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Abstract

The establishment of an international criminal tribunal has long been a goal, first of the League of Nations¹ and then of the United Nations. It is consistent with this tradition and appropriate that the United Nations adopt this Draft.

KEYWORDS: crime, offenders, treatment



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DRAFT STATUTE

INTERNATIONAL CRIMINAL TRIBUNAL

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DRAFT STATUTE

INTERNATIONAL CRIMINAL TRIBUNAL

**Committee of Experts on
International Criminal Policy for the Prevention
and Control of Transnational and International
Criminality
and For the Establishment of an International Criminal
Court**

**Organized by the
International Institute of Higher Studies in Criminal
Sciences**

**Under the Auspices of
the Italian Ministry of Justice**

**in Cooperation with The
United Nations Crime Prevention & Criminal Justice
Branch**

24-28 June 1990

I. Introduction

The establishment of an international criminal tribunal has long been a goal, first of the League of Nations¹ and then of the United Nations. It is consistent with this tradition and appropriate that the United Nations adopt this Draft.

1. This Draft is based on the Draft Statute for the Creation of an International Criminal Jurisdiction to Implement the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, U.N. Doc. E/CN.4/1426 (19 Jan. 1981), which was prepared at the request of the United Nations Commission on Human Rights and presented by Professor M. Cherif Bassiouni to the Ad Hoc Working Group of Experts on Southern Africa in the Final Report on the Establishment of an International Criminal Court for the implementation of the *Apartheid Convention* and Other Relevant International Instruments, U.N. Doc. E/CN.4/AC/22CRP.19/Rev.1 (10 Dec. 1980, orig. in English), *reprinted* in Bassiouni & Derby, *Final Report on the Establishment of An International Criminal Court for the Implementation of the Apartheid Convention and Other Relevant International Instruments*, 9 HOFSTRA L. REV. 533 (1981).

It also reflects some of the modifications incorporated in the draft presented in M.C. Bassiouni, A DRAFT INTERNATIONAL CRIMINAL CODE AND DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL TRIBUNAL 213 (1987). Modifications were made by members of the COMMITTEE OF EXPERTS ON CONTROL OF TRANSNATIONAL AND INTERNATIONAL CRIMINALITY AND FOR THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT, organized by the INTERNATIONAL INSTITUTE OF HIGHER STUDIES IN CRIMINAL SCIENCES, under the auspices of the ITALIAN MINISTRY OF JUSTICE in cooperation with the UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE BRANCH, meeting in Siracusa, Italy, 24-28 June

1. TREATY OF PEACE WITH GERMANY (TREATY OF VERSAILLES) signed at Versailles, 28 June 1919, 11 *Martens Nouveau Recueil* (3d) 323, (entered into force 10 January 1920). *See also*, CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES (FIRST HAGUE, I), signed at The Hague, 19 July 1899, 26 *Martens Nouveau Recueil* (2d) 720, 32 Stat. 1779, T.S. No. 342 (entered into force 4 September 1900). CONVENTION RELATIVE TO THE ESTABLISHMENT OF AN INTERNATIONAL PRIZE COURT (SECOND HAGUE, XII), signed at The Hague, 18 October 1907, 3 *Martens Nouveau Recueil* (3d) 88 (never entered into force).

1990. The list of members of the COMMITTEE OF EXPERTS is attached at APPENDIX 2.

Modifications made by the Committee of Experts were recorded and formulated by the RAPPORTEUR for the WORKING GROUP ON MODELS FOR AN INTERNATIONAL CRIMINAL COURT AND FOR A REGIONAL CRIMINAL COURT, Professor Christopher L. Blakesley. Professors Ved Nanda and Daniel Derby assisted Professor Blakesley. The Working Group on Models for an International Criminal Tribunal Convention was chaired by the Honorable Arthur Napoleon Raymond Robinson, Prime Minister, Trinidad and Tobago.

2. The past efforts include: the League of Nations Convention on the Prevention and Suppression of Terrorism containing a proposal for the establishment of an international criminal court,² the precedents of the International Military Tribunals of Nuremberg³ and Tokyo,⁴ the efforts of the United Nations in their 1951 (revised in 1953) Draft Statute for the Establishment of an International Criminal Court,⁵ and the 1980 Draft Statute for the Establishment of an International Criminal Jurisdiction to Implement the International Convention on the Suppression and

2. CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT, opened for signature at Geneva, 16 November 1937, League of Nations O.J. Spec. in Supp. No. 156 (1938), League of Nations Doc. C.547 (I).M.384(I).1937.v(1938) (never entered into force).

3. AGREEMENT FOR THE PROSECUTION AND PUNISHMENT OF MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS (LONDON AGREEMENT), signed at London, August 1945, 82 U.N.T.S. 279, 59 Stat. 1544, E.A.S. No. 472 (entered into force, 8 August 1945), CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL (NUREMBERG) (annexed to the London Agreement); and CONTROL COUNCIL LAW No. 10 (Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity), adopted at Berlin, 20 December 1945, OFFICIAL GAZETTE OF THE CONTROL COUNCIL FOR GERMANY, No. 3, Berlin, 31 January 1946.

4. INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST PROCLAIMED AT TOKYO, 19 January 1946, and amended 26 April 1946, T.I.A.S. No. 1589 (entered into force 19 January 1946), CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST (TOKYO).

5. DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT (Annex to the Report of the Committee on International Criminal Jurisdiction, 31 August 1951), 7 GAOR Supp. 11, U.N. Doc. A2136 (1952) at 23. REVISED DRAFT STATUTE FOR AN INTERNATIONAL COURT (Annex to the Report of the Committee on International Criminal Jurisdiction, 20 August 1953), 9 GAOR Supp. 12, U.N. Doc.A/2645 (1954), at p. 21.

Punishment of the Crime of *Apartheid*,⁶ and other proposals by various organizations, such as the International Law Association,⁷ the International Association of Penal Law⁸ and the works of individual scholars.⁹

3. The establishment of an international criminal tribunal could admittedly be based on various models, including, but not limited to:
 - i. Expanding the jurisdiction of the International Court of Justice to include questions of interpretation and application of conventional and customary international criminal law, and providing for compulsory jurisdiction under Article 36 of the Statute of the International Court of Justice for disputes

6. DRAFT STATUTE FOR THE CREATION OF AN INTERNATIONAL CRIMINAL JURISDICTION TO IMPLEMENT THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID, 19 January 1980, U.N. Doc. E/CN.4/1416 (prepared by Professor M. Cherif Bassiouni).

7. See, DRAFT STATUTE FOR AN INTERNATIONAL COMMISSION OF CRIMINAL INQUIRY AND A DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT, International Law Association, 60th Conference, Montreal, August 29 — September 4, 1982, in *Report of the 60th Conference of the International Law Association* (1983).

8. See, REPORT ON THE CREATION OF AN INTERNATIONAL CRIMINAL JURISDICTION, by V.V. Pella, to the Interparliamentary Union, XXII Conference, held in Berne and Geneva, 1924, in *l'Union Interparlementaire. Compt Rendu de la XXII Conférence tenue à Berne et à Geneve en 1924, publié par le Bureau Interparlementaire*, 1925. See also, *l'Union Interparlementaire, Compt Rendu de la XXII Conférence Tenue à Washington et à Ottawa en 1925* (1925). Project of the International Association of Penal Law, in *Actes du Premier Congrès International de Droit Pénal, Bruxelles*, 26-29 June 1926 (1927) and PROJET DE STATUT POUR LA CRÉATION D'UNE CHAMBRE CRIMINELLE AU SEIN DE LA COUR PERMANENTE DE JUSTICE INTERNATIONALE, presented by the International Association of Penal Law to the League of Nations in 1927, 5 *Revue International de Droit Pénal* (1928). DRAFT INTERNATIONAL CRIMINAL CODE, presented by the AIDP to the VIth U.N. Congress on Crime Prevention and the Treatment of Offenders (Caracas, 1980) (U.N.Doc. E/CN.4/NGO 213) [Updated in M.C. Bassiouni, A DRAFT INTERNATIONAL CRIMINAL CODE AND DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL TRIBUNAL (1987)]. See also, 45 *Revue International de Droit Pénal* Nos. 3-4 (1974); 52 *Revue International de Droit Pénal* Nos. 1-4 (1981).

9. See, DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT, in J. Stone & R. Woetzel, *Toward a Feasible International Criminal Court* (1970); DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT, (*Foundation for the Establishment of an International Criminal Court — Wingspread Conference*, September 1971); DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT, Work Paper, *Abidjan World Conference on World Peace Through Law* August 26-31 (1973).

between states arising out of these questions;

- ii. Establishing an international commission of inquiry, either as an independent organism, as part of the international criminal court or as an organ of the United Nations. Such a commission would investigate and report on violations of international criminal law, taking into account the proposal of the International Law Association and existing United Nations experiences with fact finding and inquiry bodies which have developed over the years;
 - iii. Establishing an international (universal) criminal jurisdiction along the lines of the 1953 United Nations Revised Draft Statute for Establishment of an International Criminal Court¹⁰ or the 1980 Draft Statute for the Establishment of an International Criminal Jurisdiction to Implement the International Convention on the Suppression and Punishment of *Apartheid* Convention;¹¹
 - iv. Establishing Regional International Criminal Tribunals as described below.
4. The United Nations should adopt this Draft and submit it to the General Assembly.

