THE POSSIBLE IMPACT OF THE INTERNATIONAL CRIMINAL COURT ON HUMAN RIGHTS IN AFRICA

Dissertation submitted in partial fulfilment of the requirement for the degree Masters of Law (LLM) in Human Rights and Democratisation in Africa.

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DECLARATION

I, ERIC NGONJI, hereby declare that this work is original and the result of my own effort. It has never on any previous occasion been presented in part or whole to any Institution or Board for the award of any Degree.

I further declare that every secondary information used has been duly acknowledged in the work. I am responsible for any error whatever the nature, in this work.

Student

Signed:.................................... Date:..............................

Supervisor

Signed:.................................... Date..............................

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DEDICATION

To

My father, Njungwe Raphael and sister Njungwe Edith, all of memory.

To

My loving and caring mother, Malenjie Jeanne Njungwe, the source of my strength throughout the programme.

And to

All the victims of gross human rights violations on the African continent.

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LISTS OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights.
AJICL	African Journal of International and Comparative Law.
AFHRD	Asian Forum for Human Rights and Development.
AHRLJ	African Human Rights Law Journal.
AI	Amnesty International.
Art(s)	article(s).
CAR	Central African Republic.
CAT	Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment.
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women.
CICC	Coalition for an International Criminal Court.
DRC	Democratic Republic of Congo.
ed(s)	editor(s).
HRQ	Human Rights Quarterly.
HRW	Human Rights Watch.
ICC	International Criminal Court.
ICCPR	International Covenant on Civil and Political Rights.
ICESCR	International Covenant on Economic, Social and Cultural Rights.
ICJ	International Commission of Jurists.
ICJ	International Court of Justice.
ICTR	International Criminal Tribunal for Rwanda.
ICTY	International Criminal Tribunal for Yugoslavia.
IMT	International Military Tribunal.
LCHR	Lawyers Committee for Human Rights.
NGO(s)	Non-Governmental Organisation(s).

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OAU	Organisation of African Unity.
para(s)	paragraph(s).
RACHPR	Review of the African Commission on Human and Peoples' Rights.
SADR	Sahrawi Arab Demovratic Republic.
S.C. RES.	Security Council Resolution.
SRSA	Strategic Review for Southern Africa.
UDHR	Universal Declaration of Human Rights.
UN	United Nations Organisations.
U.N. G.A. RES.	United Nations General Assembly Resolution.
Vol	Volume.
&	and.

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CHAPTER 1

1. INTRODUCTION

The cruelty and horrors of World War II were historic in shaping the new world order.[1] The international protection of human rights then gained eminence following the establishment of the Nuremberg and Tokyo International Military Tribunals (IMT) in 1945, to try Nazi and Japanese war leaders for crimes against peace, war crimes and crimes against humanity committed during the war.[2] Thereafter the United Nations (UN) General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, (Genocide Convention) on 9 December 1948,[3] and later the Universal Declaration of Human Rights (UDHR) on 10 December 1948.[4] Both instruments have been pivotal. While the latter has been the foundation upon which all subsequent human rights instruments have been developed, the former expounded the principle of international crimes and extraterritorial jurisdiction.[5]

1.1. Nature and significance of study

In Africa, the last century was marked by massive violations of human rights, from oppression associated with colonialism, which affected almost the whole continent, to post-colonial violations of various nature and varying degree. For a while it appeared as if Africa was cursed.[6] In spite of its past as a continent whose people had under the

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1 C Beyani in Goodwin-Gill & Talmon (eds) (1999), 24; M Craven, (1995), 6. It was only after World War II that the international community took a resolute step and affirmed faith in fundamental human rights, and the need to save succeeding generations from the scourge of war.

2 Charter of the IMT, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), August 8, 1945. The agreement limited the Tribunals jurisdiction to major war criminals and those whose crimes had no particular location, and stressed in arts; 1, 4 & 6, that the tribunal would not prejudice the jurisdiction of national courts under the Allies November 1943 Moscow Declaration, whereby minor Nazi war criminals would be judged and punished in the countries where they committed their crimes. The IMT represented a major step in the elaboration and enforcement of the international criminal law; See generally, Ratner & Abrams, (1997), 162-165.

3 U.N. G.A. RES. 260A(III) of 9 Dec. 1948, entered into force on 12 Jan. 1951.

4 U.N. G.A. RES. 217A(III) of 10 Dec. 1948.

5 Genocide Convention, arts; 1, 6, 7, & 9.

6 M Hansungule (2001) *"Domestic Implementation of Human Rights in African Constitutions"* (on file with author).

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colonial rule, suffered systematic rape of their human dignity,[7] the African leaders, once in power, reverted to the "lessons" learnt during colonialism. After fighting for freedom, all the people in Africa were rewarded with, was further atrocities, inflicted on them this time around by fellow Africans.

African States acquired international status after gaining independence, thereby having rights as well as responsibilities in the international arena.[8] Among these responsibilities were the recognition, respect and protection of human rights.[9] Despite their international commitments, the situation of human rights on the continent remained ominous. Not only were African States unable to afford their own citizens fundamental rights and freedoms which were elementary to the very being of human existence, they became the main protagonist of human rights violations.[10]

The African State has been such an egregious human rights violator that scepticism reigns as to the ability of the regional human rights mechanism to solely deal with the scourge.[11] Africa has experienced, and continues to experience grave atrocities committed on the continent. There have been numerous armed conflicts in which soldiers and militias have tortured, raped and murdered civilians.[12] Africa makes headlines with events related to internal and interstate wars[13] with all its accompanying consequences of death, amputations, refugees, famine and diseases. All these elements violate the basic human rights of the people of Africa. Besides, Africa has also witnessed massive human rights violations both under military regimes and undemocratic civilian rulers, who have devoted much time on the elimination of individuals opposed to their

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[7] Ibid.

[8] Especially when African States gained admission into the UN.

[9] One of the principle against which the UN was created. Besides, some independence African constitutions were of European origin and embodied human rights provisions; Algerian Constitution (1976), Benin Constitution (1977), Ghanaian Constitution (1969), Zambian Constitution (1973).

[10] Hansugule (note 6).

[11] M Mutua 'in Power & Allison (eds) (2000), 144.

[12] See conflict situations in Angola, DRC, Liberia, Rwanda and Sierra Leone.

[13] D Torou '*The Struggle Towards Human Rights in Africa : Success and Failure'*, <http://www.peace.ac/afstrugglehumanrights.htm> accessed on 17-08-2001.

