(iii) Secretariat Study: Report on the work of the International Law Commission at its Forty-fourth Session

Background

The International Law Commission (hereinafter called the Commission or ILC), established by General Assembly Resolution 174 (III) in 1947, is the principal organ to promote the progressive development of international law and its codification. The Commission held its Forty-fourth Session in Geneva from 4th May to 24th July 1992. There were as many as five substantive topics on the agenda of the said Session of the Commission. These included:

(i) The Draft Code of Crimes Against the Peace and Security of Mankind;

(ii) The Law of Non-Navigational Uses of International Watercourses;

(iii) State Responsibility;

(iv) International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law; and

(v) Relations Between States and International Organisations (Second Part of the Topic).

In view of its practice not to hold a substantive debate on draft articles adopted on first reading until comments and observations of Governments thereon are available, the Commission did not consider the item, on the *Law of the Non-Navigational Uses of International Watercourses*. The Commission, however, appointed Mr. Robert Rosenstock as Special

Rapporteur for the topic. The Commission also did not consider the item "Relations Between States and International Organizations (second part of the topic). The discussion of the first part of the topic dealing with the status, privileges and immunities of representatives of States to international organizations had culminated in the adoption of a set of draft articles which had formed the basis of the **Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, 1975.** States had been slow to ratify the aforementioned convention and doubts had arisen as to the advisability of continuing the work undertaken in 1970 on the Second part of the topic, dealing with the status, privileges and immunities of International Organisations and their personnel. These issues the Commission observed, were to a large extent covered by existing agreements between States and International Organization. Further while eight reports had been presented by two successive Special Rapporteurs and a total of 22 draft articles contained therein had been referred to the Drafting Committee, the latter had not taken any action on them. Besides neither in the Commission nor in the Sixth Committee had the view been expressed that the topic should be more actively considered. The Commission therefore, decided, subject to the approval of the General Assembly, not to pursue further, during the current tenure of its members the consideration of the topic.

It will be recalled that the General Assembly had by its Resolution 46/54 invited the Commission to consider further, within the framework of the draft Code of Crimes against the Peace and Security of Mankind, and to analyse the issue concerning the question of international criminal jurisdiction or other international criminal trial mechanism as outlined in the Commission's Report on the work of its Forty-second Session so as to enable the General Assembly to provide guidance on the matter.

The Commission held substantial discussions on the issue of an international criminal jurisdiction or other international trial mechanism; the topics on State Responsibility and International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law. Some notes and Comments on these items which were subjected to detailed discussions during the forty fourth session are contained herein.

It may be emphasised that the Asian-African Legal Consultative Committee attaches particular importance to the question of Non-Navigational Uses of International Watercourses as this topic is also under consideration by the Committee. The topic of the Draft Code of Crimes Against the Peace and Security of Mankind is also one to which the AALCC

Secretariat attaches great importance in view of the current international situation.

Draft Code of Crimes Against the Peace and Security of Mankind: The establishment of an International Criminal Court

At the Forty-fourth Session the Commission considered the Tenth Report of the Special Rapporteur[1], Mr. Doudou Thiam, which dealt with the possible establishment of an international criminal court or other international trial mechanism.[2]

It is important to note that the Commission had in 1991 adopted a set of Draft Articles on the Draft Code of Crimes Against the Peace and Security of Mankind. On first reading it was envisaged that the draft articles would be applied by national courts. Article 6 (which deals with the obligation of States Parties to try or extradite persons accused of crimes against the Code) however provides:

"6 (3) The provisions of paragraphs 1 and 2 do not prejudge the establishment and the jurisdiction of an international criminal court".

Article 9, dealing with the principle *non bis in idem* also contemplates the possible establishment of an international criminal court.

Scope of the Tenth Report

The Special Rapporteur's tenth report discusses in some detail the issue of possible establishment of an international criminal court. The report comprises of two parts. Part I (paras 7 - 20) deals with certain objections to such a jurisdiction. Part II (paras 21 - 86) considers certain specific issues which would arise in the course of establishing such a jurisdiction. These dealt with the following issues :-

(A) The law to be applied (paras 21 - 46);

(B) The jurisdiction of the court *ratione materiae* (paras 47 - 56);

(C) Complaints before the court (paras 57 -66);

(D) Proceedings relating to compensation (paras 67 - 75);

(E) The "rendition" of an accused person to the court and its relationship to extradition (paras 76 - 83); and

(F) The question of appeals i.e. "the double hearing principle (paras 84 - 86).