II. Background

1. Initiatives on the establishment of an International Criminal Tribunal¹² have been developed since the failure to establish an International Tribunal pursuant to Articles 227-229, Treaty of Versailles (1919) to prosecute: Kaiser Wilhelm II for "Crimes Against Peace;" German Military Personnel for "War Crimes;" and Turkish Officials for "Crimes Against Humanity."
2. More particularly, there are two projects developed by the United Nations 1953 Draft Statute for the Creation of an International Criminal Court, which was tabled by the General Assembly in 1953,¹³ and the 1980 Draft Statute for the Establishment of an International Criminal Jurisdiction to Enforce the *Apartheid*

10. *Supra* note 5.

11. *Supra* note 6.

12. These initiatives are listed in the Appendix to this Draft.

13. *Supra* note 5.

Convention, which has been before the Commission on Human Rights without action since 1980.¹⁴ Non-governmental organizations have also produced noteworthy projects such as those of the International Law Association (see Appendix).

III. The Need for Establishing an International Criminal Tribunal

1. Increased international and transnational crimes.
2. The existence of 22 categories of international crimes¹⁵ representing 315 international instruments between 1815-1988.
3. The internationally perceived dangers of drug-trafficking and recycling of illicit proceeds of drug-trafficking, and their harmful effects on many societies of the world irrespective of whether they are producing or consuming countries, and the increased manifestations of organized criminality.
4. The continued manifestation throughout the world of terror-violence which threatens *inter-alia*: civilian aviation; civilian maritime navigation; diplomats and other internationally protected persons; and innocent civilians.
5. The inability of states and their national legal systems to act unilaterally to control and suppress these and other dangers arising from international and transnational criminality.

IV. Alternative Models

1. The Universal Model — *See*, 1953 United Nations Draft Statute¹⁶ and 1980 Draft Statute.¹⁷
2. The non-adjudicative Inquiry Model — *See*, Model proposed by the ILA.¹⁸

14. *Supra* note 6.

15. *See*, M.C. Bassiouni, *International Crimes: Digest/Index of International Instruments 1815-1985* (Vo. I & II, 1986).

16. *Supra* note 5.

17. *Supra* note 6.

18. *Supra* note 7; C. Blakesley, DRAFT MODEL FOR PROPOSED INTERNATIONAL COMMISSION [OR BOARD] OF CRIMINAL INQUIRY, part of DRAFT MODEL INTERNATIONAL CRIMINAL TRIBUNAL, adapted, with analysis from earlier Draft Models by M.C. Bassiouni and that cited in note 8, *supra*, for the *Istituto Superiore Internazion-*

3. The Regional Model. The universal model may be adapted for regional use. *See*, C. Blakesley, DRAFT MODEL INTERNATIONAL [REGIONAL] CRIMINAL TRIBUNAL, adapted, with analysis from earlier Draft Models by M.C. Bassiouni and that cited in note 7, *supra*, *reprinted in*, 136 THE CONGRESSIONAL RECORD, No. 77, pp. S 8080 - S 8089 (Washington, D.C. June 18, 1990).

A Model for A Proposed International Criminal Tribunal

GENERAL

1. Establishment of the Tribunal

- i. The Tribunal will be established pursuant to a multilateral convention [hereinafter referred to as "the Convention"] open to all States-Parties.
- ii. The States-Parties to the Convention will agree on the establishment of the Tribunal whose location will be determined by agreement.
- iii. The established Tribunal will have an international legal personality and will sign a host-country agreement with the host state. The Tribunal will thus have extra-territoriality for its location and immunity for its personnel.
- iv. The Tribunal's costs and facilities, including detentional facilities will be paid on a pro-rata basis by the States-Parties to the Convention.
- v. The Tribunal as an international organization will be granted jurisdiction by the States-Parties to prosecute certain specified offenses embodied in the annex, as codified by the States-Parties, and in international conventions and the authority to

ale de Scienze Criminali, Committee of Experts on International Criminal Policy for the Prevention and Control of Transnational and International Criminality for the Establishment of an International Criminal Court, Siracusa, Italy, 24-28 June 1990.

detain those accused, and those convicted of the charges. [The merits of such a detentional scheme is that it removes pressures on the affected states, particularly in "terrorism" cases, and in cases involving major drug offenders].

2. Jurisdiction of the Tribunal and Applicable Law

- i. The Jurisdiction of the Tribunal will be universal for offenses provided and defined in the annex to this Convention to be enacted by the authority of the Standing Committee. For other crimes, not listed in the Annexed Code of Offenses, jurisdiction also exists by virtue of a provision (or series of provisions) in the Convention, which will be in the nature of a "transfer of criminal proceedings" agreement.¹⁹ [Thus, each State-Party that has original jurisdiction based on territoriality, active or passive personality, would not lose jurisdiction, but merely transfer the criminal proceedings to the Court. This approach will alleviate some major jurisdictional and sovereignty problems.]
- ii. In the cases where it is called for, the intended consequence of this approach of "transfer of proceedings," the Tribunal will use the substantive law of the transferring state and its own procedural rules which will be part of the Convention and promulgated prior to the Tribunal's entry into function.²⁰
- iii. In the transfer of proceedings context, the Procurator-General of the Tribunal will act as the Chief Prosecutor, but will be assisted by a prosecuting official of the transferring state whose law is to be applied.

3. Prosecution

- i. Prosecution may commence on the basis of a criminal

19. See, e.g., the EUROPEAN CONVENTION ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS (E.T.S. No. 73).

20. The procedural rules will be consistent with and based on general principles of international law and in accordance with internationally protected human rights, particularly the International Covenant on Civil and Political Rights, Res. 2200 (XXI), 16 December 1966; 21 GAOR, Suppl. No. 16 (A/6316), at 45-52; and the Inter-American Convention on Human Rights. OAS T.S. No. 36, at 1-21 (OAS Official Records, OEA/SER. A/16) 22 November 1969.

complaint brought by a State-Party. In addition, a State-Party that does not have subject matter or *in personam* jurisdiction, or that does not wish to bring a criminal complaint within its own jurisdiction, may petition the Procurator-General of the Tribunal to inquire the potential direct prosecution by the Court. In such cases, the request by a State-Party will be confidential, and only after the Procurator-General of the Tribunal has deemed the evidence sufficient will the case for prosecution be presented to the Court *in camera* for the Court's action. In such a situation, the Tribunal's Procuracy acts as a Judicial Board of Inquiry.²¹ Once the Procuracy (sitting as the Judicial Board of Inquiry) has decided whether to prosecute, the Procurator-General will issue an Indictment and request the surrender of the accused by the State-Party where the accused may be found.

- ii. The Convention includes provisions on surrendering the accused to the Tribunal and providing the Tribunal with legal assistance (including administrative and judicial assistance) for the procurement of evidence (both tangible and testimonial).²²

4. Conviction

- i. Upon conviction the individual may be returned to the surrendering state, which will carry out the sentence on the basis of provisions in the Convention, in the nature of "transfer of prisoners' agreements."²³ Alternatively, the convicted person can be transferred to any other State-Party on the same legal basis, or the Tribunal may place the convicted person in its own detentional facilities which will be established by the

21. See, *supra* note 18.

22. See, e.g., THE EUROPEAN CONVENTION ON MUTUAL LEGAL ASSISTANCE (E.T.S. No. 30), and the various bilateral Conventions between various states. See, e.g., A. Ellis and R. Pisani, *The United States Treaties on Mutual Assistance in Criminal Matters*, in 2 M.C. Bassiouni, *INTERNATIONAL CRIMINAL LAW* 151 (1986).

23. See, e.g., THE EUROPEAN CONVENTION ON TRANSFER OF SENTENCED PERSONS (E.T.S. No. 112) and the bilateral treaties on Transfer of Prisoners between the United States and Canada, the United States and Mexico and other countries. See, Bassiouni, *TRANSFER OF PRISONERS BETWEEN THE UNITED STATES, MEXICO AND CANADA* 239; and H. Epp, *The European Convention on Transfer of Prisoners* in 2 M.C. Bassiouni, *INTERNATIONAL CRIMINAL LAW* 253 (1986).

Convention in accordance with a host-state agreement between the Tribunal and the State wherein the detentional facility will be established.

- ii. By virtue of the Convention, an indictment by the Procuracy, sitting as a Judicial Board of Inquiry, will be recognized by all States-Parties.

5. Composition of the Court

The Court will consist of as many judges as there are States-Parties to the Convention, but not less than twelve. There will be four Chambers of three Judges each and a Presiding Judge. The judges will be drawn by lot to sit in rotation on the four Chambers (one of which will be the Judicial Inquiry Board).

6. Appeal

To provide for the right of appeal, the Tribunal will be divided into Chambers and the Judges drawn by lot. One Chamber will be the Judicial Inquiry Board and one or more other Chambers will be adjudicating chambers. Three judges will form a panel for hearing cases. The Tribunal sitting *en banc* will hear appeals. The three judges who heard the case will not sit with the *en banc* for that appeal.

7. Selection of Judges

Each State-Party will appoint a Judge from the ranks of its judiciary or from distinguished members of the Bar or from Academia. The judges will be persons of high competence, knowledgeable in International Criminal Law, and of high moral character. Appointment of Judges and their tenure is to be established by the Convention.

DRAFT STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL

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Part IV - Statute of the International Criminal Tribunal*

Chapter 1. Definitions

Article I. *The Statute*

The Statute of the International Criminal Tribunal which is the legal authority and basis for the functioning of the Tribunal and its Organs.

Article II. *The International Criminal Tribunal*

All the Organs created by the Statute, which include the Court, the Procuracy, the Secretariat, and the Standing Committee of States-Parties.

Article III. *The International Criminal Court*

The judicial organ of the Tribunal, which adjudicates matters constituting an alleged violation of the International Criminal Code, determines guilt or innocence, and meets out penalties in accordance with the provisions of the Statute.