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tyranny. Contrary to what should be the case,[14] gross human rights violators have in most cases acted with impunity.[15]

Fortunately, the tide of international law is rapidly turning against this reign of impunity. The impact of the New World order it is hoped, would make the whole world, especially Africa, a much better place for human beings. The question of who would have jurisdiction to try international crimes has been a point of concern and contention, but has received some very clear answers. In 1994 the United Nations set up the International Criminal Tribunal for Rwanda (ICTR) to try international criminals.[16] The adoption of the ICC Statute,[17] it is hoped would be of great significance to Africa and certainly a welcomed development. Its coming into existence would certainly mark the end of impunity and the dawn of a new era of criminal accountability.[18]

There is no doubt therefore that the end of the last century brought about a great awakening; a new order of international law, in which the world would no longer stand by while some human beings subject their fellows to inhumane treatment without fear of being confronted by the judicial process.[19] The question clearly is whether this new creation of the legal world would have a bearing on the human rights situation in Africa. This dissertation would therefore examine the extent to which the ICC would contribute to the respect for human rights, and eradicate the culture of impunity in Africa.

1.2. Methodology

The international community has made enormous efforts to ensure that gross human rights violators are brought to book. The normative framework now in place is quite comprehensive. Serious moves have also been made towards putting in place

[14] An exception is Rwanda in which mechanisms are in place both nationally and internationally to try genocide suspects. However, the limited mandates of the courts prevent those responsible for atrocities committed in Rwanda after 1994 from being brought to justice. There are also prospects that the Special Court for Sierra Leone will bring gross human rights violators to justice.

[15] Amin (Uganda), Habre (Chad), Mengistu (Ethiopia).

[16] S.C. RES. 955 of 8 Nov. 1994. The UN had a year earlier established the ICTY (S.C. RES. 827 of 25 May 1993) to prosecute individuals for international crimes committed in the former Yugoslavia.

[17] Adopted by the Rome Diplomatic Conference on 17 July 1998. Not yet in force.

[18] C Eboe-Osuji, *African Legal Aid,* Oct-Dec, (1999), 15.

[19] Ibid, 28.

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institutions to try violators, the most significant being the adoption of the Rome Statute of the ICC. In examining what impact the ICC would have on the human rights situation in Africa, various aspects are considered.

Chapter two gives an appraisal of human rights violations in Africa, an overview of the regional human rights mechanism, and also examines the legal reasons for the establishment of the ICC. Chapter three scrutinises the crimes within the jurisdiction of the ICC and how protective they are for Africa. Chapter four examines other relevant characteristics of the Court to see how significant the Court may be for Africa. Chapter five deals with recommendations and conclusions. Suffice to point out here that other recommendations and conclusions have been made in the work where appropriate.

The study made use of three main sources of information:

- Instruments: includes various UN Statutes and Conventions relevant to the study;
- Library: from where literature such as books and journals relevant to the study were obtained;
- Internet: the internet proved quite helpful and an extensive use was made of it.

1.3. Overview of existing research

A number of books and articles have been written on the ICC both before and after the adoption of the ICC Statute. Besides, much literature especially on NGO mobilisation and lobbying campaigns can be got through internet search.[20] The website of the ICC[21] also carries a wide range of vital information about the Court.

However, all writings on the ICC have had an international focus. I have not come across any literature on the ICC with an African perspective. One would have expected that the adoption in the same year of a Protocol establishing the African Court on Human

[20] The NGO Coalition for an ICC, *The International Criminal Court,* <http://www.iccnow.org/>; Human Rights Watch (HRW), *International Justice: International Criminal Court,* <http://www.hrw.org/campaigns/icc/>; Lawyers Committee for Human Rights (LCHR), *International Criminal Court: The Architecture of Global Justice,* <http://www.lchr.org/IJP/icc.htm>; Asian Forum for Human Rights and Development (AFHRD), *International Criminal Court,* <http://www.forumasia.org/projects.html>; all accessed on 06-07-2001.

[21] <http://www.un.org/law/icc/index.html> accessed on 06-07-2001.

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and Peoples' Rights,[22] and the Statute of the ICC, would have prompted academics and commentators to publish on both. While there are publications on the former, publications on the latter all have an international perspective. This study will thus contribute to remedy the scantiness of literature by addressing an academic reflection on the regional dimension of the ICC.

1.4. Limitation of the study

The present work has some limitations. The word 'possible' in the title is indicative of the non-existence of the Court. The fact that the Statute has been adopted is at least a guarantee that this institution will one day come to existence. The study therefore makes use of the past and present human rights situation on the African continent.

Also while the work will most often refer to specific countries, the study would usually look at Africa globally. The truth however is that Africa is vast and the human rights situation, whether in terms of respect or violations varies in nature and degree in different countries.

Also, the restrictions on the study in terms of time, resources and institutional regulations means that the different patterns within and among African States cannot be really appreciated.

1.5. International human rights and international humanitarian law

This assay seeks under this subtitle to narrow the gap between human rights and humanitarian law. From inception, human rights and humanitarian law were treated as two separate fields.[23] Although the genesis and development of these branches of law show that they exist as independent categories the persistent scrutiny by modern analysts have revealed common attributes and areas of merger of both subjects.[24]

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22 Adopted by the OAU Assembly of Heads of States and government on 9 June 1998, not yet in force.

23 R Kolb, *IRRC,* No.324 (30 Sept. 1998), 409; J Dugard, *IRRC,* No.324 (30 Sept. 1998), 445.

24 Ibid; see also Doswald-Beck & Vité, *IRRC,* No.293 (30 April 1993), 94-119; Sommaruga (16 March 1995); D Schindler, *IRRC,* No.208 (28 Feb. 1979), 3-14; R Brett, *IRRC,* No.324 (30 Sept. 1998), 531-536.

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The main difference between the two subjects is that the application of humanitarian law is limited to situations of armed conflict, whether international or non-international, whereas human rights protect the individual at all times, both war and peace time.[25] Humanitarian law as such deals with the manner in which hostilities are conducted, the treatment of persons captured by the adverse party, and the conduct of belligerents towards the civilian population. On the other hand, human rights are concerned with the organisation of State power vis-à-vis the individual.[26] It limits the power of the State over the individual by seeking essentially to prevent arbitrary behaviour. Hence while humanitarian law seeks to protect victims or potential victims by attempting to limit the suffering caused by war, human rights seeks to protect the individual and further his development.[27]

Despite this divergence, the growing significance of international criminal law and the criminalisation of serious violations of human rights have watered down the differences, and the two subjects are today generally considered merely as different branches of the same discipline.[28] The UN resolution on "Respect for human rights in armed conflicts" of the 1968 International Conference on Human Rights in Teheran[29] gave support to the argument that human rights and humanitarian law cannot be strictly and effectively dissociated. International humanitarian law is increasingly perceived as part of human rights law applicable in armed conflict.[30] Both subjects are complementary to each other and do have the same goals; the protection of the individual. In other words, in the application of human rights and humanitarian law, the protection of the human being is the supreme objective.

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25 States can however derogate from certain human rights especially in times of public emergency, (see art; 4(1) ICCPR). Nonetheless, there is a limitation to this since they cannot derogate from other rights such as the right to life, freedom of torture, freedom from slavery etc (art; 4(2) ICCPR).

26 Kolb (note 23), 409.

27 "*What is the difference between international humanitarian law and human rights law?*" 1 Dec. 1999; <http://www.icrc.org/icrceng.nsf...> accessed on 22-10-2001.