1. See Doc. A/CN/4/442.
2. General Assembly Resolution 46/54. The Report was prepared in pursuance of 9.12.1991 operative paragraph 3.

The draft proposals on these issues were according to the Special Rapporteur, put with the idea of stimulating a debate.

The report was discussed in the Commission in two parts. First, a general debate on Part I and thereafter a specific discussion on each of the questions covered in Part II.

The discussions on Part I dealt with a simple question which had to be answered by the Commission: was it possible to establish an international criminal court? On this point the debate had revealed three trends: ¾ A substantial majority of the members of the Commission had spoken in favour, although with some qualifications, of establishing an international criminal court. They pointed out ¾ on the basis of examples as diverse as the trial of General Noriega in the United States of America, the Gulf War, the attacks on aircraft in which Libya was being singled out and the Touvier case in France ¾ that the lack of an international criminal court was leading States to take unilateral measures which were considered by many to be unacceptable. They urged that such a situation, which could only benefit the strong States, might result in a denial of justice when a State, or one of its courts, refused to try a case because it involved one of its powerful nationals. An international criminal court would fill such a gap.

The second trend was represented by the members of the Commission who pointed out the political and technical problems concerning which the establishment of an international criminal court would give rise. In their view that they would prefer the Commission to move towards a more flexible mechanism which was more compatible with State sovereignty. Some proposals had been made to that effect. One member, for example, had referred to the possibility of the participation of active observers in proceedings instituted before national courts or the possibility of requesting Advisory Opinion from the International Court of Justice. But this opinion according to the Special Rapporteur would not be effective. Trials were in principle public and open to any observer who wished to be present and the establishment of a mechanism composed solely of observers would thus not be a crucial innovation. He had further pointed out that the Advisory Opinion which could be requested from the International Court of Justice could not constitute the "trial mechanism" referred to in General Assembly resolution 46/54. Another member had suggested the establishment of an Ad Hoc Court, but was nevertheless suspicious of such courts, which would be of the Nuremberg type which would established after the Commission of the alleged crimes. This thinking was more in terms of an institution along the lines of the Permanent Court of International Arbitration. However such a court would involve choosing judges from a list and determining the

applicable law, which might be appropriate for arbitration but not for International Criminal Law. The proposal however nevertheless deserves further consideration and possible clarification.

State sovereignty has been described as a major insurmountable political problem. But in modern day world, political *interaction*, necessitated giving up some national prerogatives and was making headway. This would be discerned in the European Community for example. The Commission should not ignore that trend. With regard to technical problems, one member, for example, pointed out that criminal responsibility involved the responsibility of the individual. It was sometimes difficult to determine the responsibility of those in Government or Parliament since the responsibility of the members of a Government was collective. That was the solution adopted by the Nuremberg Tribunal in connection with the theory of conspiracy even where a particular minister did not agree with a decision of the Government.

Concerning aggression, the problem of jurisdiction of the Security Council and of the future International Criminal Court, had to be discussed. The problem would only arise if the International Criminal Court adopted a decision contrary to that of the Security Council. If the Security Council made a ruling, the International Criminal Court would have to consider the appropriateness of the decision it might be called upon to make to avoid being at odds with the Security Council. If the Security Council, determined that there had been an act of aggression and the International Criminal Court concluded otherwise, there might be some difficulties between the plaintiff State and the defendant who might shelter behind the Security Council's decision. The problem was undoubtedly delicate and it was up to the Commission to arrive at an acceptable solution.

The third trend, was in favour of maintaining the status quo. In view of the AALCC Secretariat the second trend, if properly developed further would satisfy the requisite requirements of establishing an international jurisdiction.

Ultimately, besides the problem of national sovereignty, the establishment of an International Criminal Court depends on the existence of political will of States. All the outstanding issues could easily be resolved through drafting in the Commission. A clearly affirmed political will by the member States for the creation of such a Court is a condition *sine qua non* to enable the Commission to make any headway in its work.

The Special Rapporteur recalled that, in 1950, the Commission had appointed two Rapporteurs to study the advantages and drawbacks of establishing an international criminal court. Having considered their reports, the Commission had concluded that it was in favour of such a Court. The

Commission was naturally free to change its mind after 40 years, but if it did so, it would have to indicate reasons therefor. In his view, the recent developments in the international situation did not justify such a reversal. He proposed that if the Commission maintained a possible position, it might set up a Working Group entrusting it with preparing a draft which would be submitted to the General Assembly. If on the other hand the solution seemed premature, the Commission might continue to review all the aspects of the question in plenary. If such a Working Group was established, it would, be necessary for it to compile all the arguments in favour of establishing the court and to prepare a document along those lines which would reflect the consensus.