Article IV. *The Procuracy*

That Organ of the Tribunal that investigates, prosecutes, and oversees the application of the decisions of the Court.

Article V. *The Secretariat*

The clerical and administrative organ of the Tribunal.

Article VI. *The Standing Committee*

That body consisting of the States-Parties to the Convention that adopted the Statute.

Article VII. *The Procurator*

The person elected by the Standing Committee to head the Procuracy.

* This text relies in part on the 1953 United Nations *Revised Draft Statute for an International Criminal Court* (9 GAOR Supp. XII, U.N. Doc. A/2645 1954), prepared by the International Law Commission, hereinafter referred to as 1953 ILC Draft and the *Draft Statute of an International Criminal Court* of the International Law Association of May 1979 in proceedings of the International Law Associations' Belgrade Conference, 1980, P. 11, hereinafter referred to as 1979 ILA Draft, and the Final Report on the Draft Statute for the Creation of an International Criminal Jurisdiction to Implement the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, 19 January 1980, E/CN.4/1426 (1980).

Article VIII. *The Judge or Judges*

The judicial person or persons who sit on the Court.

Article IX. *The Secretary*

The person elected by the Standing Committee to head the Secretariat.

Article X. *The Convention*

The instrument by virtue of which the Statute for the Tribunal is adopted.

Chapter 2. General Provisions**Article XI. *Purpose of the International Criminal Tribunal***

The purpose of this International Criminal Tribunal is to enforce the provisions of those international crimes which shall be included in the annex, as codified by the States-Parties and other international offenses which may be established by means of Supplemental Agreements to this list.

Commentary

This article establishes an International Criminal Tribunal which is to be a new international legal institution consisting of several organs discussed in Article III below. This Draft Convention provides States-Parties with the opportunity to include Supplemental Agreement to the International Criminal Code, within the jurisdiction of the Court, other international offenses than those contained in the International Criminal Code.

With some 22 categories of international crimes, representing some 315 international instruments enacted between 1815 and 1989, none of which properly defines in criminal law terms the offenses proscribed or provides their elements, it is necessary that the Standing Committee properly codify, or assign another organ of the Tribunal to codify, the offenses to be covered by the Convention.

Article XII. *Nature of the Tribunal*

The Tribunal shall be a permanent body, occupying facilities and performing its chief functions at the Palace of Justice in The Hague, and utilizing as its official languages those of the United Nations.

Commentary

This article considers the Tribunal a newly created institution, and, in order to minimize logistical problems, the suggested location is the Palace of Justice in The Hague; it is already established and equipped as an international judicial body. The official languages are those of the U.N., which represents a recognized world consensus.

Article XIII. *Organs of the Tribunal*

1. The Tribunal shall consist of the following organs:
 - a. The Court;
 - b. The Procuracy;
 - c. The Secretariat; and
 - d. The Standing Committee of States-Parties to the Statute of the International Criminal Tribunal.
 2. The functions and competence of the above organs shall be as designed in Chapter 4 of this Convention.
-

Commentary

This article establishes four bodies with separate functions and purposes which are described throughout this Statute.

Article XIV. Jurisdiction of the Tribunal

The Tribunal shall have universal jurisdiction to investigate, prosecute, adjudicate and punish persons and legal entities accused or found guilty of any of the crimes contained in the International Criminal Code and any other international offenses which may be embodied in a Supplemental Agreement.

Commentary

The Tribunal's jurisdiction is universal in that there are no territorial or geographic limits to the offenses or offenders which would deny the Tribunal subject-matter or *in personam* jurisdiction with respect to those offenses contained in the International Criminal Code and any Supplemental Agreement thereto. Within the competence of the Tribunal, there are no geographical or territorial limits to the Tribunal's jurisdiction. *See*, art. XV, *infra*.

The 1953 ILC Draft does not define crimes to be dealt with beyond the phrase "crimes generally recognized under international law." whereas the 1979 ILA Draft incorporates by reference definitions of crimes in sixteen international conventions, but notably omitting the *Apartheid* Convention.

Article XV. Competence of the Tribunal

1. The Tribunal shall, subject to the provisions of the present Statute, exercise its competence in accordance with international law whose sources are stated in Article 38 of the International Court of Justice.
 2. The competence of the Organs of the Tribunal shall be interpreted and exercised in light of the purposes of the Tribunal as set forth in this Convention.
-

Commentary

While penal theoreticians may argue the merits of a distinction between jurisdiction and competence, it is suggested that jurisdiction establishes the Tribunal's geographic and subject-matter authority, and *in personam* authority, while competence determines the specific powers of the Court with respect to its jurisdiction and provides the legal framework of reference for the Tribunal's exercise of its jurisdictional authority. This includes the theory of *La Competence de la Competence* in the Statute of the International Court of Justice whereby the Court can establish its own competence from its recognized competence. See I. Shihata, *The Power of the International Court to Determine its own Jurisdiction*. The Hague: Nijhoff, 1965. Essentially, the Convention will provide what conduct committed anywhere will fall within the Tribunal's competence.

Article XVI. *Subjects Upon Whom the Tribunal Shall Exercise Its Jurisdiction*

The Tribunal shall exercise its jurisdiction over natural persons.

Commentary

Although Article XIV on jurisdiction refers to the Tribunal's authority over natural persons, it was deemed of importance to emphasize this authority under a separate article though it may appear duplicative, since the International Criminal Code covers natural persons. See M.C. Bassiouni, *A Draft International Criminal Code and Draft Statutue for an International Criminal Tribunal* (1987).

Article XVII. Sanctions and Penalties

1. The Court as an organ of the Tribunal shall upon entering a finding of guilty, and in accordance with standards set forth in this Convention have the power to impose the following penalties and sanctions:
 - a. The penalties shall be:
 - i. Deprivation of liberty or any lesser measures of control where the person found guilty is a natural person; and,
 - ii. Fine to be levied against a natural person, organization or State; and
 - iii. Confiscation of the proceeds of proscribed (or criminal) conduct.
 - b. The sanctions shall be:
 - i. Injunctions against natural persons or legal entities restricting them from engaging in certain conduct or activities; and
 - ii. Order restitution and provide for damages.
 2. Sanctions shall be established by the rules of the Court and shall be published before their entry into effect. Such sanctions shall be based on the criteria set forth in the annexed list.
-

Commentary

Only the Court upon a finding of guilty, subject to the provisions of this Convention, the procedures, and rules which would be developed by the different Organs and the standards of fairness set forth in the International Criminal Court, can impose a sanction against a natural person, organization, or State. Clearly deprivation of liberty applies to natural persons and not to legal entities, but fines and other sanctions apply to both natural persons and legal entities. It is to be noted that there is no schedule of penalties affixed to any specific crime and that some may raise a question of *nulla poena sine lege*. To avoid this problem the Convention recognizes that the Court shall enact appropriate and specific rules or sanctions to be promulgated prior to the tribunal's commencement of activities, which could satisfy the element of notice. Proceeds of confiscation will go to defray costs of the Tribunal.

In keeping with the principle of legality, it is necessary that well developed sanctions and penalties be developed and promulgated prior

to trial. This legislative responsibility will be delegated by the Standing Committee to some organ of the Tribunal.

Chapter 3. The Penal Processes of the Tribunal

Article XVIII. *Initiation of the Process*

1. No criminal process shall be initiated unless a complaint is communicated to the Procuracy or originated within the Procuracy.
2. The Investigative Division of the Procuracy shall determine whether such complaints are "manifestly unfounded" or not, and that determination shall be reported immediately to the source of the communication, if any.
3. No complaint by a State-Party to the present Statute or an Organ of the United Nations shall be deemed "manifestly illfounded." Other States and Intergovernmental Organizations whose complaints are determined to be "manifestly illfounded" may appeal such determinations to the Court pursuant to Article XII of this Statute.
4. Unless otherwise directed by the Court, the Procuracy may either take no further action on "manifestly illfounded" complaints or may continue further investigation.
5. Communications determined "not manifestly illfounded" shall be transferred together with the record of investigation to the Prosecutorial Division of the Procuracy, which shall immediately inform the accused and assume responsibility for the development of the case.
6. When a case is ready for prosecution, the procurator shall submit it to an appropriate Chamber of the Court pursuant to this Statute, or to the Standing Committee pursuant to this Statute, or to both, but if a case based on a complaint submitted by a State-Party to this Statute or by an Organ of the United Nations has not been presented to the Court within one year of submission to the Standing Committee, the source of the complaint may request the Court to examine the case and act pursuant to Article IX of this Statute.

