

and the defence to make submissions and to consider the appropriate sentence to be imposed.

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

Article 47

Applicable penalties

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

(a) a term of life imprisonment, or of imprisonment for a specified number of years;

(b) a fine.

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

(a) the State of which the convicted person is a national;

(b) the State where the crime was committed; and

(c) the State which has custody of and jurisdiction over the accused.

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

(a) the Registrar, to defray the costs of the trial;

(b) a State the nationals of which were the victims of the crime;

(c) a trust fund established by the Secretary-General of the United Nations for the benefit of victims of crime.

PART 6. APPEAL AND REVIEW

Article 48

Appeal against judgment or sentence

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

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

Article 49

Proceedings on appeal

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

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

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

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

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

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

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

Article 50

Revision

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

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

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

(a) reconvene the Trial Chamber;

(b) constitute a new Trial Chamber; or

(c) refer the matter to the Appeals Chamber;

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

Article 51

Cooperation and judicial assistance

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

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

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

3. Upon receipt of a request under paragraph 2:

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

shall respond without undue delay to the request.

Article 52

Provisional measures

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

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

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

Article 53

Transfer of an accused to the Court

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

2. Upon receipt of a request under paragraph 1:

(a) all States parties:

- (i) in a case covered by article 21(1)(a), or
- (ii) which have accepted the jurisdiction of the Court with respect to the crime in question;

shall, subject to paragraphs 5 and 6, take immediate steps to arrest and transfer the accused to the Court;

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

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

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

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

5. A State party may delay complying with paragraph 2 if the accused is in its custody or control and is being proceeded against for a serious crime, or serving a sentence imposed by a court for a crime. It shall within

45 days of receiving the request inform the Registrar of the reasons for the delay. In such cases, the requested State:

- (a) may agree to the temporary transfer of the accused for the purpose of standing trial under this Statute; or
- (b) shall comply with paragraph 2 after the prosecution has been completed or abandoned or the sentence has been served, as the case may be.

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

Article 54

Obligation to extradite or prosecute

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

Article 55

Rule of speciality

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

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

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

Article 56

Cooperation with States not parties to this Statute

States not parties to this Statute may assist in relation to the matters

referred to in this Part on the basis of comity, a unilateral declaration, an *ad hoc* arrangement or other agreement with the Court.

Article 57

Communications and documentation

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

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

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

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

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

PART 8. ENFORCEMENT

Article 58

Recognition of judgments

States parties undertake to recognize the judgments of the Court.

Article 59

Enforcement of sentences

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

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

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

Article 60

Pardon, parole and commutation of sentences

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

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

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

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

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

APPENDIX TO ANNEX-A

Crimes pursuant to Treaties (see art. 20(e))

1. 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.

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

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

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

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

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

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

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

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

RECOMMENDATION OF THE SIXTH COMMITTEE

The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Establishment of an international criminal court

The General Assembly,

Recalling its resolution 47/33 of 25 November 1992, in which it requested the International Law Commission to undertake the elaboration of a draft statute for an international criminal court,

Recalling also its resolution 48/31 of 9 December 1993, in which it requested the International Law Commission to continue its work on the question of the draft statute for an international criminal court, with a view to elaborating a draft statute for such a court, if possible at the Commission's forty-sixth session in 1994,

Recalling further that the International Law Commission adopted a draft statute for an international criminal court at its forty-sixth session and decided to recommend that an international conference of plenipotentiaries be convened to study the draft statute and to conclude a convention on the establishment of an international criminal court,

Recalling its resolution 49/53 of 9 December 1994, in which it decided to establish an *ad hoc* committee, open to all States Members of the United Nations or members of specialized agencies, to review the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries,

Noting that the *Ad Hoc* Committee on the Establishment of an International Criminal Court has made considerable progress during its sessions on the review of the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission,

Noting also that the *Ad Hoc* Committee still have different views on major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and that, therefore, further discussions are needed for reaching consensus on the above issues in the future,

Noting further that the *Ad Hoc* Committee is of the opinion that issues can be addressed most effectively by combining further discussions with the drafting of texts, with a view to preparing a consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries,

Noting that the *Ad Hoc* Committee recommends that the General Assembly take up the organization of future work with a view to its early completion, given the interest of the international community in the establishment of an international criminal court,

Noting also that the *Ad Hoc* Committee encourages participation by the largest number of States in its future work in order to promote universality,

Expressing deep appreciation for the renewed offer of the Government of Italy to host a conference on the establishment of an international criminal court,

1. Takes note of the report of the *Ad Hoc* Committee on the Establishment of an International Criminal Court, including the recommendations contained therein, and expresses its appreciation to the *Ad Hoc* Committee for the useful work done;

2. Decides to establish a preparatory committee open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, to discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries, and also decides that the work of the Preparatory Committee should be based on the draft statute prepared by the International Law Commission and should take into account the report of the *Ad Hoc* Committee and the written comments submitted by States to the Secretary-General on the draft statute for an international criminal court pursuant to paragraph 4 of General Assembly resolution 49/53 and, as appropriate, contributions of relevant organizations;

3. Also decides that the Preparatory Committee will meet from 25 March to 12 April and from 12 to 30 August 1996 and submit its report to the General Assembly at the beginning of its fifty-first session, and requests the Secretary-General to provide the Preparatory Committee with the necessary facilities for the performance of its work;

4. Urges participation in the Preparatory Committee by the largest number of States in order to promote universal support for an international criminal court;

5. Decides to include in the provisional agenda of its fifty-first session an item entitled "Establishment of an international criminal court", in order to study the report of the Preparatory Committee and, in the light of that report, to decide on the convening of an international conference of plenipotentiaries to finalize and adopt a convention on the establishment of an international criminal court, including the timing and the duration of the conference.

V. Status and Treatment of Refugees

(i) Introduction

The item "Status and Treatment of Refugees" was first referred by the erstwhile United Arab Republic at the fifth session of the AALCC held in 1964 and has continued to be on the agenda of the regular sessions since then. Apart from the legal and humanitarian considerations, this topic touches several issues of mutual concern to the Member States of the AALCC.

In recent years the focus of the AALCC has been on preparing a 'Model Legislation on the Status and Treatment of Refugees' and the "Establishment of Safety Zones for the Internally Displaced Persons in Their Country of Origin."

The AALCC at its 34th Session held in Doha in 1995 considered the brief of documents on Model Legislation on the Status and Treatment of Refugees¹ and the Establishment of Safety Zones for the Displaced Persons in their country of origin and after due deliberations appealed to Member States to take all possible measures to eradicate the causes and conditions which force people to leave their countries and cause them to suffer unbounded misery. It urged Member States, who have not already done so, to ratify or accede to the Convention relating to the Status of Refugees, 1951 and the 1967 Protocol thereto.

The item 'Deportation of Palestinians in violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories' has been on the agenda of the AALCC since its 27th session, held in Singapore in 1988, when it was first referred to by the Government of the Islamic Republic of Iran. The item has since been discussed at successive sessions of the AALCC. When the item was last discussed at the 34th Session of the AALCC held in Doha in 1995, a view was expressed *inter alia*

1. The full account of the brief has been given in the printed Report and Selected Documents of the Thirty-Fourth Session, Doha, Qatar (17-22 April 1995).