The Discussion on part two of the Special Rapporteur's Report in the plenary of the Commission

The discussions in the Commission concentrated on the question of the Law to be applied and the jurisdiction with regard to the law to be applied. The first question raised was whether it should be confined to the proposed draft code of crimes. Consensus emerged that the applicable law should not be limited to the Code. The Code was still at the draft stage and it only covered certain categories of international crimes i.e. ¾ crimes against the peace and security of mankind and other most serious crimes. One member for instance observed that there was little chance of the Code, becoming an instrument that could be applied. Relevant conventions in view of many member States should be referred to. If the Code was to take the form of a convention it would become part of that category of sources of the applicable law. If not the international criminal court could still be an institution that was possible for acceptance by the international community.

The Special Rapporteur had provided for Alternative B, "The court shall apply :

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

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

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

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

(e) internal law, where appropriate.

The elements listed in alternative B of the draft provision gave rise to considerable controversy. The members of the Commission had generally

stated that they were in favour of referring to International Conventions. It was however true that all International Conventions could not serve as the basis for a criminal action, since not all of them were universally accepted. Apartheid, for example, had been included, after lengthy discussion, in the list of crimes against the peace and security of mankind, not in accordance with the International Convention on the suppression of punishment of the crime of *Apartheid*, but in accordance with the peremptory norms of international law.

Custom was the most disputed element and some have gone so far as to say that the *nullem crimes sine lege* principle ruled out any possibility of basing a criminal action on custom. But it was impossible to detach custom from the applicable law, particularly in international law, which was essentially customary.

Referring to the general principles of criminal law recognized by States, some members of the Commission pointed out that since the Hague Conventions of 1899 and 1907 in respect to the laws and customs of war on land, a similar provision analogous to the 'Martens Clause' had been used in all the relevant codification instruments. General principles should therefore not be ignored.

Several members also pointed out that jurisprudence was a source of law in many legal systems and played a particularly important role in the common law countries.

In connection with internal law, the generally accepted principle on the issue under consideration was that of the conferment of jurisdiction. The International Criminal Court in the view of some members of the Commission could not take cognizance of a case unless the States concerned ¾ the State in whose territory the crime had been committed, the victim State, the State of which the suspected perpetrator of the crime was a national and the State on whose territory the suspected perpetrator was found ¾ had recognized its jurisdiction. However, the possibility could not be ruled out that one of those States might make the conferment of jurisdiction on the court subject to the application of its internal law, provided, of course, that the latter was not in conflict with the general principles of criminal law. It was difficult to believe that the international criminal court would never be called upon to apply internal law in a given case, even though it would obviously have to apply international law.

Jurisdiction of the court was a much debated topic, and a middle of the road approach will have to be adopted.

The list of crimes for which the court would have exclusive and

compulsory jurisdiction was not final but it could be made shorter or longer. The Special Rapporteur had proposed a dual regime of jurisdiction: exclusive jurisdiction and optional jurisdiction. He had intended to be cautious, but his proposal for solely optional jurisdiction had been rejected at the preceding session. However such an approach seemed to be generally accepted at the current session.

The question of complaints before the court (section c) had concentrated on paragraph 1 of the draft provision. This provision dealt with principle, not procedure, and its purpose was to provide, on the one had, that only States, and not individuals, were empowered to bring a complaint before the court. On the other hand all States would be concerned irrespective of whether or not they were parties to the Statute of the Court. Thus in the view of some the right to bring a case should not be confined to States parties, since, by referring a matter to the court, a non-party State was, in a sense, showing that it had confidence in the court. What had to be ascertained was in which capacity a State which was not a party to the Statute of the court could bring a complaint before the court. A State which had been a victim of an international crime, whether or not the act had been committed in its territory and whether or not the alleged perpetrator was one of its nationals might be granted the right to institute proceedings.

Furthermore, in our view, it would be undesirable for a prosecutor to be entitled to refer a case to the Court, as some members of the Commission have proposed. The role of the prosecutor could be envisaged in several ways in the event of proceedings being instituted before the international criminal court. The prosecutor should not, in our view, refer cases to the court himself. His role should be to receive complaints, and if necessary to initiate inquiries and to draw up the indictment.