Commentary

The desirability of such a process has substantial support. See G.A. Res. 1187 (XII) 11 November 1957. See Report of the Secretary-General on "International Criminal Jurisdiction," U.N. GAOR (XII) 1957), Doc. A/13649; see also *U.N. Historical Survey on the Question of the International Criminal Jurisdiction* Doc. A/CN.4/7, Rev. 1 (1949). For a documentary history of the various projects for the creation on an international criminal jurisdiction, see B. Ferencz, *The In-*

ternational Criminal Court (1980) 2 vols. See also, J. Stone and R. Woetzel, *Toward a Feasible International Criminal Court* (1970); 35 *Revue Internationale de Droit Penal* 102 (1964) devoted to that subject, and 45 *Revue Internationale de Droit Penal* No. 3-4 (1974) containing the contributions of the AIDP to V U.N. Congress on Crime Prevention and Criminal Justice, Geneva, September 1975 devoted to the subject of "*La Creation d'une Justice Penal Internationale*. The *Revue International de Droit Penal* contained scholarly writings on this subject in its issues of 1928, 1935, 1945, and 1952, as well as others. The AIDP has traditionally supported the creation of an international criminal court as witnessed by the positions it has taken at its various International Congresses, and those of its distinguished members among them: Pella, Donnedieu de Vabres, Saldana, Graven, Jimenez de Asua, Setille, Cornil, Bouzat, Jescheck, Romoshkiin, Herzog, Glaser, Dautricourt, Quintano-Rippoles, Arroneau, Mueller, De Schutter, Triffterer, Lombois, Plawski, Ferencz, Oehler, and Zubkowski. As past Secretary-General and now President of the AIDP, Professor M. Cherif Bassiouni has consistently supported the proposition. Because of the numerous writings on the subject by the above mentioned scholars and others, it would be impossible to cite them all. For three more initiatives resulting in the submission of a draft statute, see the International Law Association, "Draft Statute for an International Commission of Criminal Injury" adopted by its International Criminal Law Committee in Paris, May 1978 Proceedings of the International Law Association (Belgrade Conference 1980) p. 4; and "Draft Statute for an International Criminal Court," World Peace through Law, Abidjan World Conference August 1973 (edited by Robert K. Woetzel); and a "Draft Statute for an International Criminal Court" prepared by the Foundation for the Creation of an International Criminal Court, see also K. de Haan, "The Procedural Problems of a Permanent International Criminal Jurisdiction" in *De bestraffing van inbreuken tegen het oorlogs - en het humanitair recht* (A. Beirlaen, S. Dockx, K. de Haan, C. Van den Wijngaert, eds., 1980) p. 91.

The 1953 ILC Draft in Article 29 provides that the penal processes could commence only by action of a State-Party. The 1979 ILA Draft in Article 23 allows only States to approach the Commission which at its turn would present a case to the Court. The procedures presented herein differ from the 1953 ILC Draft and the 1979 ILA Draft in that they concentrate the investigation and prosecution of any case with the Procuracy, but a State-Party, Organ of the U.N., Inter-Governmental Organization, Non-Governmental Organization

and individual may file a complaint with the Procuracy, which shall accept such communications. The Procuracy then makes an initial determination as to whether the complaint is "not manifestly illfounded" or "manifestly illfounded." That determination is quite similar to the one made by the European Convention on Human Rights. However, the Procuracy is not without controls as to its discretion, in that a State-Party and an organ of the U.N. are entitled to recognition of their complaints as being "not manifestly illfounded," while other States and Inter-Governmental Organizations are entitled to an appeal to the Court of a determination by the Procuracy that the complaint has been found "manifestly illfounded." Communications and complaints by individuals and Non-Governmental Organizations are not entitled to the same status. The Procuracy's decisions are thus reviewable in the case of certain complaints and communications, and a decision holding a complaint "not manifestly illfounded" will then travel two alternate channels: (a) the possibility of mediation and conciliation through the Standing Committee; and (b) adjudication before the Court. A period of one year is allowed for the conciliation process, which is the same period allowed for the Procuracy's investigation and preparation of the case. Thereafter, the case may be presented to the Court at the request of the complaining State-Party or Organ of the U.N. if it is the initiator of the complaint. Otherwise that period of one year is extendable, subject to the Court's review.

Article XIX. Pre-Trial Process

1. The Prosecutorial Division of the Procuracy may request an appropriate Chamber of the Court pursuant to this Article of the Statute to issue orders in aid of development of a case, in particular, orders in the nature of:
 - a. Arrest warrants;
 - b. Subpoenas;
 - c. Injunctions;
 - d. Search warrants; and
 - e. Warrants for surrender of an accused so as to enable accused persons to be brought before the Court and to transit States without interference.
2. Requests for such orders may be granted with or without prior notice if opportunity to be heard would jeopardize the effectiveness of the requested order.
3. All such orders shall be executed pursuant to the relevant laws of the state in which they are to be executed.
4. The ultimate merits of a case shall not be considered pursuant to Article X of this Statute until the case has been submitted to an appropriate Chamber of the Court, sitting in a preliminary hearing at which the accused is represented by Counsel, and the Chamber made the following determinations:
 - a. The case is reasonably founded in fact and law;
 - b. No prior proceedings before the Tribunal or elsewhere bar the process in accordance with principle *ne bis in idem* or fundamental notions of fairness; and
 - c. No conditions exist that would render the adjudication unreliable or unfair.
5. The schedule of proceedings shall be established by the appropriate Chamber in consultation with the Procuracy and Counsel for the accused with due regard to the principle of fairness to the parties and the principle of "speedy trial."

Commentary

A non-exhaustive list of orders that may be issued by the Court in aid of the preparation of a case is specified. It is expected that the Rules of the Court will go into the details of the form, content, and

other formalities pertaining to these orders. They are among the traditional powers of either a Court, or a judge of instruction, respectively, in the Common Law and Romanist-Civilist tradition. Similar provisions may be found in the 1053 ILC Draft, Articles 40, 41, and 42 and in the 1979 ILA Draft, Articles 36 and 37. It must be noted here that this Court will in this and other respects rely on the cooperation of the States-Parties to implement its orders. It must also be noted that where a State-Party has treaties or relations with a State non-Party on the subject of extradition and judicial assistance and cooperation, the Courts' orders and determinations of any sort would have an impact beyond that State-Party and thus give this Convention a multiplier effect with respect to its impact. [See e.g., V.E.H. Booth, *British Extradition Law and Procedure* (1980); C. Van den Wijngaert, *The Political Offence Exception to Extradition* 1980); M.C. Bassiouni, *International Extradition in United States Law and Practice* (2 vols. 1983); I. Shearer, *Extradition in International Law* (1971); T. Vogler, *Auslieferungsrecht und Grundgesetz* (1969); Bedi, *International Extradition* (1968); A. Billot, *Traite de l'Extradition* (1874); and M. Pisani and F. Mosconi, *Codice delle Convenzioni di Estradizione E Di Assistenza Giudiziaria in Materia Penale* (1979).] The observations made herein are also relevant to Chapter 6 on the Duties of the States-Parties since such duties will not only extend to the carrying out of the obligations of this Statute within their own territories but also whenever possible in their relations with other States. It is clear that the carrying out and execution of all such obligations to assist the Tribunal where required by this Statute, and in particular Chapter 6, but a State-Party is only requested to act pursuant to its relevant national laws. It must, however, be noted that a State-Party cannot enact national laws that will frustrate the carrying out of the obligations arising under this Statute.

Paragraph 4 establishes a procedure analogous to an indictment, such as was proposed in Articles 33 to 35 and 31 of the 1953 ILC and 1979 ILA Drafts, respectively, by means of a Committing Chamber in the former and Commission processes in the latter. Under the present draft, however, this process is but a step toward determination of guilt, it being unnecessary to give it special consequences because prior procedures in the Procuracy have been given appropriate consequences and progress under the present draft after the initial Procuracy action is gradual rather than involving thresholds.

The subparagraph a determination is primarily for the sake of effi-

ciency, as a means of detecting any errors by the Procuracy as to the suitability of the matter for further action. Subparagraph b provides an opportunity for early consideration whether misconduct in preparation of the case may have impugned the Tribunal's integrity in such a way to impair credibility or acceptability of its determinations, as well as for early consideration of *ne bis in idem* (double jeopardy) problems. [See M.C. Bassiouni, *Substantive Criminal Law* (1978), pp. 499-512].

Subparagraph c is particularly intended to deal with the need to consider the possibility that non-cooperation of States, particularly non-Parties, may render evidence of either incriminatory or exculpatory character unavailable, so that a fair trial of the case may be impossible. Early detection of problems of this type would not only be more efficient but also would tend to avoid unnecessary and difficult *ne bis in idem* questions aborted proceedings.

Article XX. Adjudication

1. Hearings on the ultimate merits of cases shall be conducted in public before a designated Chamber of the Court but deliberations of the Chamber shall be *in camera*.
 2. A Chamber may at any time dismiss a case and enter appropriately motivated orders. In case of dismissal for any reason other than on the merits, the principle *ne bis in idem* shall not apply.
 3. In all proceedings a Chamber shall give equal weight to evidence and arguments presented by the Procurator and on behalf of the accused in accordance with the principle of "equality of arms" of the parties.
 4. When all evidence respecting guilt or responsibility for wrongful acts has been presented, and argued by the parties, the Chamber shall close the Hearings and retire for deliberations.
 5. The decisions of the Chambers shall be publicly announced orally, in summary or entirely, accompanied by written findings of fact and conclusions of law, or entered 30 days from date of pronouncement of the oral decision, and any judge of that Chamber may write a separate dissenting or concurring opinion.
 6. A Determination of guilt shall be deemed entered when recorded by the Secretariat, which shall communicate it forthwith to the Procuracy and the accused, but no such Determination shall be regarded as effective until 30 days after the date of recording at which time the deciding Chamber may no longer modify its findings.
 7. Each Chamber shall consist of three judges selected by lot, and cases shall be assigned to each Chamber by lot.
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Commentary

Paragraph 1 parallels Article 39 of the 1953 ILC Draft and 35 of the 1979 ILA Draft conforming more closely to the latter, which makes no express provision for secret sessions. This treatment appears appropriate in that any confidential evidence must be submitted in public in a form or manner that protects essential matters of confidentiality, such as identity of a witness or a particular technique for obtaining evidence, and the details for such presentations may be treated in rules of the Court and Procuracy, which may be elaborated at a time when the actual needs in this regard are clearer.

