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DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT†

PART 1: ESTABLISHMENT AND COMPOSITION OF THE TRIBUNAL

Article 1: Establishment of the Tribunal

There is established an International Criminal Tribunal (hereinafter the Tribunal), whose jurisdiction and functioning shall be governed by the provisions of the present Statute.

Article 2: Relationship of the Tribunal to the United Nations

[The Tribunal shall be a judicial organ of the United Nations.]

[The Tribunal shall be linked with the United Nations as provided for in the present Statute.]

Article 3: Seat of the Tribunal

1. The seat of the Tribunal shall be established at . . .
2. The [Tribunal] [Secretary-General of the United Nations] shall, with the approval of [the General Assembly], conclude an agreement with the State of the seat of the Tribunal, which will regulate the relationship between that State and the Tribunal.

Article 4: Status of the Tribunal

1. The Tribunal is a permanent institution open to States parties to the Statute of the Tribunal (hereinafter called the State Parties) and to other States in accordance with this Statute. It shall sit when required to consider a case submitted to it.
2. The Tribunal shall enjoy in the territory of each of the States parties such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

† United Nations Documents A/CN.4/L.490 and A/CN.4/L.490/Add.1, July 19, 1993.

Article 5: Organs of the Tribunal

The Tribunal shall consist of the following organs:

- (a) The Court, which shall consist of 18 judges elected in accordance with article 7;
- (b) The Registry, appointed under article 12;
- (c) The Procuracy, as provided in article 13.

Article 6: Qualifications of Judges

The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Court, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 7: Election of Judges

1. The judges shall be elected by majority vote of the States parties to this statute.
2. Each State party may nominate for election one person who possesses the qualifications specified in article 6, and who is willing and able to serve as may be required on the Court.
3. The election of judges shall be by secret ballot.
4. No two judges may be nationals of the same State.
5. States parties should strive to elect persons representing diverse backgrounds and experience, with due regard to representation of the major legal systems.
6. Judges hold office for a term of 12 years and are not eligible for re-election. A judge shall, however, continue in office in order to complete any case the hearing of which has commenced.
7. At the first election, 6 judges chosen by lot shall serve for a term of 4 years and are eligible for re-election; 6 judges (chosen by lot) shall serve for a term of 8 years, and the remainder shall serve a term of 12 years.

Article 8: Judicial Vacancies

1. In the event of a vacancy, a replacement judge may be elected in accordance with article 7.

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

Article 9: Independence of Judges

In their capacity as members of the Court, the judges shall be independent. Judges shall not engage in any activity which interferes with their judicial functions, or which is likely to affect confidence in their independence. In case of doubt, the Court shall decide.

Article 10: Election and functions of President and Vice-Presidents

1. The President, as well as the first and second Vice-Presidents, shall be elected by the absolute majority of the judges.
2. The President and the Vice-Presidents shall serve for a term of three years or until the end of their term of office on the Court, whichever is earlier.
3. The President and the Vice-Presidents shall constitute the Bureau which, subject to this Statute and the Rules, shall be responsible for the due administration of the Court, and other functions assigned to it under the Statute.
4. The first or second Vice-President, as the case may be, may act in place of the President on any occasion where the President is unavailable or ineligible to act.

Article 11: Disqualification of judges

1. Judges shall not participate in any case in which they have previously been involved in any capacity whatsoever, or in which their impartiality might reasonably be doubted on any ground, including an actual, apparent or potential conflict of interest.
2. A judge who feels disqualified under paragraph (1) or for any other reason in relation to a case shall so inform the President.
3. The accused may also request the disqualification of a judge under paragraph 1.
4. Any question concerning the disqualification of a judge shall be settled by a decision of the absolute majority of the chamber concerned. The chamber shall be supplemented for that

purpose by the President and the two Vice-Presidents of the Court. The challenged judge shall not take part in the decision.

Article 12: Election and functions of Registrar

1. On the proposal of the Bureau the judges of the Court by an absolute majority shall elect the Registrar, by secret ballot, who shall be the principal administrative officer of the Court.
2. The Registrar shall be
 - (a) elected for a seven-year term, and eligible for re-election;
 - (b) shall be available on a full-time basis, but may with the permission of the Bureau exercise such other functions within the United Nations system as are not inconsistent with his office as Registrar.
3. The Bureau may appoint or authorize the appointment of such other staff of the Registry as may be necessary.
4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar, so far as possible in conformity with the United Nations Staff Regulations and Staff Rules and approved by the Court.