28 Dugard (note 23), 445.

29 U.N. G.A. RES. 2444(XXIII) of 19 Dec. 1968. This resolution paved the away for the elaboration of the two additional protocols to the Geneva Conventions which were adopted in 1977.

30 Doswald-Beck & Vité (note 24), 293.

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The ICC will enforce both international human rights and international humanitarian law. While the latter is properly covered under article 8 of the Statute,[31] violations of the former is required to be grave, widespread or systematic, and to fall under one or more of the categories defined as genocide or crimes against humanity by the ICC Statute.[32] In essence the use of the phrase "human rights" in this essay covers the application of both international human rights and humanitarian law.

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31 Punishing war crimes.

32 Arts; 6 & 7 respectively.

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CHAPTER 2

2. APPRAISAL OF HUMAN RIGHTS IN AFRICA AND THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT

2.1. OVERVIEW OF HUMAN RIGHTS VIOLATIONS IN AFRICA

A broad assessment of the human rights situation should normally incorporate three phases of the development, namely, pre-colonial, colonial and post-colonial Africa. An examination of the pre-colonial phase falls outside the scope of the present study. Suffice to say however that it is not easy to generalise about human rights in a very long and timeless pre-colonial Africa. In as much as there were gross violations of human rights, and although the modern concept of democracy, human rights and universality had not been developed, there were elements of respect for humankind.[33]

The colonial situation on the other hand was the basis upon which the independence Africa leaders came to rule their people. In this regard, an analysis of the human rights situation should begin with an abridgment of the colonial period. The entire African continent, with the exception of Ethiopia and Liberia, fell under colonial rule. The human rights side of colonialism in Africa was catastrophic.[34] It was a period of grave human rights violations. It was marked by ruthless denial of the rights of the Africa peoples', and even democratic aspects of traditional African societies were stifled.[35] Whatever the administrative philosophy of the colonial powers,[36] their aims and results were the same; the maximum exploitation of human and material resources of the Africa continent.[37] In reality, the normal trend was that no freedoms that challenged or questioned the *raison d'etre* of colonialism could be tolerated. Indeed the colonial vilification of African tradition, religion, culture and language, and the exploitation of the continent's wealth is a serious setback for Africa and partly responsible for the continent's backwardness and underdevelopment in modern history.

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33 For pre-colonial human rights in Africa, see P Kunig, W Benedek & C Mahalu (1985), 2; M Mutua, *RACHPR,* Vol.6 (1996-97), 22-32; UO Umozurike, (1997), 12-19.

34 Hamsugule (note 6).

35 Kunig et al. (note 33), 4.

36 Whether assimilation for the French, indirect rule for the British or paternalism for the Belgians.

37 Umozurike (note 33), 21.

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Finally, African States became independent in the second half of the last century. The motivation for political independence in Africa was the burning desire to end subjugation and to restore or rehabilitate human dignity that had been lost during colonialism.[38] Some Independence constitutions were adopted similar to those of the Europeans with a bill of rights guaranteeing respect for human rights, the rule of law and independence of the judiciary.[39] Africa was now under the leadership of Africans who were expected to better appreciate the problems of their people. With the admission of African States into the UN, there were hopes for the protection and promotion of human rights. These hopes were however not realised. Africans entered the era of independence with virtually no background in human rights and democracy, having not inherited these values from their previous rulers. The political leaders were too familiar with the dictatorial rule of colonialism, a rule incongruent to the constitutional practice of democracy and human rights they were expected to exhibit.

Most African leaders easily broke their promises for arbitrary rule.[40] Arbitrary arrests and detentions, and summary executions of opponents became the norm. As Umozurike points out,[41] the principle of rule of law easily gave way to that of the "rule of force" with the emergence of military regimes that did no good but to supplement the atrocities committed on the African peoples.[42] Indeed respect for human rights reached its lowest ebb in the 1970s and 1980s. Frequently cited repulsive cases include the following.

In Uganda, Idi Amin exerted great pressure and terror over the whole population during his autocratic rule from 1971-1979. Amin, now being sheltered by Saudi Arabia expelled

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[38] Kunig, et al. (note 33), 6.

[39] See note 9; it is paradoxical that independent Africa was born with ready-made constitutions with a bill of rights bequeathed on them by the colonialist, although they had denied Africans the most elementary of human rights. This was however a clever device designed to protect European interests in the absence of the Whiteman.

[40] See also M Nkulu, *"The African Charter on Human and Peoples Rights: An African Contribution to the project of global ethic"* <http://astro.temple.edu/~dialogue/Center/mutombo.htm> accessed on 20-09-2001.

[41] Umozurike (note 33), 23.

[42] See military regimes in DRC (Zaire), Ghana, Nigeria.

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the entire ethnic Asian population from Uganda. His regime was responsible for the murder of an estimated 100.000 to 300.000 people.[43]

The second reign of Milton Obote in Uganda (1980-1985) is thought to have exceeded the brutality of the Amin regime. Estimates of civilians killed by Obote's forces, range from 100.000 to 300.000, while prisoners in military custody were systematically tortured.[44] Upon his overthrow in May 1985, he fled the country and now lives undisturbed in Zambia.[45]

Colonel Mengistu Haile Mariam headed the junta in Ethiopia which in 1974 overthrew the government of Emperor Haile Selassie in a bloody coup. Mengistu's regime (1974-1991) was responsible for massive human rights violations. The junta proclaimed a revolutionary agenda for the country and inaugurated its rule by sending some sixty senior officials of the emperor's government to the firing squad.[46] Also, tens of thousands of Ethiopians including political opponents, students and peaceful critics were tortured and murdered.[47] Mengistu has been granted sanctuary in Zimbabwe were he lives a quiet life.

Hissein Habre's rule in Chad (1982-1990) was also full of terror. He is known to have conducted arbitrary arrests and detentions, disappearances and eliminated political opponents. Human Rights Watch and other groups provided details of 97 political killings, 142 cases of torture, 100 disappearances and 736 arbitrary arrests carried out by Habre's regime.[48]

West Africa also suffered tremendously under military regimes. In 1979, Ghana witnessed ten-minute trials and executions of former heads of governments, following a

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43 HRW <http://www.org/campaigns/chile98/precedent.htm> accessed on 20-08-2001; see also, Mutua (note 11), 145; E Ankumah, *African Legal Aid,* April-June (2000), 5; J Dugard, *African Legal Aid,* April-June (2000), 7.

44 HRW (ibid).

45 Ibid.

46 HRW <http://www.hrw.org/press/1999/nov/megistu.htm> accessed on 24-08-2001.

47 HRW; Ankumah; Dugard (note 43).

48 In their indictment of Habre in Senegal.

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successful military coup.[49] There was a military take over of government in Liberia in 1980, followed by executions of political and government leaders.[50] In Nigeria political opponents and the civilian population suffered tremendously under successive military regimes.