Paragraph 2 describes the inherent powers of courts to dismiss cases, particularly in respect of evidentiary problems. Article 38, para-

graph 4, of the 1953 ILC Draft has a similar dismissal provision. No express provision is made for withdrawal of a matter, as was done in Articles 43 and 38 of the ILC and ILA Drafts, respectively, it being implicit in the nature of the powers of the Procuracy to determine whether to take such action.

Paragraph 3, it should be noted, relates to the principle of equality of arms, which has been observed under the European Convention on Human Rights. [Applications No. 596/59 and 789/60, *Franz Pataki and Johann Dunshim vs. Austria*, Report of the Commission of 28 March 1963, *Yearbook of the European Convention on Human Rights*, pp. 730, 734 (1963).]

Paragraphs 4 and 5 are self-explanatory.

It is contemplated that rules of the Court will address *ne bis in idem* issues.

Paragraph 6 is in part motivated by the availability of appeal and also the fact that Chambers, being constituted on a rotational basis, may be unavailable in their prior form for subsequent arguments. Details of the rotational constitution of Chambers are left for elaboration in the Court rules.

Article XXI. Sanctioning

1. Upon a Determination of guilt or responsibility, a separate hearing shall be held regarding sanctions to be imposed, at which hearing evidence of mitigation and aggravation shall be introduced and argued by the parties.
 2. At the conclusion of this hearing the Chamber shall retire for deliberation and shall issue its Determination in the same manner and subject to the same conditions as for a Determination of guilt, as set forth in paragraphs 5 and 6 of Article X.
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Commentary

These provisions are self-explanatory, but this Article is to be read in *pari materia* with Article VII and the Commentary thereto and Articles XIII and XXIII

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Article XXII. Appeals

1. Appeals to the Court *en banc* from Determinations of Chambers as to the guilt or responsibility or as to sanctions may be commenced by the accused upon written notice filed with the Secretariat and communicated to the other party within 30 days of the date of entry of judgement or order appealed.
2. Other appeals from actions of Chambers may be taken before a final judgement is entered only if such actions are conclusive as to independent matters.
3. The Procuracy may appeal questions of law in the same manner as an accused under paragraphs 1 and 2.
4. Decisions on Appeals shall be delivered in the same manner as other decisions of the Court *en banc* as provided in Article X, paragraphs 5 and 6 of this statute.
5. Decisions of the Court 24 *en banc* and unappealed Determinations of orders of Chambers shall be deemed final unless it is shown that:
 - a. Evidence unknown at the time of the Determination or order has been discovered, which have had a material effect on the outcome of the said Determination or order; or,
 - b. The Court or Chamber was flagrantly misled as to the nature of matters affecting the outcome; or
 - c. On the face of the record the facts alleged have not been proved beyond a reasonable doubt; or,
 - d. The facts proved do not constitute a crime within the jurisdiction of the Tribunal; or,
 - e. Other grounds for which the Court may provide by its Rules.
6. Appealed Determinations may be revised or vacated or remanded for new Determination, and when vacating a Determination the Court shall specify what if any *ne bis in idem* effects shall be given to the prior proceedings.

Commentary

Appeals from Chambers, Determinations and Orders, which may be done only on behalf of an accused or the Procuracy on questions of law, are permitted including post-conviction orders. This is consonant with the provisions of the International Covenant on Civil and Political

Rights concerning the dual level of judgement and review.

No appeal is permitted for the accused under Articles 49 and 43 of the ILC and ILA Drafts, respectively. Also interlocutory appeals are permitted as practical necessity may require them.

Paragraph 5 on revision of judgments parallels Articles 52 and 45 of the ILC and ILA Drafts, respectively, but is broader in scope.

Article XXIII. *Sanctions and Supervision*

1. The Court may call upon any State-Party to execute measures imposed in respect of guilt, in accordance with the laws of the said State-Party.
 2. With respect to each accused determined to be guilty, a judge of the Court shall be selected by lot as Supervisor of the sanction imposed.
 3. All requests to modify sanctions shall be directed in the first instance to the Sanction Supervising judge who may submit the request to the Adjudicating Chamber for modification provided such action in no way increases the sanction or conditions imposed upon the person or legal entity found guilty.
 4. Decisions of the Sanction Supervising judges regarding modification requests may be appealed to the Chamber which imposed the sanction, but such appeals in the Chamber's discretion need not be the subject of full hearings and detailed written decisions.
 5. Nothing herein precludes the Court in accordance with its Rules to suspend its sanctions or place pre-conditions to their application in accordance with its Rules.
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Commentary

Paragraph 1 corresponds to Articles 46 of the 1979 ILA Draft, Article 51 of the 1953 Draft having left such matters to future conventions. The terminology "sanctions" is capable of including not only punishments of imprisonment or fines but also levies of compensation or injunctive orders, thus maintaining the possibility for such broad ranges of action.

As noted previously, the supervisory mechanism of Paragraph 2 replaces the Clemency and Parole Boards provided by the ILC and ILA Drafts, and appeal is made possible under Paragraph 3.

It should be noted that these provisions govern only the procedures relating to sanctions. Standards relating to sanctions may be elaborated further in Court rules but subject to Article XXIV.

Chapter 4. Organs of the Tribunal

Article XXIV. *The Court*

1. The Court shall consist of twelve judges, no more than one of whom shall be of the same nationality, who shall be elected by the Standing Committee of States-Parties from nominations submitted thereto.
2. Nominees for positions as judges shall be of distinguished experts in the fields of international criminal law or human rights and other jurists qualified to serve on the highest courts of their respective States who may be of any nationality or have no nationality.
3. Judges shall be elected by secret ballot and the Standing Committee of States-Parties shall strive to elect persons representing diverse backgrounds and experience with due regard to representation of the major legal and cultural systems of the world.
4. Elections shall be coordinated by the Secretariat under the supervision of the presiding officer of the Standing Committee of States-Parties and shall be held whenever one or more vacancies exist on the Court.
5. Judges shall be elected for the following terms: four judges for four-year terms, four judges for six-year terms, and four judges for eight-year terms. Judges may be re-elected for any term any time available.
6. No judge shall perform any public function in any State.
7. Judges shall have no other occupation or business than that of judge of this Court. However, judges may engage in scholarly activity for remuneration provided such activity in no way interferes with their impartiality and appearance of impartiality.
8. A judge shall perform no function in the Tribunal with respect to any matter in which he may have had any involvement prior to his election to this Court.
9. A judge may withdraw from any matter at his discretion, or be excused by a two-thirds majority of the judges of the Court for reasons of conflict of interest.
10. Any judge who is unable or unwilling to continue to perform functions under this statute may resign. A judge may be removed for incapacity to fulfill his functions by a unanimous vote of the other

judges of the Court.

11. Except with respect to judges who have been removed, judges may continue in office beyond their term until their replacements are prepared to assume the office and shall continue in office to complete work on any pending matter in which they were involved even beyond their term.
12. The judges of the Court shall elect a president, vice-president and such officers as they deem appropriate. The president should serve for a term of two years.
13. Judges of the Court shall perform their judicial functions in three capacities:
 - a. Sitting with other judges as the Court *en banc*;
 - b. Sitting in panels of three on a rotational basis in Chambers; and
 - c. Sitting individually as Supervisors of sanctions.
14. The Court *en banc* shall, subject to the provisions of this Statute, adopt Rules governing procedures before its Chambers and the Court *en banc*, and provide for establishment and rotation of Chambers.
16. The Court *en banc* shall announce its decisions orally in full or in summary, accompanied by written findings of fact and conclusions of law at the time of the oral decision or within thirty days thereafter, and any judge so desiring may issue a concurring or dissenting opinion.
17. Decisions and orders of the Court *en banc* are effective upon certification of the written opinion by the Secretariat, which is to communicate such certified opinion to parties forthwith.
18. The Court *en banc* may within thirty days of the Certification of the judgement enter its decisions without notice.
19. No actions taken by the Tribunal may be contested in any other forum than before the Court *en banc*, and in the event that any effort to do so is made, the Procurator shall be competent to appear on behalf of the Tribunal and in the name of all States-Parties of this Statute to oppose such action.
20. States-Parties agree to enforce the final judgments of the Court in accordance with the provisions of this Statute.

Commentary

Except for mechanical differences, the terms of this Article as to selection, tenure and replacement of judges closely parallel those of Articles 4 through 12 and 15 through 20 of the 1953 ILC Draft and 3 through 9 and 12 through 15 of the 1979 ILA Draft, although the latter makes no provision for removal of judges.

This Article represents an innovation, in that the other drafts deal with a single court organ and created a separate Clemency and Parole Board. As discussed below, the provision for separate functions of Chambers and the Court *en banc* permits appeal, a right called for in Article 14, Paragraph 5 of the International Covenant on Civil and Political Rights. Rather than create a separate institution to deal with such matters as clemency and parole, it was deemed more efficient to have such functions performed by individual judges, subject to possible appeals from their decisions, as discussed in connection with Article XII.

Paragraph 5 contemplates that judges will be elected with reference to specific terms. Accordingly, when a given judge is considered for re-election, any of the terms that are vacant at that time may be regarded as available for that judge.

Paragraph 7 addresses the concern that any conduct by a judge may create an appearance of impropriety, and narrowly circumscribes permitted non-Court activity.

Paragraph 11 is intended to permit judges to remain in their official capacity for the sole purpose of completing work on Court action begun prior to expiration of their terms.

Paragraph 12, it should be noted, does not bar re-election of the Court president.