Article 13: Composition, functions and powers of the Procuracy

1. The Procuracy shall be composed of a Prosecutor, who shall be Head of the Procuracy, a Deputy Prosecutor and such other qualified staff as may be required.
2. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. They shall be elected by a majority vote of the States parties to this Statute from among candidates nominated by the States parties thereto for a term of five years and be eligible for re-election.
3. The State parties shall, unless otherwise decided, elect the Prosecutor or Deputy Prosecutor on a standby basis.
4. The Procuracy, as a separate organ of the Tribunal, shall act independently, and shall not seek or receive instructions from any Government or any source.
5. The Prosecutor shall appoint such staff as are necessary to carry out the responsibilities of the office.

6. The Prosecutor, upon receipt of a complaint pursuant to article 28, shall be responsible for the investigation of the crime alleged to have been committed and the prosecution of the accused for crimes referred to in articles 22 and 26.
7. The Prosecutor shall not act in relation to a complaint involving a person of the same nationality. In any case where the Prosecutor is unavailable or disqualified, the Deputy Prosecutor shall act as Prosecutor.

Article 14: Solemn Undertaking

Before first commencing to exercise their functions under this Statute, members of the Tribunal shall make a public and solemn undertaking to do so impartially and conscientiously.

Article 15: Loss of Office

1. Judges shall not be deprived of their office unless, in the opinion of two thirds of judges of the court, they have been found guilty of proven misconduct or a serious breach of this Statute.
2. Where the Prosecutor, the Deputy Prosecutor or the Registrar is found in the opinion of two thirds of the court, guilty of proved misconduct or in serious breach of this Statute, he or she shall be removed from office.

Article 16: Privileges and immunities

1. Judges shall enjoy, while performing their functions in the territory of States parties, the same privileges and immunities as those accorded to judges of the International Court of Justice.
2. Counsel, experts and witnesses shall enjoy, while performing their functions in the territory of States parties, the same privileges and immunities as those accorded to counsel, experts and witnesses involved in proceedings before the International Court of Justice.
3. The Registrar, the Prosecutor, the Deputy Prosecutor and other officers and staff of the Tribunal shall enjoy, while performing their functions in the territory of the States parties the privileges and immunities necessary to the performance of their functions.

4. The judges may, by a majority revoke the immunity of any person referred to in paragraph 3 other than the Prosecutor. In the case of officers and staff of the Tribunal, they may do so only on the recommendation of the Registrar or Prosecutor, as the case may be.

Article 17: Allowances and expenses

1. The President shall receive an annual allowance.
2. The Vice-Presidents shall receive a special allowance for each day they exercise the functions of the President.
3. The judges shall receive a daily allowance during the period in which they exercise their functions, and shall be paid for the expenses related to the performance of their functions. They may continue to receive a salary payable in respect of another position occupied by them consistently with article 9.

Article 18: Working languages

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

Article 19: Rules of the Tribunal

1. The Court may by a majority of the judges and on the recommendation of the Bureau, make rules for the functioning of the Tribunal under this Statute, including rules regulating:
 - (a) the conduct of pre-trial investigations, in particular so as to ensure that the rights referred to in articles 38 to 44 are not infringed;
 - (b) the procedure to be followed and the rules of evidence to be applied in any trial;
 - (c) any other matter which is necessary for the implementation of this Statute.
2. Rules of the Tribunal shall forthwith be notified to all States parties, and shall be published.

Article 20: Internal Rules of the Court

Subject to this Statute and to the Rules of the Tribunal, the court has the power to determine its own rules and procedures.

Article 21: Review of the Statute

A Review Conference shall be held, at the request of at least [. . .] States parties after this Statute has been in force for at least five years:

- (a) to review the operation of this Statute;
- (b) to consider possible revisions or additions to the list of crimes contained in article 22 by way of a Protocol to this statute or other appropriate instrument and in particular, the addition to that list of the Code of Crimes against the Peace and Security of Mankind, if it has then been concluded and has entered into force.

PART 2: JURISDICTION AND APPLICABLE LAW**Article 22: List of crimes defined by treaties**

The Court may have jurisdiction conferred on it in respect of the following crimes:

- (a) genocide and related crimes as defined by articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;
- (b) grave breaches of:
 - (i) The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, as defined by article 50 of that Convention;
 - (ii) The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, as defined by article 51 of that Convention;
 - (iii) The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, as defined by article 130 of that Convention;
 - (iv) The Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, as defined by article 147 of that Convention;
 - (v) Protocol I additional to the Geneva Conventions of 12 August 1949 and relating to the protection of Victims of International Armed Conflicts of 8 June 1977, as defined by article 85 of that Protocol;

- (c) the unlawful seizure of aircraft as defined by article 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970;
- (d) the crimes defined by article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971;
- (e) apartheid and related crimes as defined by article 2 of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973;
- (f) the crimes defined by article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973;
- (g) hostage-taking and related crimes as defined by article 1 of the International Convention against the Taking of Hostages of 17 December 1979;
- (h) the crimes defined by article 3 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and by article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, both of 10 May 1988.