In Equatorial Guinea, Macias Nguema, exterminated the population at will[51]. Self-proclaimed emperor, Jean-Bedel Bokassa of the Central African Republic (CAR) wasted no time in crushing anyone opposed to his policies. He is known to have even ordered the killing of children for protesting his decrees to buy school uniforms from his shop.[52] In the Zaire (DRC), Mobuto Seseseko became Africa's richest head of State whereas the Congolese wallowed in penury. Also, thousands of his opponents were eliminated.[53]

In South Africa, blacks suffered various machinations with the institutionalisation of the policy of apartheid. The notorious system of apartheid not only excluded blacks from accessing social and economic opportunities in their own country, but also deprived them of their political rights only on the grounds that they were black.[54] This policy ensured that blacks were settled separate from whites and had to carry "passes" or identification documents in order to come to town, regarded as non-black areas.[55] Many blacks who defied apartheid policies were killed or jailed for long periods, and at times without trial. In rare cases were amenities built for blacks and where they existed, they were of low quality.

Under the able organisation and leadership of government officials, the Rwanda Hutus carried out genocide on the Tutsis. This was a well-planned endeavour to wipe out the Tutsi population in Rwanda, killing an estimated 500.000 to 1000.000 people in the 1994

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49 Umozurike (note 33), 24.

50 Ibid.

51 Mutua (note 11), 145.

52 Hansugule (note 6).

53 Ibid.

54 Ibid.

55 *"The History of Apartheid in South Africa"* <http://www-cs-students.stanford.edu/~cale/cs201/apartheid.hist.html> accessed on 22-09-2001.

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Rwandan genocide.[56] This has actually been one of the greatest shocks that the international community had experience in modern time.

Also, civil wars on the continent continue to question the very existence of human beings. In Angola, DRC, Liberia, Sierra Leone, Somalia and Sudan the civilian population has constantly suffered from barbarous treatment in the hands of belligerents. Warring parties have too often used amputations and rapes on civilian population as war strategies thereby inflicting serious harm on this vulnerable segment of the society.

From the above it can be seen that the modern African States have been in many respects the colonial States in a different guise.[57] Except in the case of Liberia, and its constant attack on South Africa, the OAU maintained an indifferent attitude to these breaches,[58] relying on one of its principles; "non-interference in the internal affairs of States"[59]

The ICC is evidently aimed at bringing to justice the offending enemies of humankind and in so doing, it is hoped that it will contribute greatly to, and foster respect for human rights in Africa. The effect the ICC will have on human rights in Africa will very much depend on what measures are in place, in terms of provisions in the ICC Statute to overcome constraints that have in the past worked out favourably for human rights violators.

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56 UN Doc. E/CN.4/1994, para; 24; K Richburg *Rwandan Nuns Jailed for Genocide*, Washington Post Foreign Service, Saturday, 9 June 2001; Page A01 <http://www.washingtonpost.com/ac2/wp-dyn/A42755-2001Jun8>; Afrol News, 10 June 2001, *Vatican puzzled by verdict against Rwandan nuns,* < http://www.afrol.com/News2001/rwa010_nuns_genocide.htm>; D Listoe, 'The Look of Justice', 7 July 2001,<http://www.rewired.com/01/0707.html>; Foundation Hirondelle: Media for Peace and Human dignity *"Genocide Survivors Welcome Belgian Verdict" 11 July 2001,* <http://www.hirondelle.org/hirondelle.nsf/...> all accessed on 05-10-2001.

57 Mutua (note 11), 144.

58 E Ankumah, (1996), 4; Umozurike (note 33), 24; Nkulu (note 40).

59 Art; III(2) of the OAU Charter; the OAU emphasised the principle of non-interference in "internal affairs" in an effort to avoid conflict between member states.

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2.2. BRIEF ON THE AFRICAN HUMAN RIGHTS SYSTEM

The African human rights mechanism is founded upon the African Charter on Human and Peoples' Rights (African Charter).[60] Before the adoption of the African Charter, the only provisions on human rights on the continent was in the Charter of the OAU,[61] which in spite of its expressions on human rights did not proclaim individual rights for African people.[62] From its inception, the OAU was preoccupied with political unity, non-interference in internal affairs of another State, and the liberation of African territories under foreign domination. As such, OAU member States became very reluctant to criticise massive and notorious breaches of human rights in African States, with the notable exception of South Africa.[63]

The African Charter is not an accident of history. Its adoption by the OAU came at a time of increased scrutiny of States regarding their human rights practices, and the pre-eminence of human rights as a legitimate subject of international discourse.[64] The African Charter was adopted at a time when no African State, except for Botswana, Gambia and Senegal could boast of a nominal democracy.[65] It is therefore surprising that it was a club of dictators who gave birth to the African human rights system. However the Africa Charter makes a major contribution to the global protection of human rights; the most notable being its embodiment of the three generations of rights, the imposition of duties on individuals and the addition of ethnicity to the prohibited grounds of discrimination.[66] It is therefore significant as it adapts international human rights standards to the specificities of the African situation. Besides, it divulges an acknowledgment by African States that human rights had become an inexorable module in the international landscape.

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60 Adopted by the OAU Assembly of Heads of States and Governments on 27 June 1981, entered into force on 21 October 1986. All African States are States parties.

61 Adopted in Addis Ababa on 25 May 1963, entered into force on 13 Sept. 1963.

62 OAU Charter, preamble, paras; 1, 2, 8 & art; 1(e).

63 See note 58.

64 Mutua (note 11), 145.

65 Torou (note 13).

66 Ibid.

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After its entry into force in 1986, the African Commission on Human and Peoples' Rights in 1987 began its supervisory role in the implementation of the Charter provisions.[67] Finally, the OAU Assembly of Heads of States and Governments in 1998 adopted the Protocol to the African Charter on the establishment of an African Human Rights Court.[68] The Court is aimed at redressing the deficiencies and putting 'teeth' to the African human rights system. The Court's jurisdiction is not limited to cases that arise out of the African Charter, rather actions could be brought before it on the basis of any instrument, including international human rights treaties ratified by the State concerned.[69]

A serious shortfall of the prospective Court relates to the limitation of access of individuals and NGOs. While the African Commission, States parties and African inter-governmental organisations enjoy automatic access to the Court,[70] individuals and NGOs cannot bring an action against a State unless the State in question, either at the time of ratification, or thereafter made a declaration accepting the jurisdiction of the Court to hear such cases.[71] On the whole, the State and not the individual is the target of the African human rights court.[72] This makes persuasive the need for an international criminal court with the powers to make accountable callous individuals.

2.3. LEGAL REASONS FOR THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT

Fifty years after the adoption of the UDHR[73], the adoption of the Genocide Convention,[74] and the adoption of the Geneva Conventions,[75] the Statute of the ICC was finally adopted in 1998. The idea of a permanent international criminal court has been on the

67 The basic functions of the African Commission are both promotional and protective. These include research and dissemination of information through workshops and symposia and the encouragement of national and local human rights institutions. It also examines State reports, consider communications alleging violations, and interpret the Charter (see, art; 45).