Article XXV. *The Procuracy*

1. The Procuracy shall have the Procurator as its chief officer and shall consist of an administrative division, an investigative division and a prosecutorial division, each headed by a Deputy Procurator, and employing appropriate staff.
 2. The Procurator shall be elected by the Standing Committee of States-Parties from a list of at least three nominations submitted by members of the Standing Committee, and shall serve for a renewable term of six years, barring resignation or removal by two-thirds vote of the judges of the Court *en banc* for incompetence, conflict of interest, or manifest disregard of the provisions of this Statute or material Rules of the Tribunal.
 3. The Procurator's salary shall be the same as that of judges.
 4. The Deputy Procurators and all other members of the Procurator's staff shall be named and removed by the Procurator at will.
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Commentary

The significance of the three-part division of the Procuracy is apparent in connection with budgets, reports, and transfer of cases from investigative to prosecutorial divisions, as well as to the rights of the accused.

Paragraph 2, providing for joint action by the Court and Standing Committee for selection of a Procurator, appears appropriate because such an officer should be politically acceptable, and States are in a superior position to become aware of suitable candidates; the court is in a superior position to judge legal competence and estimate probable devotion to impartiality. Removal power is vested in the Court in the belief that deficiencies of the kind the Court would be likely to note would be the appropriate bases for dismissal.

Deputies are placed under control of the Procurator in Paragraph 4 in the interest of effective management.

Article XXVI. The Secretariat

1. The Secretariat shall have as its chief officer the Secretary, who shall be elected by a majority of the Court sitting *en banc* and serve for a renewable term of six years barring resignation or removal by a majority of the Court sitting *en banc* for incompetence, conflict of interest or manifest disregard of the provisions of this Statute or material Rules of the Tribunal.
 2. The Secretary's salary shall be equivalent to that of the judges.
 3. The Secretariat shall employ such staff as appropriate to perform its chancery and administrative functions and such other functions as may be assigned to it by the Court that are consistent with the provisions of this Statute or material Rules of the Tribunal.
 4. In particular, the Secretary shall each year:
 - a. Prepare budget requests for each of the organs of the Tribunal; and
 - b. Make and publish an annual report on the activities of each Organ of the Tribunal.
 5. The Secretariat staff shall be appointed and removed by the Secretary at will.
 6. An annual summary of investigations undertaken by the Procuracy shall be presented to the Secretariat for publication, but certain investigations may be omitted where secrecy is necessary, provided that a confidential report of the investigation is made to the Court and to the Standing Committee and filed separately with the Secretariat. Either the Court or the Standing Committee may order by majority vote that the report be made public.
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Commentary

Although most of the functions of the Secretariat are ministerial in character, its duties to oversee communications and prepare reports serve an inspectorate function as well. Accordingly, control over the Secretariat is vested in the Court, as a neutral body.

Article XXVII. *The Standing Committee*

1. The Standing committee shall consist of one representative appointed by each State-Party.
2. The Standing Committee shall elect by majority vote a presiding officer and alternate presiding officer and such other officers as it deems appropriate.
3. The presiding officer shall convene meetings at least twice each year of at least one week duration, each at the seat of the Tribunal, and call other meetings at the request of a majority vote of the Committee.
4. The Standing Committee shall have the power to perform the functions expressly assigned to it under this Convention, plus any other functions that it determines appropriate in furtherance of the purposes of the Tribunal that are not inconsistent with the convention, but in no way shall those functions impair the independence and integrity of the court as a judicial body.
5. In particular, the Standing Committee may:
 - a. Offer to mediate disputes between State-Parties relating to the functions of the Tribunal; and
 - b. Encourage States to accede to the Convention; and,
 - c. Propose to States-Parties international instruments to enhance the functions of the Tribunal.
6. The Standing Committee may exclude from participation representatives of States-Parties that have failed to provide financial support for the Tribunal as required by this Statute or States-Parties that failed to carry out their obligations under this Statute.
7. Upon request by the Procuracy, or by a party to a case presented for adjudication to a Chamber of the Court, the Standing Committee may be seized with a mediation and conciliation petition. In that case, the Standing Committee shall within 60 days decide on granting or denying the petition, from which decision there is no appeal. In the event that the Standing Committee grants the petition, Court proceedings shall be stayed until such time as the Standing Committee concludes its mediation and conciliation efforts, but not for more than one year except by stipulation of the Parties and with the consent of the Court.

Commentary

The 1953 ILC Draft assumed that the Court created under it would be a part of the United Nations, and therefore any governing-body needs or political issues regarding its operations would be addressed by the political organs of the United Nations, especially the General Assembly. Under the 1979 ILA Draft, a similar assumption appears to have been made in that no treaty-type provisions are included and, although references are made to "Contracting Parties," this term appears to mean only States that have consented to be subject to operation of the Court. Nevertheless, the Commission contemplated in the ILA Drafts would have had a somewhat political character, in that only nationals of States consenting to be subject to operations of the Commission, could have been members and the Commission's own statute is referred to as a "Convention" in its Article 3.

The present Statute, in contrast, would be entirely conventional in character, although there are various express provisions for coordination of action with the United Nations. Accordingly, the need for an organ to deal with governance of the Tribunal and political issues relating to its activities promoted provision for a Standing Committee. It should be noted that the express functions of the Standing Committee are of a governing-body nature for the most part, and that its functions beyond these are largely unspecified. This would permit the representatives of States-Parties who constitute that organ to have wide flexibility in pursuing non-judicial matters helpful to international criminal justice. The requirement of meetings twice a year assures that the Standing Committee will be available for consultation on political questions.

One of the most significant functions of the Standing Committee may be in Paragraph 6 with respect to proposing action to initiate and propose new norms of international criminal law or standards for its application by the Tribunal. In view of the vagueness of existing instruments purporting to define international crimes, such proposals and adoption may be essential in order that criminal responsibility may be dealt with without violating the principle of *nulla poena sine lege*.

It should be noted that this Article does not contemplate deprivation of the status of State-Party in response to non-payment of financial support, but mere suspension.

No provision has been made for terms of representatives, it being assumed that their tenure shall be at the pleasure of the appointing State.

Article XXVIII. General Institutional Matters

1. Each of the Organs of the Tribunal shall formulate and publish its own Rules in accordance with the general principles of Internal law and the Standards set forth in this Convention to regulate its functions under this Statute, but the Rules of the Procuracy and Secretariat shall be subject to approval by a majority of the Court *en banc*.
2. The Procurator shall participate without a vote in formulating the Rules of the Court and of the Secretariat. The President of the Court shall participate without a vote in formulating the Rules of the Procuracy and of the Secretariat.
3. Except to the extent of the adopted Rules, procedures of the Court shall be those of the International Court of Justice and those of the Secretariat shall be as for the Registrar of the International Court of Justice.
4. Each of the Organs of the Tribunal shall cooperate with the Secretariat in formulating its budget request and such budget requests shall be presented to the Court *en banc* for modification or approval, subject to adoption or rejection in their entirety by the Standing Committee.
5. The Judges, the Procurator, the Deputy Procurators and their assistants, and the Secretary shall be deemed officers of the Court, as well as Counsels appearing in a given case, and they shall enjoy immunity from legal processes of States with respect to the performance of their legal duties.
6. No officer of the Court other than Counsel in a given case shall perform any function under this Statute without having first made a public, solemn declaration of impartiality and adherence to this Statute and the Rules of the Tribunal.

Commentary

Paragraph 1 rules, it should be noted, are subject to further provisions in this Convention. Recognition that flexibility should be provided for such Rules was expressed in Article 24 of the 1953 ILC Draft and Article 10 of the 1979 ILA Draft. Court approval of Rules for the Procuracy and Secretariat appeal appropriate in view of the need to assure that such rules are fair and conform to legal requirements. Par-

ticipation by the Procurator in formulation of Court Rules recognizes the desirability that such Rules interrelate properly with Procuracy procedures and capabilities.

Paragraph 2 gives the Court, a neutral body, a key role in shaping the budget of the Tribunal, but leaves a veto power with the Standing Committee, which represents the States obliged to meet the budget. Prior draft statutes did no deal in detail with budgetary approval. See 1953 ILC Article 23 and 1979 ILA Article 17.

Paragraph 5 parallels Article 14 of the 1953 ILC Draft, which has no counterpart in the 1979 ILA Draft, as to judges. Expansion to other Tribunal officers is clearly appropriate. Expansion to other parties before the Court is necessary in the interest of fairness. [See, e.g., the European Agreement Relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights (Council of Europe, May 1969; E.T.S. No. 69).

Paragraph 6's requirement of a solemn declaration parallels Article 13 of the 1953 ILC Draft and Article 11 of the 1979 ILA Draft, but is expanded to include officers of the Tribunal.

Chapter 5. Tribunal Standards

Article XXIX. *Standards for Rules and Procedures*

1. In all proceedings of the Tribunal and in the formulation of any of its organs, the accused shall be entitled to those fundamental human rights enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which for these purposes are:

a. *The presumption of innocence*

The presumption of innocence is a fundamental principle of criminal justice. It includes *inter alia*:

1. No one may be convicted or formally declared guilty unless he has been tried according to law in a fair trial;
2. No criminal punishment or any equivalent sanction may be imposed upon a person unless he has been proven guilty in accordance with the law;
3. No person shall be required to prove his innocence; and
4. In case of doubt the decision must be in favor of the accused.

b. *Procedural rights*

The accused shall be given effective ways to challenge any and all evidence produced by the prosecution and to present evidence in defense of the accusation.