Article 23: Acceptance by States of jurisdiction over crimes listed in article 22

Alternative A

1. A State party to this Statute may, by declaration lodged with the Registrar, at any time accept the jurisdiction of the Court over one or more of the crimes referred to in article 22.
2. A declaration made under paragraph (1) may be limited to:
 - (a) particular conduct alleged to constitute a crime referred to in article 22 or
 - (b) conduct committed during a particular period of time, or may be of general application.
3. A declaration may be made under paragraph (1) for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case six months' notice of withdrawal must be given to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

4. A State not a party to this Statute may, by declaration lodged with the Registrar, at any time accept the jurisdiction of the Court over a crime referred to in article 22 which is or may be the subject of a prosecution under this Statute.

Alternative B

1. Unless it makes the declaration provided for in paragraph 2, a State becoming party to this Statute is deemed to have accepted the jurisdiction of the Court over any crime referred to in article 22, if it is a party to the treaty which defines that crime.
2. A State party to the present Statute may, by declaration lodged with the Registrar, indicate that it does not accept the jurisdiction of the Court over one or more of the crimes referred to in paragraph 1.
3. The declaration may be made on the ratification of or accession to the Treaty embodying this Statute or at any time thereafter, in which case it shall come into effect 90 days after being made and it shall not affect any proceedings already commenced under this Statute.
4. Declarations may be withdrawn at any time, with immediate effect.

Alternative C

1. A State party to this Statute may, by declaration lodged with the Registry, at any time accept the jurisdiction of the Court.
2. Unless otherwise specified, a declaration of acceptance under paragraph 1 shall be deemed to confer jurisdiction on the court with regard to all of the crimes listed in article 22.
3. A declaration of acceptance under paragraph (1) may be limited to (the rest of the provision as in paragraphs 2, 3 and 4 of Alternative A).

Article 24: Jurisdiction of the Court in relation to article 22

1. The Court has jurisdiction under this Statute in respect of a crime referred to in article 22 provided that its jurisdiction has been accepted under article 23:
 - (a) by any State which has jurisdiction under the relevant treaty to try the suspect of that crime before its own courts,

- (b) in relation to a suspected case of genocide, by any State party to the Convention on the Prevention and Punishment of the Crime of Genocide, of 9 December 1948.
2. If the suspect is present on the territory of the State of his nationality or of the State where the alleged offence was committed, the acceptance of the jurisdiction of the Court by that State is also required.

Article 25: Cases referred to the Court by the Security Council

Subject to article 27, the Court also has jurisdiction under this Statute over cases referred to in Articles 22 or 26 (2) (a) which may be submitted to it on the authority of the Security Council.

Article 26: Special acceptance of jurisdiction by States in cases not covered by Article 22

1. The Court also has jurisdiction under this Statute in respect of other international crimes not covered by Article 22 where the State or States identified in paragraph (3) notify the Registrar in writing that they specially consent to the Court exercising, in relation to that crime, jurisdiction over specified persons or categories of persons.
2. The other international crimes referred to in paragraph (1) are:
 - (a) a crime under general international law, that is to say, under a norm of international law accepted and recognized by the international community of States as a whole as being of such a fundamental character that its violation give rise to the criminal responsibility of individuals;
 - (b) crimes under national law, such as drug-related crimes, which give effect to provisions of a multilateral treaty, such as the 1988 United Nations Convention against Illicit Traffic in Narcotic Drug and Psychotropic Substances, aimed at the suppression of such crimes and which having regard to the terms of the treaty constitute exceptionally serious crimes.
3. The State or States referred to in paragraph (1) are:

- (a) in relation to a crime referred to in paragraph (2) (a), the State on whose territory the suspect is present, and the State on whose territory the act or omission in question occurred;
- (b) in relation to a crime referred to in paragraph (2) (b), the State on whose territory the suspect is present and which has jurisdiction in conformity with the treaty to try the suspect for that crime before its own courts.

Article 27: Charges of Aggression

A person may not be charged with a crime of or directly related to an act of aggression under articles 25 or 26 (2) (a) unless the Security Council has first determined that the State concerned has committed the act of aggression which is the subject of the charge.