As to the role of International Organizations, they too might have certain interests to protect. An International Organisation might itself have been a victim of aggression against its property or its agents, in which case it might be more appropriate for the organization and not for the State to bring a complaint. In our view International Organizations should be regarded as legal persons under public law with interest separate from those of their members States. They should therefore be able to refer a complaint to the court in the same capacity as States.

With proceedings relating to compensation (Sec. D) in internal law, it frequently occurs that a criminal court has to rule in criminal proceedings and at the same time in the civil proceedings which arose out of them. Therefore there is no reason why an international criminal court could not do likewise. This view however is not generally shared.

The draft provision on the surrender to the court of the alleged perpetrator of the crime (Section E) has given rise to many reservations which are justified in particular by the need to take account of the basic human rights which are protected by extradition treaties. A view was expressed that surrender to the court of the alleged perpetrator of the crime should be automatic; it was an obligation of all States parties to the Statute of the Court. The Court could also conclude extradition agreements with States that were not parties to the Statute. In any event, if an international criminal court was established, it was necessary to have confidence in it, to allow it to perform its function and not to paralyse its action by provisions that would render it ineffective and futile. The principle of surrender should, therefore not be open to question.

Some members were hesitant with regard to the draft provision on the principle of two-tier jurisdiction (Sec. F). It is true that since the court would be the highest international criminal body, it would be anomalous for its decisions to be reconsidered on appeal. In most legal systems, no appeal lies against decisions handed down by the highest national courts. The decisions of the International Criminal Court would be intended to be final. Consequently no appeal should lie, either on point of fact or on a point of law, against the decisions of the international criminal court. Some ideas however were expressed on the possibility of the case being heard by a bench of judges with appeal to the full bench.

After the above discussions in the plenary a working group on an International Criminal Court was formed under the Chairmanship of Mr. Abdul G. Koroma. The mandate of the Working Group was :-

> "To consider further and analyse the main issues raised in the Commission's Report on the work of its 42nd Session concerning the question of an International trial mechanism and to that end take into account the Ninth (Part II) and Tenth Reports of the Special Rapporteur. So as to draft concrete recommendations with regard to various issues which the Working Group may consider and analyse within the framework of its mandate".

Discussions in the Working Group:

The Working Group identified 5 areas for study :

(i) the basic structure of the court or the other options for an international trial mechanism;

(ii) the system of bringing complaints and of prosecuting alleged offenders;

(iii) the relationship of the court to the United Nations system, and especially the Security Council;

(iv) the applicable law and procedure, the issue of ensuring due process to accused persons; and

(v) prosecution and related matters.

The basic structure of the court or the other options for an 'International Trial Mechanism'

The method of creation of a court:- This can be done through a resolution of the General Assembly. The best way for creation of any international institution would however be by a statute agreed to by states parties. Created this way it would have assurance of a sufficient degree of international support to work effectively.

The composition of the court:- It is assumed that the court or other trial mechanism would not be a full-time body, but an established mechanism that can be called into operation when required. The court would be constituted according to procedure determined by the statute, on each occasion it is required to act. The President of the court alone would act in full-time capacity. This would substantially reduce the costs, and help to ensure that suitably qualified persons were available to act as judges.

It was suggested that each state party to the statute would nominate for a prescribed term, one qualified person to act as a judge of the court. Person would be qualified, if they held, or had held, judicial office on the highest criminal trial court of a state party, or were otherwise experienced in penal law (including, where possible, international penal law). States parties would undertake to make judges readily available to serve on the court. The states parties would elect by a secret ballot, from among the judges so nominated, a person to act as President of the court for a prescribed term, and four other judges who with the President would constitute a "bureau" for the Court. When a Court was required to be constituted, the "bureau" would choose five judges to constitute the Court, and in doing so would take into account prescribed criteria (nationality of the accused etc). Under the statute judges of the court would, act independently of any direction or control of their state of origin.

(2) **The system of Bringing Complaints and of Prosecuting Alleged Offenders**

The ways by which a state might accept the jurisdiction of the court: The court should not have compulsory jurisdiction i.e. the state party to the statute is not obliged to accept *ipso facto* and without further agreement the jurisdiction of the proposed court. By becoming party to the statute a state party would have certain administrative obligations. But merely becoming a party would not itself entail the acceptance of jurisdiction of the Court over particular offences or classes of offences. It was suggested that a menu of crimes be presented out of which state could choose. This would have to be done by a separate act. The jurisdiction of the court would not be exclusive but concurrent with state courts. States which are not parties to the statute can nevertheless accept jurisdiction of the Court on an *ad hoc* basis, since the basic purpose of the court is to find solutions to problems involving serious offences of an international character.