The defendant has the right to present at all judicial proceedings and to confront his accusers. The right to confront includes the right to examine opposing witnesses.

c. *Speedy trial*

Criminal proceedings shall be speedily conducted without, however, interfering with the right of the defense to adequately prepare for trial. To this effect:

1. Time limitations should be established for each stage of the proceedings and should not be extended without reason by the appropriate Chamber of the Court.
2. Complex cases involving multiple defendants or charges may be severed by the appropriate Chamber of the Court when it is deemed in the interest of fairness to the parties and justice to the case.
3. Administrative or disciplinary measures shall be taken

against officials of the Tribunal who deliberately or by negligence violate the provisions of this Statute and the rules of this Tribunal.

d. *Evidentiary questions*

1. All procedures and methods for securing evidence shall be in accordance with internationally guaranteed Human Rights, the standards of justice set forth in this Statute, and in the rules of the Tribunal.
2. The admissibility of evidence in criminal proceedings must take into account the integrity of the judicial system, the rights of the defense, the interests of the victim, and the interests of the world community.
3. Evidence obtained directly or indirectly by illegal means which constitute a serious violation of internationally protected human rights, violate the provisions of this Convention, and Rules of this Tribunal shall hold them inadmissible.

e. *The right to remain silent*

Anyone accused of a criminal violation has the right to remain silent and must be informed of this right.

f. *Assistance of counsel*

1. Anyone suspected of a criminal violation has the right to defend himself and to competent legal assistance of his own choosing at all stages of the proceedings.
2. Counsel shall be appointed *sua sponte* whenever the court deems necessary and in accordance with the Rules of the Court enacted pursuant to this Convention.
3. Appointed counsel shall receive reasonable compensation from the Tribunal whenever the accused is financially unable to do so.
4. Counsel for the accused shall be allowed to be present at all stages of the proceedings.
5. Counsel for the accused or the accused shall be provided with all incriminating evidence available to the prosecution as well as all exculpatory evidence as soon as possible but no later than at the conclusion of the investigation or before adjudication and in reasonable time to prepare the defense.
6. Anyone detained shall have the right to access and to communicate in private with his counsel personally and by

correspondence, subject only to reasonable security measures decided by a judge of the Court.

g. Arrest and detention

1. No one shall be subjected to arbitrary arrest or detention.
2. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by this Statute and Rules of the Tribunal and only on the basis of a determination by the Court.
3. no one shall be arrested or detained without reasonable grounds to believe that he committed a criminal violation within the jurisdiction of the Tribunal.
4. Anyone arrested or detained shall be promptly brought before a judge of the Court and shall be informed of the charges against him; after appearance before such judicial authority he may be returned to the custody of the arresting authority but he shall be subject to the jurisdiction of the Court even when in the custody of a State-Party.
5. Preliminary or provisional arrest and detention shall take place only whenever necessary and as much as possible should be reduced to a minimum of cases and to the minimum of time.
6. Preliminary or provisional detention shall not be compulsory but subject to the determination of the Court and in accordance with its Rules.
7. Alternative measures to detention shall be used whenever possible and include *inter alia*:
 - limitations of freedom of movement, and
 - imposition of other restrictions.
8. No detainee shall be subject to rehabilitative measures prior to conviction unless he freely consents thereto.
9. No administrative preventive detention shall be permissible as part of any criminal proceedings.
10. Any period of detention prior to conviction shall be credited toward the fulfillment of the Sanction imposed by the Court.
11. Anyone who has been the victim of illegal or unjustified detention shall have the right to compensation. An action for damages may be brought and damages awarded for accusations which are vexations or brought in bad faith.

h. *Rights and interests of the victim*

The rights and interests of the victim of a crime shall be protected where appropriate taking into account the United Nations Declaration on victims of crime.

1. the opportunity to participate in the criminal proceedings;
 2. the right to protect his civil interests, and
 3. due regard shall be given in formulation of Rules of the Organs of the Tribunal to the principle of *ne bis in idem*, but a seemingly duplicative prosecution shall not be barred provided that the record in the prior proceeding is taken into account along with any prior measures in respect of the guilt of the accused.
2. Arrest and detention shall be in conformity with the Standard Minimum Rules for Treatment of Prisoners and the Principles on Freedom from Arbitrary Arrest and Detention of the United Nations.
 3. Maximum flexibility regarding restrictive measures should be encouraged, including use of such mechanisms as house arrest, work release and bail, and credit shall be given for any preconviction restrictions to an accused.
 4. The Tribunal shall include all of the above in the formulation of its Rules of Practice and Procedures which shall be effective upon promulgation.
 5. No proceedings before the Tribunal shall commence prior to the promulgation of the Rules of Practice and Procedures of the Court, the Procuracy, and the Secretariat.

Commentary

The Standards of fairness which are to be guaranteed in all proceedings before the Organs of the Tribunal and which are to be reflected in the Rules to be promulgated by the said Organs embodying those rights are contained in the 1948 *Universal Declaration of Human Rights*, the 1966 *International Covenant on Civil and Political Rights*, the 1980 *Body of Principles on the Protection of Persons from All Forms of Arbitrary Arrest and Detention*, the 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and the 1969 *Inter-American Convention on Human Rights*. These standards are also embodied in the resolutions of the XIIth Interna-

tional Congress of Penal Law held in Hamburg 1979 whose draft and explanatory notes are in 49 *Revue Internationale de Droit Penal* vol. 3, 1978. These provisions are particularly consonant with the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and *Additional Protocols*. [See A. Robertson, *Human Rights in Europe* (1977), and D. Poncet, *La Protection de l'Accuse par la Convention Europeenne des Droits de l'Homme* (1977). See also, e.g., L. Sohn and T. Buergenthal, *International Protection of Human Rights* (1973).]

Chapter 6. Judicial Assistance and Other Forms of Cooperation

Article XXX. *Cooperation between the States-Parties and the International Criminal Tribunal*

Section 1. *Duties of States-Parties*

- 1.1 The States-Parties shall provide the International Criminal Tribunal with all means of legal assistance and cooperation, including, but not limited to extradition, letters rogatory, service of writs, assistance in securing testimony and evidence, transmittal of records, transfer of proceedings, and transfer of prisoners.
- 1.2 The application of 1.1 shall be in accordance with the domestic legislation of one requested state.
- 1.3 Where necessary States-Parties shall enact the legislation necessary to implement these provisions.

Comments

Legal assistance includes administrative as well as judicial assistance.

Section 2. *Methods and Procedures*

- 2.1 The methods of judicial assistance and other forms of cooperation and regulating procedures between the States-Parties and the International Criminal Tribunal shall be those methods and procedures provided for in Part III, "Procedural Enforcement Part."
- 2.2 The Rules of Practice of the Tribunal shall supplement the provision of Part III with respect to ministerial matters.

Section 3. *Recognition of the Judgments of the International Criminal Tribunal*

- 3.1 The States-Parties agree to recognize the judgments of the Court and to execute its provisions. For the purposes of double jeopardy and evidentiary matters, the International Criminal Tribunal shall recognize the sanctions of other States in accordance with the provisions of this Convention.
- 3.2 The Court's Rules of Practice shall govern the recognition of the judgments of the Court by State-Parties and those of the other states by the Court.

Section 4. *Transfer of Offenders and Execution of Sentences*

- 4.1 In the event the International Criminal Tribunal does not have detentional facilities under its direct control, it may request a State-Party to execute the sentence in accordance with that Party's correctional system, and in that case, the Tribunal shall continue to exercise jurisdiction over the offender, including his transfer to another State or facility.
 - 4.2 In the event the International Criminal Tribunal has placed an offender in its own detention facilities, this person may by agreement be transferred for detention to his country of origin, subject to the Tribunal's jurisdiction.
 - 4.3 The Tribunal's Rules of Practice shall determine the basis and condition of the transfer of offenders and the execution of sentences.
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Commentary

Sections 1 and 2 of this Article refer to the modalities and procedures set forth in Part III, and Section 2 adds the proviso that ministerial matters can be provided for by the Tribunal's Rules of Practice.

The basis of international enforcement and cooperation derives from the maxim *aut dedere aut judicare* from Hugo Grotius, *De Jure Belli ac Pacis* (1624). It is now recognized as a general principle of international law to "prosecute or extradite," see Bassiouni, "International Extradition and World Public Order," in *Aktuelle Probleme des Internationalen Strafrechts* (1970), pp. 10, 15 (D. Oehler and P.G. Potz, eds), and it is the conceptual basis of the indirect enforcement scheme, which international law has relied upon. It is embodied in international criminal law conventions. The mechanism by which the indirect enforcement scheme operates is that a State obligates itself under an international convention to include appropriate provisions in its national laws which would make the internationally proscribed conduct a national crime. This approach is found in all international criminal law conventions establishing such a duty upon its Contracting Parties. See e.g., the Four *Geneva Conventions* of 12 August 1949, in their respective Articles 49-50/50-51/129-130/146-147. It is also the case with respect to all other international criminal law conventions.

The requested party executes in the manner provided for by its law any letters rogatory relating to criminal matters and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring

evidence or transmitting objects, records or documents to be produced in evidence.