Article 28: Applicable Law

The Court shall apply:

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

PART 3: INVESTIGATION AND COMMENCEMENT OF PROSECUTION

Article 29: Complaint

Any State Party with jurisdiction over a particular crime under the terms of an international convention and which has accepted the jurisdiction of the Court pursuant to article 23 of the Statute with respect to the crime or other State with such jurisdiction and which has accepted the jurisdiction of the Court pursuant to article 23; or the Security Council pursuant to article 25; may by submission to the Registrar bring to the attention of the Court in the form of a complaint with such supporting documentation as it deems necessary, that a crime, within the jurisdiction of the Court, appears to have been committed.

Article 30: Investigation and preparation of the indictment

1. The Prosecutor shall, upon receipt of a complaint in accordance with article 29 and unless the Prosecutor determines that no possible basis exists for action by the Court, initiate investigations. The Prosecutor shall assess the information obtained and decide whether there is sufficient basis to proceed. The Prosecutor shall inform the Bureau of the Court of the nature and basis of the decision taken. In the case of a decision by the Prosecutor not to proceed, the Bureau, acting as a Review Chamber, and at the request of the complainant State or the Security Council, shall have the power to review the decision and if it finds that there is sufficient basis, direct the Prosecutor to commence a prosecution.
2. The Prosecutor shall have the power to request the presence of and to question suspects, victims and witnesses, to collect evidence, including the disclosure and production of any documentation or exhibits relevant to the complaint, and to conduct on-site investigations.
3. In carrying out these tasks, the Prosecutor may, as appropriate, seek the cooperation of any State in a position to provide assistance and shall have the authority to request the Court to issue such subpoenas and warrants as may be required, including for the arrest and detention of a suspect.
4. A person suspected of a crime shall:
 - (a) prior to being questioned in an investigation under the Statute, be informed of the right to remain silent without such silence being a consideration in the determination of guilt or innocence, and of the right to have the assistance of counsel of the suspect's choice or, in the absence of means to retain counsel, to have counsel and legal assistance assigned to the suspect by the Court;
 - (b) Not be compelled to testify or to confess guilt;
 - (c) If questioned in a language other than a language the suspect understands and speaks, be provided with competent interpretation services, and translations of documents on which the suspect is to be questioned.

Article 31: Commencement of prosecution

1. Upon a determination that there is a sufficient basis to proceed, the Prosecutor shall prepare an indictment containing

a statement giving particulars of the facts and indicating the crime or crimes with which the accused is charged under the Statute.

2. Prior to an indictment by the Court, a person may be arrested or detained under the Statute, for such period as may be determined by the Court in each case, only pursuant to:
 - (a) A determination by the Court, that such arrest or detention is necessary because there is sufficient ground to believe that such person might have committed a crime within the jurisdiction of the Court; and, unless so arrested the person's presence at trial cannot be assured; and
 - (b) The issuance of a warrant or other order of arrest or detention by the Court.

Article 32: The indictment

1. The indictment together with the necessary supporting documentation shall be submitted by the Prosecutor to the Bureau of the Court.
2. The Bureau, acting as an Indictment Chamber, shall examine the indictment and determine whether or not a *prima facie* case exists.
3. If the Bureau concludes that a *prima facie* case exists, it shall affirm the indictment and convene a Chamber in accordance with article 37.
4. On affirming the indictment, the bureau may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention or surrender of persons, and any other orders as may be required for the conduct of the trial.

Article 33: Notification of the Indictment

States parties to the Statute

1. The Court, with a view to ensuring prompt notification of an indictment to the accused, shall immediately following the issuance of an indictment:
 - (a) notify all States parties of the indictment and of any order relating to the accused that may have been issued by the Court; *and*
 - (b) transmit to the State Party, or States parties, within whose jurisdiction the accused is then believed to be:

- (i) the indictment and any order relating to the accused that may have been issued by the Court;
 - (ii) a copy of the Statute of the Court;
 - (iii) a copy of the rules of evidence and procedure of the Court;
 - (iv) a statement of the accused's right to obtain legal assistance as set out in article 44, paragraph 1(b) of the Statute; *and*
 - (v) if one of the working languages of the Tribunal is not the principal language understood and spoken by the accused, a translation under the auspices of the Tribunal of the indictment and other documents referred to in the preceding subparagraphs.
2. Where the State party or States parties, within whose jurisdiction the accused is believed to be, have accepted the jurisdiction of the Court with respect to such crimes as are the subject of the indictment, the Court shall order such State Party, or States parties:
 - (a) to ensure that the indictment, together with the other documents referred to in paragraph 1 of this article, are personally notified to the accused: *and*
 - (b) if an order for the arrest or detention of the accused has been issued by the Court, to ensure that the accused is arrested or detained immediately following such notification.
3. Where the State Party or States parties, within whose jurisdiction the accused is believed to be, have not accepted the jurisdiction of the Court with respect to such crimes as are the subject of the indictment, the Court shall request such State or States:
 - (a) to cooperate with the Tribunal in having the indictment and other documents personally notified to the accused; *and*
 - (b) if an order for the arrest or detention of the accused has been issued by the Court, to cooperate in obtaining the arrest or detention of the accused. States not Parties to the Statute
4. Where the State or States, within whose jurisdiction an accused is believed to be, are not parties to the Statute, the Court shall with a view to prompt notification of indictment

to the accused and, where necessary, the arrest or detention of the accused, immediately following the issuance of an indictment:

- (a) notify such State or States of the indictment and of any order of the Court relating to the accused;
 - (b) transmit to such State or States copies of the indictment and other documents referred to in subparagraph 1(b) of the present article; and
 - (c) invite such State or States:
 - (i) to cooperate with the Tribunal in having the indictment and other documents personally notified to the accused; and
 - (ii) if an order for the arrest or detention of the accused has been issued by the Court, to cooperate in obtaining the arrest or detention of the accused. Cases where personal notification of the indictment may not be feasible
5. If personal notification of the indictment, together with the other documents, is not made to the accused within a period of sixty days after the indictment, the Court shall prescribe such other manner of bringing the indictment to the attention of the accused.

Article 34: Designation of persons to assist in a prosecution

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

Article 35: Pre-trial detention or release on bail

1. The Court shall decide whether an accused person who is brought before it shall continue to be held in detention or be released on bail.
2. If the Court decides to hold the accused in detention, the State on whose territory the seat of the Court is established

shall make available to the Court an appropriate place of detention and, where necessary, the requisite guards.

PART 4: THE TRIAL

Article 36: Place of Trial

1. Unless otherwise decided by the Court, the place of the trial will be the seat of the Tribunal.
2. By arrangement between the Court and the State concerned, the Court may exercise its jurisdiction in the territory of any State party, or in the territory of any other State.
3. Where practicable and consistent with the interest of justice, a trial should be conducted in or near the State where the alleged crime was committed.

Article 37: Establishment of Chambers

1. Cases shall be tried by Chambers of the Court.
2. A Chamber of the Court shall be established in accordance with the rules of the Court. Each Chamber shall consist of five judges.
3. Several Chambers may be established and may sit concurrently.
4. No judge from a complainant State or from a State of which an accused is a national shall be a member of the Chamber dealing with that particular case.

Article 38: Disputes as to Jurisdiction

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it.
2. Challenges to its jurisdiction may be made, in accordance with procedures laid down by the rules:
 - (a) at the commencement of the trial, by an accused or any State party;
 - (b) at any stage of the trial, by the accused.
3. If a State challenges the jurisdiction of the Court under paragraph 2 (a), the accused has a full right to be heard in relation to the challenge. A decision that there is jurisdiction shall not be reopened at the trial.

Article 39: Duty of the Chamber

1. If the bureau has not already done so under article 32, the Chamber shall decide, as early as possible in each case:
 - (a) the place at which the trial is to be held, having regard to article 36;
 - (b) the language or languages to be used during the trial, having regard to article 18 and article 44, paragraphs 1 (f) and 2.
2. The Chamber may order:
 - (a) the disclosure to the defence of documentary or other evidence available to the Prosecutor, having regard to article 44, paragraph 3;
 - (b) the exchange of information between the Prosecutor and the defence, so that both parties are sufficiently aware of the issues to be decided at the trial.
3. At the commencement of the trial, the Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, and allow the accused to enter a plea of guilty or not guilty.

Article 40: Fair trial

1. The Chamber shall ensure that a trial is fair and expeditious, conducted in accordance with the present Statute and the rules of procedure and evidence of the Court, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
2. A trial shall be public, unless the Chamber determines that certain proceedings be in closed session, in accordance with article 46 of the Statute.

Article 41: Principle of Legality (*nullum crimen sine lege*)

An accused shall not be held guilty:

- (a) in the case of a prosecution under article 22, unless the treaty concerned was in force [and its provisions had been made applicable in respect of the accused;]
- (b) in the case of a prosecution under article 26 (2) (a), unless the act or omission constituted a crime under international law; or
- (c) in the case of a prosecution under article 26 (2) (b), unless the act or omission constituted a crime under the relevant

national law, in conformity with the treaty, at the time the act or omission occurred.

Article 42: Equality before the Tribunal

All persons shall enjoy equality before the Tribunal.

Article 43: Presumption of Innocence

A person shall be presumed innocent until proved guilty.