68 See note 22.

69 Protocol, art; 3(1).

70 Art; 5.

71 Arts; 5(3) & 34(6).

72 This limitation also applies to the European and Inter-American Human Rights Courts.

73 See note 4.

74 See note 3.

75 See note 116.

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international agenda for much of the last century and the adoption of the ICC Statute constituted a milestone in the arena of international criminal law.[76] The ICC would be an independent and permanent international judicial body governed by its Statute and operating under the auspices of the UN. It will be charged with prosecuting violators of grave international crimes.

The ICC has been established to strengthen international criminal justice in a number of ways.

2.3.1. To end impunity

The logical reaction to violations of penal laws is prosecution. Violations must be prosecuted in order to bring their perpetrators to justice. This position is in line with the principle of the rule of law. The rule of law entails that all persons are equal before, and equally bound by the law. No one is above the law. When crimes are not prosecuted the principle of the rule of law is totally disregarded and perpetrators continue to be a threat to the society in which they reside.[77] The ICC seeks to carry forward the principle of the rule of law internationally, by guaranteeing the prosecution of individuals responsible for violating international criminal law. It presents an opportunity therefore to strengthen the rule of law and respect for the basic demands of humanity.

Prosecuting criminals is based on the need to protect society,[78] and the international community as a whole. Past human rights abuses ought to be prosecuted to deter future abuses.[79] World respect for law will suffer if it is seen that civilian and military authorities can commit certain kinds of criminal conduct with impunity.[80] As such, a permanent international criminal institution with powers to investigate and prosecute violators of international criminal law would contribute significantly to the fight against impunity.

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76 J Dugard (2000), 2nd ed, 151; R Provost in Goodwin-Gill & Talmon (eds) (1999), 439; W Slomanson (2000), 399; P Kirsch in Triffterer (ed) (1999), XXIII; V Nanda *HRQ* (1998), Vol.20, No.2, 413-417; P Gargiulo in Lattanzi & Schabas (eds) Vol.1 (1999), 67; O Triffterer in Triffterer (ed), (1999), 18-23; For an elaborate account on the efforts towards an ICC, see B Ferencz, (1980).

77 K Kindiki (2001) 1 *AHRLJ*, 71.

78 T Farer, *HRQ*, (2000), 91-92.

79 Ratner & Abrams (note 2), 184.

80 E Stover "In the Shadow of Nuremberg: Pursuing War Criminals in the Former Yugoslavia and Rwanda" <http://www.rog/MGS/V2N3Stover.html> accessed on 29-08-2001.

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2.3.2. To supplement national mechanisms

Massive human rights abuses have been committed and continue to be committed worldwide. The ICC as such is indispensable to help end impunity for grave crimes under international law by providing a forum for adjudication when national criminal justice systems fail to do so. The growth of international criminal law has been retarded by a reliance on national authorities to prosecute international wrongdoers.[81] The absence of a permanent court had therefore left the international community with the option to urge national governments to bring to an end international crimes being committed in their territories, and to prosecute those responsible for such crimes.

But then, most governments have been unwilling to undertake prosecutions and in some situations, courts have been subordinated to the tyranny of the Executive. Also, national governments have been unable to prosecute because of weak domestic legal system, or because human rights violators have fled to other countries.[82] In other situations, there is sufficient willingness to prosecute, but the administration of justice does not provide sufficient guarantees for fair trial.[83] The ICC provides effective mechanisms for initiating prosecutions where domestic legal systems are either "unwilling" or "unable" to do so.[84] Besides, the administration of justice in the ICC provides effective guarantee for fair trial principles recognised in international human rights law.

2.3.3. Complementing other International Tribunals

The ICC has characteristics which can effectively remedy the deficiencies of existing international tribunals. This is of considerable importance in building a solid international justice system.

81 E Wise in C Bassiouni (ed) (1999), 2nd ed, Vol.II, 16.

82 See the case of Chad, Ethiopia, Uganda.

83 Rwanda is a good example.

84 ICC Statute, art; 17(1)(a) & (b).

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2.3.3.1. The ICC and the International Court of Justice (ICJ)

The main distinctive feature between the ICC and the ICJ is that individuals have no locus before the latter. The ICJ handles cases involving States and not individuals.[85] As such there is little or no means of ensuring individual accountability before the ICJ. Without an international body like the ICC, individuals responsible for egregious human rights violations would continue to go unpunished. The ICC will have the powers to investigate, prosecute and convict individuals responsible for international crimes. It is thus a forum for the redress of crimes committed by individuals whether as part of, or in relation to the government in power, or of groups rebelling or aiming to change the government or the status quo.[86] Moreover, the ICC has the potential of victim compensation. By this, victims would actually be compensated for the harm suffered from violations.[87]

2.3.3.2. The ICC and the ICTY/ICTR

Unlike the ICTR and ICTY, the ICC would be a permanent body based at The Hague.[88] Although *ad hoc* tribunals represent important steps towards the establishment of a permanent international criminal court, they do not in themselves provide a system of international criminal law.[89] While both tribunals have irrefutably developed substantial criminal jurisprudence that may assist the ICC in its operation, the ICC provides for more efficiency, immediate action and consistency in resolving issues involving criminal acts worldwide.[90]

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Also, *ad hoc* tribunals are subject to limits in time or place. For instance, the mandate of the ICTR is limited to events that occurred between 1 January 1994 and 31 December

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85 ICC website <http://www.un.org/law/icc> accessed on 29-07-2001.

86 AFHRD, *'Primer on the International Criminal Court'* <http://www.forumasia.org/projects/icc.html> accessed 10-07-2001.

87 ICC Statute, art; 75.

88 Ibid, art; 3(1).

89 L Sunga (1997), 330; N Dorsen & J Fowler "*The International Criminal Court: An Important Step Towrads Effective International Justic*"'<http://www.igc.org/icc/html/aclu199907.html> accessed on 25-09-2001.

90 AFHRD (note 86).

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1994. Consequently, atrocities committed in Rwanda outside these dates do not fall within the tribunal's jurisdiction. This situation has been properly dealt with in the Rome Statute since the mandate of the ICC is not in any serious way limited by time and place, except for the fact that it will not have any retrospective effect.[91]

Further, *ad hoc* tribunals have always been established to cater for particular situations. This aspect raises the question of "selective justice". The question then is; why a tribunal for Rwanda and none for Liberia, Sudan or the DRC for instance. The ICC will ensure that international criminal law functions not only to punish the guilty on a discretionary basis. Accordingly, it is an appropriate respond to the criticism that the international community has unfairly targeted particular conflicts while ignoring others.[92] Therefore, despite the wide support in the creation of *ad hoc* tribunals, it is clear that no matter how individually successful they may be, they cannot be a substitute for a stable international judicial mechanism.[93] The rule of law precludes selective justice and requires that victims should be able to seek redress for crimes of concern to the international community as a whole where a domestic system cannot provide it.[94] The ICC would provide such an opportunity and dispense justice according to the highest international standards of fair trial and due process.