The subject matter jurisdiction (jurisdiction ratione materiae) of the court: The court's jurisdiction should extend to specified existing international treaties creating crimes of an international character. This should include the code of Crimes against the Peace and Security of Mankind (subject to its adoption and entry into force), but it should not be limited to the Code. The treaties which can be included are certain war crimes, the Genocide Convention, the *Apartheid* Convention, Convention on hostage taking, hijacking of ships and aircraft etc.

Another issue to be resolved is whether the competence of the court should extend to the crimes against general international law, which have not yet been incorporated. It is suggested that the list of crimes need not be a long one.

The personal jurisdiction (jurisdiction ratione personae) of the court: This issue was dealt with by the Special Rapporteur in his Ninth Report[3]. The broadest possibility would be to build on the exiting principle of universal jurisdiction under various treaties. The court would try individuals i.e. natural persons rather than states. The court should have jurisdiction over offences which themselves have an international character. It could be provided that the Court has personal jurisdiction in any case where a state party to the Statute has lawful custody of an alleged offender. It has jurisdiction to try the offender under the relevant treaty or under general international law, and it consents to the Court exercising jurisdiction instead. In the first phase of operation, the essential need is to establish and reinforce the confidence of states in the court as a possible means of dealing with certain special cases. Another area which needs to be considered is whether an accused person should be able to rely on personal immunity (e.g. as a diplomatic agent). The ideal solution would be to require in every such case

3. A/CN. 4/435 and Corr. 1.

the consent of the state in question and to treat that consent as a waiver of the immunity.

Three conditions would have to be met for the court to have jurisdiction over a case :

(i) the case must involve an alleged crime falling within the subject-matter of *jurisdiction materiae;*

(ii) the state or states which, under the provisions dealing with personal jurisdiction, are required to accept the court's jurisdiction must have done so, either in advance or *ad hoc;*

(iii) the alleged crime must fall within the terms of their acceptance of jurisdiction.

The relationship between a court and the code of crimes:

Though the draft code of crimes against the peace and security of mankind and the establishment of an international criminal court are two independent projects within the Commission, it is clear that they are inter-related. It would be unfortunate if some states did not ratify the Code because of the lack of appropriate means of implementation. Similarly it would be unfortunate if states did not adhere to the Statute of the Court, because of a perceived lack of objective jurisdiction in the absence of the code.

The essential point, if a court is to become a reality, is to maximize the level of support it can receive from states. When drafting the Statute of the Court however, the possibility should be left open, that a state could become a party to the statute without thereby becoming a party to the Code, or that a state may confer jurisdiction on the Court with respect to the Code, or with respect to one or more crimes of an international character defined in other conventions, or on an *ad hoc* basis. The criteria should be that of maximum flexibility as regards the jurisdiction *ratione materiae* of a court, but this is most readily achieved if the Code and the Statute of the Court are *separate instruments*.

There was general agreement that the proposed Court should not be limited to offences contained in the Code. The Court could have an independent utility, especially if it was widely supported by states. It should be established under its own Statute.

(3) The Relationship Between the court and the United Nations systems, Specially the Security Council.

An important issue which the 1953 Committee left open was whether

the Court should be a part of the United Nations System or should operate as an independent entity. If the Court is world wide in its scope it should be associated with the United Nations. If it is to operate on a regional basis, it can be associated with the relevant regional organization. The Court as envisaged is to be a modest mechanism rather than a standing institution with a substantial staff. The ordinary costs of the Court would be borne by parties to the statute. For any actual trial, it would depend on its length and complexity, but the costs would be borne by states making use of the court.

One idea that may have real potential relates to the concern expressed about the trial of major drug-traffickers. Where this problem is special to a particular region, it may be that a *regional trial court*, established by the countries concerned in cooperation with the United Nations would be one way of resolving such a problem. Such a court need not be part of the United Nations system although technical and other assistance by relevant United Nations programmes or other relevant regional international organizations could be made available.