Article 44: Rights of the accused

1. In the determination of any charge under this Statute, the accused is entitled to a fair and public hearing, subject to article 40, paragraph 2, and to the following minimum guarantees:
 - (a) to be informed promptly and in detail, in a language which the accused understands, of the nature and cause of the charge;
 - (b) to be informed of the right of the accused to conduct the defence or to have the assistance of counsel of the accused's choice or, in the absence of means to retain counsel, to have counsel and legal assistance assigned to the accused by the Court;
 - (c) to have adequate time and facilities for the preparation of the defence, and to communicate with counsel;
 - (d) to examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;
 - (e) to be tried without undue delay;
 - (f) if any of the proceedings of, or documents presented to, the Court, are not in a language the accused understands and speaks, to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;
 - (g) not to be compelled to testify or to confess guilt;
 - (h) to be present at the trial, unless the Court, having heard such submissions and evidence as it deems necessary, concludes that the absence of the accused is deliberate.
2. At the commencement of a trial, the Court shall ensure that the indictment and other documents referred to in article 33,

paragraphs 1 (h) and 4 (b) of the Statute, and copies thereof in a language understood and spoken by the accused, have been provided to the accused sufficiently in advance of the trial to enable adequate preparation of the defence.

3. All incriminating evidence on which the prosecution intends to rely and all exculpatory evidence available to the prosecution prior to the commencement of the trial shall be made available to the defence as soon as possible and in reasonable time to prepare for the defence.

Article 45: Double jeopardy (*non bis in idem*)

1. No person shall be tried before any court for acts constituting crimes referred to in articles 22 or 26, for which that person has already been tried under this Statute.
2. A person who has been tried by another court for acts constituting crimes referred to in articles 22 or 26 may be subsequently tried under this Statute only if:
 - (a) the act in question was characterized as an ordinary crime; or
 - (b) the proceedings in the other court were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.
3. In considering the penalty to be imposed on a person convicted under this Statute, the Court shall take into account the extent to which any sentence imposed by another court on the same person for the same act has been served.

Article 46: Protection of the accused, victims and witnesses

The Chamber shall take all necessary measures available to it, to protect the accused, victims and witnesses, and may to that end conduct proceedings *in camera* or allow the presentation of evidence by electronic or other special means.

Article 47: Powers of the Court

1. The Court shall, subject to the provisions of the Statute and in accordance with the rules of procedure and evidence of the Court have, *inter alia*, the power to:
 - (a) require the attendance and testimony of witnesses;

- (b) require the production of documentary and other evidentiary materials;
 - (c) rule on the admissibility or relevance of issues, evidence and statements;
 - (d) maintain order in the course of a trial.
2. The Court shall ensure that a complete record of a trial, which accurately reflects the proceedings, is maintained and preserved by the Registrar under the authority of the Court.

Article 48: Evidence

1. The Court shall, on the application of the prosecution or of the defence, require any person to give evidence at the trial unless it concludes that the evidence of such person would not contribute to clarifying any matter of relevance to the trial. The Court may also on its own initiative require any person to give evidence at the trial.
2. Before testifying, each witness shall make such oath or declaration as is customary in judicial proceedings in the State of which the witness is a national.
3. The Court may require to be informed of the nature of any evidence before it is offered so that it may rule on its admissibility or relevance. Any such ruling shall be made in open court.
4. The Court shall not require proof of facts of common knowledge but may take judicial notice thereof.
5. Evidence obtained directly or indirectly by illegal means which constitute a serious violation of internationally protected human rights shall not be admissible.
6. A witness who has not yet testified shall not be present when the evidence of another witness is taken. However, a witness who has heard the evidence of another witness shall not for that reason alone be disqualified from giving evidence.
7. The Court may accept evidence in such forms as it deems appropriate in accordance with its rules of procedure and evidence.

Article 49: Hearings

1. The indictment shall be read to the accused and the Court shall ask the accused to plead guilty or not guilty to each of the charges in the indictment.

2. If an objection is raised as to the jurisdiction of the Court, the Court shall rule on the objection prior to proceeding any further with the trial.
3. The Prosecutor shall make an opening statement and call witnesses and present evidence on behalf of the prosecution and, thereafter, the defence may make an opening statement and may call witnesses and present evidence on behalf of the accused.
4. When hearings of evidence have been completed, the prosecution shall make its closing statement and, thereafter, the defence may make its closing statement.
5. The Court shall ask whether the accused wishes to make a statement before it delivers the judgment, and shall, if the accused so wishes, permit such a statement to be made.
6. The Court shall, thereafter, retire for closed and private deliberations upon the judgment it is to make.

Article 50: Quorum and Majority for Decisions

At least four judges must be present at each stage of the trial. The decisions of the Chambers shall be taken by a majority of the judges.