Above all, the establishment of the ICC under an international treaty, where States voluntarily undertake obligations through ratification as distinct from the constitutions of *ad hoc* tribunals clears any doubts as to the legal basis of the court under international law.[95]

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91 ICC Statute, art; 11.

92 P Malanczuk (1997), 7th ed, 360.

93 LCHR, *'Why we need the ICC'*, <http://www.lchr.org/feature/50th/why.htm> accessed on 04-09-2001.

94 Ibid.

95 Malanczuk (note 92), 160.

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CHAPTER 3

3. CRIMES WITHIN THE JURISDICTION OF THE ICC: IS AFRICA ADEQUATELY PROTECTED?

The ICC represents a response by the international community to the unimaginable atrocities inflicted upon millions of children, women and men during the last century. The ICC aims to ensure that those who commit the most serious crimes of concern to the international community as a whole do not go unpunished.[96] Article 5 of the ICC Statute lists these crimes to include genocide, crimes against humanity, war crimes, and when defined, the crime of aggression. These crimes represent what is termed the "core crimes" under international law.[97] According to article 25(3), anyone who commits, orders, solicits, induces, facilitates or contributes, to the commission of these crimes would be held guilty under the Statute.

A first reading of articles 6, 7 and 8 of the Statute raises the question whether the atrocities committed in Africa fits within the parameters of their definitions. Howwver, an examination of the nature of violations in some parts of Africa will reveal that had the ICC been in existence before, several prosecutions might have been instituted.

3.1. THE CRIME OF GENOCIDE

The deliberate extermination of whole peoples had been described at Nuremberg as the crime of genocide[98] and the crime was as far back as 1951 generally acknowledged as reflecting customary international law.[99] In terms of the Genocide Convention, genocide

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96 ICC Statute, preamble, paras; 2, 3, 4, 5 & art; 1. Goodwin-Gill in Goodwin-Gill & Talmon (eds) (1999), 199-223,) differentiates between 'international crimes' and 'serious crimes of international concern'. While his arguments are important, the present work regards the 'most serious', 'gravest', or 'core' crimes under international law to constitute crimes within the jurisdiction of the ICC.

97 Other international crimes for instance terrorism, drug trafficking were not included in the Courts jurisdiction. A compelling reason for this was to avoid overburdening the Court with relatively less important cases.

98 Ferencz (note 76), 5. The term genocide is derived from the Greek word *"genos"* meaning race, nation or tribe, and Latin *"cide"* meaning killing; for more on the background and application of the Genocide Convention, see N Jorgensen in Goodwin-Gill & Talmon (eds) (1999), 273-291.

99 H Hebel & D Robinson in Roy Lee (ed) (1999), 89;

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can be committed either in time of peace or war.[100] The ICC Statute defines genocide with respect to the commission of certain acts with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. These acts include the killing of members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.[101]

3.1.1. Genocide situations in Africa

The definition of genocide looks distant from reality, and difficult to imagine that human beings can ever have such a preconception. However, this has been a reality in Africa and unless stringent measures are taken, the likelihood of another occurrence is not totally excluded. The effective punishment of genocide by the ICC would therefore save Africa from such a situation, more so because post-colonial conflicts in Africa have often adopted an ethnic or religious dimension.

The 1994 incident in Rwanda was among the events that informed the UN Secretary General's conclusion that "man's capacity for evil knows no limits".[102] Rwanda, an African State, has been plagued by ethnic conflict for decades that culminated in the horrific events of 1994. It involved a well-organised and well-executed plan by the Hutus to wipe off the entire Tutsi population in that country. This incident has been described as a genocide.[103]

Ethnic tension continues to ravage other parts of Africa, and is primarily responsible for the protracted conflict in Burundi that has led to the death of hundreds of thousands of

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[100] Genocide Convention, preamble, para.1 & art; 1. The ICC Statute defines the crime of genocide in an identical manner to art; 2 of the Genocide Convention. See also the Statute of the ICTY art; 4 and ICTR art; 2.

[101] See arts; 6(a)-(e).

[102] Kofi Anan, UN Secretary General; ICC website, <http://www.un.org/law/icc/general/overview.htm> accessed on 10-06-2001.

[103] On 2 Sept. 1998, the ICTR in *The Prosecutor v Jean-Paul Akayesu,* (Case No. ICTR-9-4-T), found the accused guilty of genocide. The tribunal concluded that genocide was indeed committed in Rwanda in 1994 against the Tutsi as a group, and that the genocide appears to have been meticulously organised.

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Africans over the years. The conflict in Burundi is largely between the Hutu and the Tutsi population that make up that country.

On the other hand, Nigeria has for long been religiously pluralistic, but today, Islam and Christianity are key players in national life.[104] That country has experienced severe instability, but some of the bloodiest upheavals that the nation has been through have been in part a struggle between the Islamic North and the Christian South.[105] The administration of General Babaginda even quietly and without public debate joined Nigeria to the Organisation of Islamic States, an action that rankled Christians.[106] More so, the Shari'a law has been a politically inspired imposition, which has been damaging to Muslim-Christians relations in recent years.[107]

In the same light, Sudan has been in a persistent civil war for more than two decades. Although originally it was not a religious war,[108] the Christian South leadership and the Muslim North leadership later on gave it that character.

The point here is that ethnic and religious conflicts have actually led to mass loss of lives in Africa. One cannot say for certain that the continent would not have experienced other genocides, where it not of the difficulty and inability of one group to out-rightly overpower its rival. The fact remains that ethnic and religious tensions in Africa do not in any way exclude the potential for genocides. Consequently, the punishment of this crime by the ICC will act as a sufficient deterrent to potential violators.

3.2. CRIMES AGAINST HUMANITY

Crimes against humanity were codified in the Charter of the Nuremberg Tribunal in 1945 and recognised as part of international law.[109] However these crimes have received a

[104] J Pobee *'Religious Human Rights in Africa'* <http:www.law.emory.edu/EILR/volumes/spring96/pobee.html> accessed on 25-09-2001.

[105] Ibid.

[106] Ibid.

[107] Ibid.

[108] Ibid.

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much clearer definition in an international treaty under the Rome Statute and is distinguished from ordinary crimes in 3 ways: first, the crimes must have been "committed as part of a widespread or systematic attack"; second, they must be "knowingly directed against a civilian population"; third, they must have been committed pursuant to a "State or organisational policy". Thus they can be committed by state agents or by persons acting at their instigation or with their acquiescence, such as vigilantes or para-military units.[110] Crimes against humanity can also be committed pursuant to policies of organisations, such as rebel groups, which have no connection with the government.[111]

Article 7 of the Rome Statute thus lists eleven acts, which will amount to crimes against humanity if they satisfy the three characteristics above.[112] These acts include; murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law, in connection with any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[113] Crimes against humanity are today regarded as part of *jus cogens.*[114]

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109 Charter of the Nuremberg Tribunal, art; 6(c). This was the first instance in positive international criminal law in which the specific term "crimes against humanity" was identified and defined, see C Bassiouni (1999), 2nd ed, 1.