Other aspects which need to be looked into are the relationship between the Court and the Security Council. Whether the Court has to abide by the Security Council decision which may be political or it should act independently as a judicial organ is still to be resolved.

(4) Applicable Law and Procedure, the issue of ensuring due process to the accused person

In drawing up provisions dealing with law to be applied by an international criminal court, account must be taken of the specific nature of the proceedings before that body, which is, of course, judicial in character. The trial of an individual charged with committing a crime coming within the jurisdiction of such a court is not an international dispute between two subjects of international law. Rather, an international mechanism would be employed to bring to account persons accused of a serious crime of an international character falling within the jurisdiction of the court. A Court would not be created to deal with minor matters, or matters falling exclusively within the domestic jurisdiction of any State. (The Tenth Report of the Special Rapporteur paras (21-46) dealt with this aspect).

A formula along with lines of Article 38 of the Statute of the International Court of Justice would not suffice. It would need to be supplemented by a reference to other sources such as national law, as well as to the secondary law enacted by International Organizations, and in particular the United Nations.

Applicable procedure: The Statute of a Court, or rules made thereunder, should specify to the greatest extent possible the procedural rules for the trial.

(5) Prosecution and Related Matters

The Working Group also outlined some possible solutions to the general question of how proceedings could be initiated before an international criminal court. Such a court would not try *defendants* in *abstentia*. In this context Article 14(3) (d) of the International Covenant on Civil and Political Rights refers to the right of an accused person "to be tried in his presence". In the case of an international criminal court, the requirement that the defendant be in the custody of the court at the time of trial is also important. Other points discussed in the Working Group were: (a) the system of prosecution; (b) the initiation of a case; (c) bringing defendants before a court; (d) international judicial assistance in relation to proceedings before a court; (e) implementation of sentences and (f) relationship of a court to the existing extradition system.

The system of prosecution: Essentially there are three options (1) a complainant state as prosecutor; (2) an independent standing prosecutional organ; and (3) an independent prosecutor appointed on an *ad hoc* basis. An independent *ad hoc* prosecutional system seems best preferable whereby on the occasion of a trial a prosecutor would be appointed on basis agreed. One option would be for the court to appoint a prosecutor, after consultations with the state making the complaint and any state concerned. In the case of a complaint of aggression, for example, the prosecutor could be nominated by the Security Council.

The initiation of a case: In the initiation of a case by complaint, it will be necessary first to identify an official or body to whom such complaint is to be made. This could be the President of the court.

The next question is which state could bring a complaint? In view of the AALCC Secretariat, the right to bring a complaint should extend to *any state party* which has accepted the court's jurisdiction with respect to the offence in question as proposed by the Working Group merits consideration. Consideration need also to be given to a victim state's right to bring a complaint. Another state which could have the right to initiate complaints is a state which has custody of the suspect and which would have jurisdiction under the relevant treaty to try the accused for the offence in its own courts. Co-operation of that state would necessarily be required if a trial was to proceed.

When the complaint is lodged, it would be examined by an independent prosecutor appointed on an *ad hoc* basis. The prosecutor will, where appropriate, issue a formal accusation charging the alleged offender with the commission of a specific crime which falls within the subject matter and personal jurisdiction of the court.

Bringing defendants before a Court: This process would definitely be different from the extradition procedures. The means by which transfer, of the accused, could be requested will in part depend on the nature of the prosecution arrangements. Such a request must be from an authority expressly designated in the Statute. It must be in writing, must contain as accurate a description as possible of the person sought, and must specify the offence and evidence which should be *prima facie* sufficient to justify putting the accused on trial. The requested state would be empowered, and if necessary required, to place an accused person under provisional arrest pending completion of the process of transfer.

International judicial assistance in relation to proceedings before a court: Assistance shall include, but not be limited to:

(a) ascertaining the whereabouts and addresses of persons;

(b) taking testimony or statements of persons in the requested state or at the court;

(c) effecting the production or preservation of judicial and other documents, records, or articles of evidence;

(d) service of judicial and administrative documents; and

(e) authentication of documents.

Other provisions in the treaty could relate to:-

(i) the identification of a central authority in the requested state and an officer of the court to whom and by whom requests for assistance would be made;

(ii) the execution of the request for assistance and the law governing execution;

(iii) the contents of the request;

(iv) the circumstances in which a person who is in custody in the requested state may appear as a witness at the court;

(v) costs;

(vi) confidentiality of information;

(vii) rules governing testimony;

(viii) the language in which requests are to be made; and