Article 51: Judgment

1. The Court shall pronounce judgments and impose sentences on persons convicted of crimes under this Statute.
2. The judgment of the Court shall be in written form and contain a full and reasoned statement of its findings and conclusions. It shall be the sole judgment or opinion issued.
3. The judgment shall be delivered in open Court.

Article 52: Sentencing

1. The Court shall hold a further and separate hearing to consider the question of the appropriate sentences to be imposed on the convicted person and to hear the submissions of the prosecution and of the defence and such evidence as the Court may deem to be of relevance.
2. The Court shall retire for deliberations in private.
3. The decisions of the Court on the sentences shall be delivered in open court.

Article 53: Applicable Penalties

1. The Chamber may impose on a person convicted of a crime under this Statute one or more of the following penalties:
 - (a) a term of imprisonment, up to and including life imprisonment;
 - (b) a fine of any amount.
2. In determining the length of a term of imprisonment or the amount of a fine to be imposed for a crime, the Chamber may have regard to the penalties provided for by the law of:
 - (a) the State of which the perpetrator of the crime is a national;
 - (b) the State on whose territory the crime was committed; or
 - (c) the State which had custody of and jurisdiction over the accused.
3. The Chamber may also order:
 - (a) the return to their rightful owners of any property or proceeds which were acquired by the convicted person in the course of committing the crime;
 - (b) the forfeiture of such property or proceeds, if the rightful owners cannot be traced.
4. Fines paid or proceeds of property confiscated pursuant to this article may be paid or transferred, by order of the Chamber, to one or more of the following:
 - (a) the Registrar, to defray the costs of the trial;
 - (b) a State whose nationals were the victims of the crime;
 - (c) a trust fund established by the Secretary-General of the United Nations for the benefit of victims of crime.

Article 54: Aggravating or Mitigating Factors

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

PART 5: APPEAL AND REVIEW**Article 55: Appeal against judgement or sentence**

1. [The Prosecutor and] the convicted person may, in accordance with the rules, appeal against a decision under articles 51, 52 or 53 on any of the following grounds:
 - (a) material error of law;

- (b) error of fact which may occasion a miscarriage of justice;
or
 - (c) manifest disproportion between the crime and the sentence.
2. Unless the Chamber otherwise orders, a convicted person shall remain in custody pending an appeal, and provisional measures may be taken to ensure that the judgment of the Chamber, if affirmed, can be promptly enforced.

Article 56: Proceedings on Appeal

1. As soon as notice of appeal has been filed, the Bureau shall take steps in accordance with the rules to constitute an Appeals Chamber consisting of seven judges who did not take part in the judgment contested.
2. The President or a Vice-President shall preside over an Appeals Chamber.
3. The Appeals Chamber has all the powers of the Chamber, and may affirm, reverse or amend the decision which is the subject of the appeal.
4. The decisions of the Appeals Chamber shall be by majority, and shall be given in open court. Six judges shall constitute a quorum.
5. Subject to article 57, decisions of the Appeals Chamber shall be final.

Article 57: Revision

The convicted person [or the prosecutor] may, in accordance with the rules of the Court, apply to the Court for revision of its judgment on the ground that a new fact, not known at the time of the trial or at the time of the appeal, which could have been a decisive factor in the judgment of the Court, has since then been discovered.

PART 6: INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 58: International cooperation and judicial assistance

1. States parties shall cooperate with the Tribunal in connection with criminal investigations relating to, and proceedings brought in respect of, crimes within the Court's jurisdiction.

2. States parties which have accepted the jurisdiction of the Court with respect to a particular crime shall respond without undue delay to any request for international judicial assistance or an order issued by the Court with respect to that crime, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender of the accused to the Tribunal, in accordance with article 63.
 - (f) any other request that may facilitate the administration of justice, including provisions on interim measures as required.

Article 59: Cooperation with States non-parties to the Statute

States non-parties to the present Statute may provide the Tribunal with judicial assistance and cooperation under articles 58 (2) or 62 on the basis of comity, a unilateral declaration, an ad hoc arrangement or other agreement with the Court.

Article 60: Consultation

The States parties shall consult promptly, at the request of any one of them, concerning the application or the carrying out of the provisions on international cooperation and judicial assistance, either generally or in relation to a particular case.