110 AFHRD (note 86).

111 Ibid.

112 ICC Statute, art; 7(1).

113 See arts; 7(1) (a)-(k). For definitions of the various components of crimes against humanity, see arts; 7(2)(a)-(h).

114 This term is a subject of numerous definitions, but all point to a compelling law, the hierarchical position of which is presumably above all other principles, norms and rules, of both international and national law, see, Bassiouni (note 109), 210-217.

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3.3. WAR CRIMES

Article 8 of the ICC Statute gives the ICC the power to investigate and prosecute individuals for war crimes. The ICC has jurisdiction over war crimes when committed as part of a plan or policy, or as part of a large-scale commission of such crimes.[115] War crimes are defined with respect to different situations and applicable laws.

First, the ICC has the jurisdiction to try persons for acts that amount to grave breaches of the four Geneva Conventions of 12 August 1949, wilfully committed against protected persons such as wounded soldiers, shipwrecked sailors, prisoners of war, civilians in occupied territories.[116]

Second, the ICC will have jurisdiction over other serious violations of the laws and customs applicable in international armed conflicts, within the established framework of international law. This refers to violations recognised under the Hague law limiting the methods of warfare,[117] Protocol I of the Geneva Conventions (1977),[118] and international customary law. The ICC Statute lists 26 different crimes under this section.[119]

Third, the ICC's jurisdiction over war crimes extends to armed conflicts not of an international character and refers to serious violations of article 3 common to the four Geneva Conventions of 1949, which bars specific acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down

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115 ICC Statute, art; 8(1).

116 See, arts; 8(2)(a) (i)-(viii); The four Geneva Conventions were adopted on 12 Aug. 1949, and entered into force on 21 Oct. 1950. They deal with the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I); Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II); The Treatment of Prisoners of War (Convention III); and the Protection of Civilian Persons in Time of War (Convention IV).

117 Adopted on 18 Oct. 1907, entered into force on 26 Jan. 1910. Although a violation of the Hague Convention is today regarded as a war crime (See Statutes of the ICTY, ICTR, & ICC), no provision of that Convention refers to the word "war crime". The Convention calls on States to respect the law and customs of war on land, and art; 3 (Convention IV) provides for the payment of compensation by a contracting party for acts in violation of its provisions. However, art; 6(b) of the Charter of the IMT had incorporated violations of laws and customs of war as war crimes.

118 Adopted on 8 June 1977, entered into force on 7 Dec. 1978. Protocol I deals with the Protection of victims of international armed conflicts.

119 See arts; 8(2)(b), (i)-(xxvi).

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their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause.[120]

The fourth category of war crimes over which the ICC has jurisdiction, relates to other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, which is based largely on the Second Additional Protocol to the four Geneva Conventions.[121] Acts falling within this are very much the same to those of category three above. However, though Acts within the third and fourth categories apply to non-international armed conflict, they do not cover situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.[122]

3.3.1. Crimes against humanity and war crimes situations in Africa

War crimes and crimes against humanity have been jointly considered here because the nature of violations in Africa and the different components of these crimes show that they have too often been committed simultaneously.[123] Crimes against humanity are not uncommon in Africa. It has been committed both in peace and war times. Likewise, post-colonial Africa has experienced numerous internal conflicts with appalling human rights violations, most of which can adequately suit the definition of war crimes provided for in the ICC Statute.

Perhaps, the most agonising of these is the situation of Sierra Leone. That country has been plagued by civil war for about a decade and its civilian population has suffered

120 See arts; 8(2)(c), (i)-(iv); Common art; 3 provides in relevant parts that the protected persons shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria", and the following acts remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) Taking of hostages;
(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

121 ICC Statute, art; 8(2)(e). Protocol II was adopted with Protocol I (note 118), but it deals with the Protection of victims of non-international armed conflicts.

122 Art; 8(2)(d).

123 Although there is some overlap between war crimes and crimes against humanity, the two concepts remain different. See generally B Jia in Goodwin-Gill & Talmon (eds) (1999), 243-271.

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from dreadful acts inflicted on them by the warring parties. This ranges from physical mutilation, torture and murder especially as part of organised campaigns of terror;[124] carried out by rebels.[125] Forces fighting for the government are also responsible for killings of civilian supporters of rebels.[126] The ICC guards against these situations by punishing murder and torture of civilians as crimes against humanity, when committed on a mass scale.[127] Meanwhile, intentionally directing such attacks against civilian population taking no direct part in internal armed conflicts is punishable as a war crime.[128]

Women and girls have also been rebels target for rape and abduction as wives.[129] These acts are recognised under international criminal law and will be punished by the ICC. Rape and sexual slavery, when committed on a mass scale against a civilian population constitutes crimes against humanity.[130] Likewise, they amount to war crimes when committed in internal armed conflicts.[131]

Both rebel forces and forces for the government have continuously and forcibly conscripted children to engage in armed attacks against adversary.[132] This conduct is not in accordance with international criminal law principles, and will amount to a war crime under the ICC Statute.[133]

124 These include "Operation No Living Thing" (killing and destroying anything in the way of combatants); and "Operation Pay Yourself" (looting of property and seizure of wealth).

125 These violations are documented in detail in HRW report *"Human Rights Abuses Committed Against Civilians"* <http://www.hrw.org/reports98/sierra/Sier988-03.htm#P212_31176> accessed on 24-09-2001.

126 Ibid.

127 ICC Statute, art; 7(1)(a) & (f).

128 Art; 8(2)(e)(1).

129 HRW (note 125).

130 ICC Statute, art; 7(1)(g).

131 Art; 8(2)(e)(vi).

132 HRW (note 125).

133 Art; 8(2)(e)(vii).

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Belligerents are responsible for obstructing humanitarian assistance and UN agencies, and even the detention of aids workers.[134] The ICC recognises the fact that, directing attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance will under the international law of armed conflict constitute a war crime.[135]

Although the illustration has been centred on the circumstances in Sierra Leone, the situation is not solely a Sierra Leonean phenomenon. Other conflicts on the continent have seen similar atrocities, whether committed on civilians or the adversary.

In the Democratic Republic of Congo (DRC), both rebel and government forces inflicted the same magnitude of pain on the civilian population during their long struggle. Several civilians were murdered while rape became a central war weapon of belligerents. The Situation in Angola and Liberia with respect to the commission of war crimes and crimes against humanity, were no different.