The requested Party shall effect service of writs and records of judicial decisions that are transmitted to it for this purpose by the requesting Party. Service may be effected by simple transmission of the writ or record to the person to be served. Other formalities shall be established by the Rules of the Court. *See* the 1959 *European Convention on Mutual Assistance in Criminal Matters*, and in part on the 1972 *European Convention on Transfer of Proceedings in Criminal Matters*. *See also* Grutzner, "International Judicial Assistance and Cooperation in Criminal Matters," in M.C. Bassiouni and V.P. Nanda (eds.), *A Treatise on International Criminal Law*, vol. 2, pp. 189, 217-218 (1973). *See also* *Explanatory Report on the European Convention on the Transfer of Proceedings in Criminal Matters* (Council of Europe, 1972); *Problems Arising from the Practical Application of the European Convention on Mutual Assistance in Criminal Matters* (Council of Europe, 1971); de Schutter, "International Criminal Law in Evolution: Mutual Assistance in Criminal Matters between the Benelux Countries," 14 *Neth. Int'l L. Rev.* 382 (1967); Grutzner, *Internationale Judicial Assistance and Cooperation in Criminal Matters*; and Markees, "The Difference in Concept Between Civil and Common Law Countries as to Judicial Assistance and Cooperation in Criminal Matters," in M.C. Bassiouni and V.P. Nanda (eds.), *A Treatise on International Criminal Law*, vol. 2, pp. 171, 189 (1972). *See also* Grutzner, *Internationales Rechtshilfeverkehr* (1967). For the text of these and other treaties, see M. Pisani and F. Mosconi, *Codice Delle Convenzioni di Estradizione e di Assistenza Giudiziaria in Materia Penale* (1979). *See also* e.g., 2 M.C. Bassiouni, *International Criminal Law* (1986).

Section 3³ is applicable to: (1) sanctions involving the deprivation of liberty, (2) fines or confiscations, and (3) disqualifications. A State-Party shall under the conditions provided for in this Convention enforce a sanction imposed by the Court and vice versa. *See* the 1970 *European Convention on the International Validity of Criminal Judgments*. *See also* *Aspects of International Validity of Criminal Judgments* (Council of Europe, 1968), and *Explanatory Report on the European Convention on the International Validity of Criminal Judgments* (Council of Europe, 1970). *See also* Harari, McLean and Silverwood, "Reciprocal Enforcement of Criminal Judgments," 45 *Revue Internationale de Droit Penal* 585 (1974) D. Oehler, "Recognition of Foreign Penal Judgments and their Enforcement," in M.C. Bassiouni and V.P.

Nanda (eds.), *A Treatise on International Criminal Law*, vol. 2, p. 261 (1973); Schearer, "Recognition and Enforcement of Foreign Criminal Judgments," 47 Aust. L.J. 585 (1973); D. Oehler, *Internationalen Strafrecht* (1973). For the Benelux Convention, see *Convention Concerning Customs and Excise*, September 5, 1972, Belgium-Luxembourg-The Netherlands, 247 U.N.T.S. 329 (1956). See also K. Kraelle, *Le Benelux Commente, Textes Officiels* 147, 209, 306 (1961); de Schutter, "International Criminal Cooperation: The Benelux Example," in M.C. Bassiouni and V.P. Nanda (eds.), *A Treatise on International Criminal Law*, vol. 2, p. 261 (1973). The Scandinavian countries' arrangement for recognition and enforcement of penal judgments is reproduced in H. Grutzner, *Internationales Rechtshilfeverkehr in Strafsache*, pt. IV (1967). The arrangement between France and certain African states is reproduced in 52 Rev. Critique de Droit International Prive 863 (1973). See also e.g., 2 M.C. Bassiouni, *International Criminal Law* (1986).

Section 3 relies on the concepts embodied in the 1970 *European Convention on the International Validity of Criminal Judgments*, and on the 1964 *European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders*. It also relies on the treaties on the execution of penal sentences between the United States and Mexico, 5 November 1976, between United States and Canada, 2 March 1977, and between the United States and Bolivia, 10 February 1978, all treaties having entered into force. Furthermore, special reliance was placed on U.S. legislation implementing the above treaties. 18 U.S.C., sections 4100-4115. See Bassiouni, "Perspectives on the Transfer of Prisoners between the United States and Mexico and the United States and Canada," 11 Vanderbilt J. Transnat'l L. 249 (1978); Bassiouni, "A Practitioner's Perspective on Prisoner Transfer," 4 Nat'l J. Crim. Defense 127 (1978); Abramovsky and Eagle, "A Critical Evaluation on the Newly-Ratified Mexican-American Transfer of Penal Sanction Treaty," 64 Iowa L. Rev. 325 (1979), and Professor Vagt's response thereto in the same issue.

A scheme for transfer of offenders can be said to rely in part on the assumption that a given State will recognize the criminal judgment of another and of the Court. The manner in which this Article is drafted makes this assumption. See, in particular, Article 6 of the 1970 *European Convention on the International Validity of Criminal Judgments*.

Appendix 1

TO PART B

I. *Establishment of an International Criminal Court*

A. OFFICIAL TEXTS

1. CONVENTION FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES
(First Hague, I, Signed at The Hague, 19 July 1899, 26 Martens Nouveau Recueil (2d) 720, 32 Stat. 1779, T.S. No. 342 (entered into force 4 September, 1900).
2. CONVENTION RELATIVE TO THE ESTABLISHMENT OF AN INTERNATIONAL PRIZE COURT
(Second Hague, XII), signed at The Hague, 18 October 1907, 3 Martens Nouveau Recueil (3d) 688 (never entered into force).
3. TREATY OF PEACE WITH GERMANY (Treaty of Versailles), signed at Versailles, 28 June 1919, 11 Martens Nouveau Recueil (3d) 323 (entered into force 10 January 1920).
4. CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT, opened for signature at Geneva, 16 November 1927, League of Nations O.J. Spec. in Supp. No. 156 (1938), League of Nations Doc. C.547 (I).M. 384 (I).1837.v (1938) (never entered into force).
5. AGREEMENT FOR THE PROSECUTION AND PUNISHMENT OF MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS (London Agreement), signed at London, August 1945, 82 U.N.T.S. 279, 59 Stat. 1544, E.A.S. No. 472 (entered into force, 8 August 1945), ANNEX, CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL (Nuremberg).
6. INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST PROCLAIMED AT TOKYO, 19 January 1946 and amended 26 April 1946, T.I.A.S. No. 1589 (entered into force 19 January 1946), ANNEX, CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST (Tokyo).
7. CONTROL COUNCIL LAW No. 10 (Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity), adopted at Berlin, 20 December 1945, Official Gazette of the

Control Council for Germany, No. 3, Berlin, 31 January 1946.

8. DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT (Annex to the Report of the Committee on International Criminal Jurisdiction, 31 August 1951), 7 GAOR Supp. 11, U.N. Doc. A/2136 (1952) at 23.
9. REVISED DRAFT STATUTE FOR AN INTERNATIONAL COURT (Annex to the Report of the Committee on International Criminal Jurisdiction, 20 August 1953), 9 GAOR Supp. 12, U.N. Doc. A/2645 (1954).
10. DRAFT STATUTE FOR THE CREATION OF AN INTERNATIONAL CRIMINAL JURISDICTION TO IMPLEMENT THE TO IMPLEMENT THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID, 19 January 1980, U.N. Doc. E/CN.4/1416.

B. UNOFFICIAL TEXTS

1. "REPORT ON THE CREATION OF AN INTERNATIONAL CRIMINAL JURISDICTION" by V.V. Pella to the Interparliamentary Union, XXII Conference, held in Berne and Geneva, 1924, in *L'Union Interparlementaire. Compte Rendu de la XXII Conference tenue a Berne et a Geneve en 1924, publie par le Bureau Interparlementaire*, 1925; see also, *L'Union Interparlementaire. Compete Rendu de la XXII Conference Tenue a Washington et a Ottawa en 1925* (1925).
2. "Projet d'une Cour Criminelle Internationale" adopted by the International Law Association at its 34th Conference in Vienna, August, 1926, *The International Law Association, Report of the 34th Conference, Vienna, August 5-11, 1926* (1927).
3. Project of the International Association of Penal Law, in *Actes du Premier Congres International de Droit Penal*, Bruxelles, 26-29 June 1926 (1927) and "Projet de Statut pour la Creation d'une Chambre Criminelle au Sein de la Cour Permanente de Justice Internationale," presented by the International Association of Penal Law to the League of Nations in 1927, 5 *Revue Internationale de Droit Penal* (1928).
4. "Constitution et Procedure d'un Tribunal Appropriate pour juger de la Responsabilite des Auteurs des Crimes de Guerre, presente a la Conference des preliminaires de Paix par la Commission

des Responsibilites des Auteurs de la Guerre et Sanctions, III, La Paix de Versailles" (1930).

5. "PROJECT FOR THE ESTABLISHMENT OF A CONVENTION FOR THE CREATION OF A UNITED NATIONAL TRIBUNAL FOR WAR CRIMES," established by the United Nations War Crimes Commission, 1944, *see* United Nations War Crimes Commission (Wright ed. 1948).
 6. *L'Union Interparlementaire. Compte rendu de la XXVII Conference Tenue a Rome en 1948*, (1949).
 7. "DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT," in Stone and R. Woetzel, *Toward a Feasible International Criminal Court* (1970).
 8. "DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT," Foundation for the Establishment of an International Criminal Court (Wingspread Conference, September 1971).
 9. "DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT," Work Paper, *Abidjan World Conference on World Peace through Law*, August 26-31, (1973).
 10. "Draft Statute for an International Commission on Criminal Inquiry and a Draft Statute for an International Criminal Court," International Law Association, 60th Conference, Montreal, August 29-September 4, 1982, in REPORT OF THE 60TH CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION (1983).
- II. *Instruments on the Codification of Substantive International Criminal Law*
- A. OFFICIAL TEXTS
1. 1954 Draft Code of Offences against the Peace and Security of Mankind. (9 U.N. 60R Supp. No. 9, UNDOC A/2693).
 2. Draft International Criminal Code, Presented by the AIDP to the VIth U.N. Congress on Crime Prevention and the Treatment of Offenders (Caracas, 1980) (U.N. Doc. E/CN.4/NGO 213) [Updated in M.C. Bassiouni, A DRAFT INTERNATIONAL CRIMINAL CODE AND DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL TRIBUNAL (1987)].

Appendix 2

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