Article 61: Communications and contents of documentation

1. Communications in relation to this Statute shall normally be in writing and shall be between the competent national authority and the Registrar of the Court.
2. Whenever appropriate, communications may also be made through the International Criminal Police Organization (ICPO/INTERPOL), in conformity with arrangements which the Tribunal may make with this organization.
3. Documentation pertaining to international cooperation and judicial assistance shall include the following:

- (a) the purpose of the request and a brief description of the assistance sought, including the basis and legal reasons for the request;
 - (b) information concerning the individual who is the subject of the request;
 - (c) information concerning the evidence sought to be seized, describing it with sufficient detail to identify it, and describing the reasons for the request and the justification relied upon;
 - (d) description of the basic facts underlying the request; and
 - (e) information concerning the charges, accusations or conviction of the person who is the subject of the request.
4. All communications and requests shall be made in one of the working languages set forth in article 18 of the present Statute.
 5. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

Article 62: Provisional Measures

In cases of urgency, the Court may request of the State concerned any or all of the following:

- (a) to provisionally arrest the person sought for surrender;
- (b) to seize evidence needed in connection with any proceedings which shall be the object of a formal request under the provisions of this Statute; or
- (c) to take as a matter of urgency all necessary measures to prevent the escape of a suspect, injury to or the intimidation of a witness, or the destruction of evidence.

Article 63: Surrender of an accused person to the Tribunal

1. As soon as practicable after affirming the indictment under article 32, the Prosecutor shall seek from the Bureau or, if a Chamber has been constituted, from the Chamber, an order for the arrest and surrender of the accused.
2. The Registrar shall transmit the order to any State on whose territory the accused person may be found, and shall request the cooperation of that State in the arrest and surrender of the accused.
3. On receipt of a notice under paragraph (2):

- (a) a State party which has accepted the jurisdiction of the Court with respect to the crime in question shall take immediate steps to arrest and surrender the accused person to the Court;
 - (b) a State party which is also a party to the treaty establishing the crime in question but which has not accepted the Court's jurisdiction over that crime shall arrest and, if it decides not to surrender the accused to the Tribunal, forthwith refer the matter to its competent authorities for the purpose of prosecution;
 - (c) in any other case, a State party shall consider whether it can, in accordance with its constitutional processes, take steps to arrest and surrender the accused person to the Tribunal.
4. The surrender of an accused person to the Tribunal constitutes, as between the States parties to this Statute, sufficient compliance with a provision of any treaty requiring that a suspect be extradited or the case submitted to its competent authorities for the purpose of prosecution.
 5. A State party should, as far as possible, give priority to a request under paragraph 2 over requests for extradition from other States.
 6. A State party may delay complying with paragraph 3 if the accused is in its custody and is being prosecuted for a serious crime or is serving a sentence imposed by a court for a crime.
 7. A State party may, within 45 days of receiving an order under paragraph 2, file a written application with the Registrar requesting the Court to set aside the order or quash the indictment on specified grounds. Pending a decision of the Chamber on the application, the State concerned shall take all necessary provisional measures under article 62.

Article 64: Rule of speciality

1. A person delivered to the Tribunal shall not be subject to prosecution or punishment for any crime other than that for which the person was surrendered.
2. Evidence tendered shall not be used as evidence for any purpose other than that for which it was tendered.

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

PART 7: ENFORCEMENT OF SENTENCES

Article 65: Recognition of judgments

States parties undertake to recognize and give effect to the judgments of the Court. Where necessary or appropriate, States parties shall enact specific legislative and administrative measures necessary to comply with the obligation to recognize the judgments of the court.

Article 66: Enforcement of sentences

1. States parties are requested to offer facilities for imprisonment in accordance with this Statute.
2. Imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Tribunal their willingness to accept convicted persons.
3. If no State is designated under paragraph 2, the imprisonment shall be served in a prison facility made available by the State referred to in article 3.
4. Imprisonment under paragraphs 2 or 3 shall be subject to the supervision of the Court.

Article 67: Pardon, parole and commutation of sentences

1. If, under a generally applicable law of the State of imprisonment a person in the same circumstances who had been convicted for the same conduct by a court of that State would be eligible for pardon, parole or commutation of sentence, the State shall so notify the Court.
2. If a notification has been given under paragraph 1, the prisoner may, subject to and in accordance with the rules, apply to the Court seeking an order for pardon, parole or commutation of the sentence.
3. If the Bureau decides that an application under paragraph 2 is apparently well founded, it shall convene a Chamber to consider and decide whether in the interest of justice the person convicted should be released and on what basis.

4. When imposing sentence, a Chamber may stipulate that the sentence is to be served in accordance with specified laws as to pardon, parole or commutation of the State which, under article 66, is responsible for implementing the sentence. In such a case the consent of the Court is not required for subsequent action of that State in conformity with those laws, but the Court shall be given at least 45 days notice of any decision which might materially affect the terms or extent of the imprisonment.
5. Except as provided in paragraphs 3 and 4, a person serving a sentence imposed by the Court is not to be released before the expiry of the sentence.