However, we should bear in mind that the commission of grave atrocities on the continent has not been limited to conflict situations. The terror under the role of Amin and Obote of Uganda, Bokassa of the CAR, Habre of Chad, Mengistu of Ethiopia, Nguema of Equatorial Guinea, and Mobutu of the DRC are illustrative that gross human rights violations in Africa does not necessarily need war.[136]

Also significant is the fact that the ICC Statute includes apartheid[137] as a category of crimes against humanity. In no other continent has the effect of apartheid been felt like in Africa. Until less than a decade ago, apartheid continued to be one of the major obstacles to the full development of Africans. This policy that was institutionalised in South Africa, was also exported to its protectorate of Namibia. The policy was all about

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134 HRW (note 125).

135 Art; 8(2)(e)(iii).

136 In this case, crimes against humanity only, since war crimes can only be committed in a conflict situation; whether international or non-international.

137 Defined in art; 7(2)(h) "as inhumane acts committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime".

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treating a Black "less a human being" to a White. Its punishment is at least a guarantee of prevention and assurance that such a situation may not arise again on this continent.

Generally therefore, the assurance that, crimes against humanity and war crimes will also be investigated, prosecuted and punished by the ICC accurately covers the nature of crimes for which perpetrators in Africa have often committed with impunity. Accordingly, it is an admonition to violators to treat humankind humanely as none of their appalling deeds will be forgiven.

3.4. THE CRIME OF AGGRESSION

Article 5(1)(d) of the ICC Statute gives the ICC jurisdiction to try the crime of aggression. However, its jurisdiction over this crime is postponed until a suitable definition is adopted.[138] The lack of a definition for the crime depicts the difficulties in describing precise individual responsibilities for the crime.[139] Another part of the debate in the definition of the crime of aggression focused on the role of the Security Council in this regard.[140] As per article 39 of the UN Charter, the Security Council shall determine the existence of an act of aggression. Accordingly therefore, the subject is linked to the role of the Security Council in the maintenance of international peace and security. Difficulties in finding an acceptable balanced in the responsibility of the Security Council on the one hand, and the judicial independence of the Court therefore let to a deferment of the aspect of definition.

The draft statute had however listed specific acts for which an individual in a position of responsibility could be held accountable for aggression.[141] This included planning, preparing, ordering, initiating, or carrying out an armed attack, or the use of force, or a war of aggression, or a war in violation of international treaties or agreements, by a State, against the territorial integrity of another State, and against the provisions in the UN Charter.[142] At the end of the Rome Diplomatic Conference, delegates could only

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138 Art; 5(2).

139 Gargiulo (note 76), 91.

140 Ibid, 91-92; A Zimmermann in Triffterer (ed) (1999), 104-105. UN website *"Background Information"* <http://www.un.org/icc/crimes.htm#aggression> accessed on 05-09-2001.

141 For an analysis of the various proposal and debates, see Gargiulo (note 76), 91-100.

142 See note 140 *(UN Background information)*.

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reach an agreement for the inclusion of aggression under the Court's jurisdiction without a settled definition for it.

3.4.1. Will a future definition for the crime of aggression be protective enough for African States?

The crime of aggression for now exists in name only.[143] Despite the lack of a definition for this crime, it would be absurd to argue that individual criminal responsibilities for this crime may not be discerned out of some conflict situations in Africa. A good example of this is the DRC conflict. That conflict saw the involvement of seven States[144] all seeking to protect their selfish interest at the expense of hundreds of thousands of civilian lives. In addition to this, most conflicts in Africa have been able to carry on for long because of the financial support of some non-States actors like multilateral corporations, which exploit the conflict situation for personal gains.[145] Extending criminal responsibilities for aggression to members of multinational corporations, members of governments of States and other financiers, supplying weapons to destabilise governments, or abetting wars in any other way will help relieve some African States from wars sponsored by powerful State and non-state actors.

Another concern will be the ability of other parties to institute actions on the crime of aggression without the political influence of the Security Council. No African State is a permanent member of the Security Council and the worry that issues of African concern may not form the focus of its consideration is real. It is acknowledged that the Security Council's primary mandate to determine threats to, and breaches of international peace

143 By art; 5(2), the ICC shall exercise jurisdiction over crimes of aggression once a provision is adopted in accordance with arts; 121 and 123 of the Statute dealing with amendment and Review Conference. Such a provision must define the crime and set out the conditions under which the Court shall exercise jurisdiction with respect to this crime.

144 H Solomon & K Mngqibisa, *SRSA*, Vol.22(2), (2000), 33-35; H Campbell in Mandaza (ed) (1999), 56-59. Countries involved in that conflict included Angola, Chad, Namibia, Rwanda, Sudan, Uganda, Zimbabwe.

145 The Conflict in the DRC for instance saw the involvement of companies like the American Mineral Field, Anglo-American, Texaf, george Forrest International, Petrofino, Union Miniere, Osleg, Comiex, Sonangol, while Charles Taylor could finance his insurgency in Liberia by illicitly granting timber, rubber and diamond concessions to various investors; see, I Taylor & P Williams, *African Affairs,* Vol.100, No.399 (April 2001), 270-279.

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and security[146] empowers it to refer cases to the Court.[147] Hence it is undisputable that from the establishment of the UN, the determination of an act of aggression has been the legitimate prerogative of the Security Council. While its retention of this power is indubitable, it is necessary that if the ICC is to act fairly, then other actors must be able to institute cases for this crime. In defining the crime of aggression therefore, the issue of totally subjecting the Court's independence and credibility to the political considerations of the Security Council should be circumvented. This is because if permanent members of the Security Council use their veto power to protect potential defendants when their countries interests are perceived to be involved, the Court's integrity will be seriously compromised.[148] States parties should be able to independently and effectively institute proceedings for the crimes of aggression without the influence of the Security Council.

In this light, the detailed proposal put forward by Cameroon on the relationship of the Security Council and the Court with respect to the crime of aggression provides a good starting point.[149] The proposal recognises the priority of the Security Council in

146 Chap; II of the UN Charter (arts; 39-51) deals generally with the powers and responsibilities of the Security Council on actions with respect to threats to the peace, breaches of the peace, and acts of aggression.

147 ICC Statute, art; 13(b).

148 This point will be very crucial for the Court's functioning. What the world needs is an independent institution that can freely and fairly exercise its jurisdiction, and not one that will act like a national court for the more powerful States. Recent event in the world (US and UK bombardment of Afghanistan following the 11 Sept. 2001 World Trade Centre terror attack) shows that the whole process of strengthening international justice through the ICC will be a dilemma if the crime of aggression is to be determined solely by the Security Council. This situation is made even more difficult by the power of the Security Council to suspend investigation or prosecutions by the Court for a period of one year with the possibility of renewal. As one writer notes, this is certainly a dangerous power in the hands of the Security Council (F Lattanzi in Lattanzi & Schabas (eds) Vol.1 (1999), 51-66). However, since such a decision by the Security Council will require the consent of all permanent members, the hope is that some members will use their veto power to avoid putting the Court in a dilemma. Besides, there should be strong and compelling reasons to justify the exercise of that power by the Security Council.

149 Proposal submitted by Cameroon (UN Doc. A/CONF.183/C.1/L.39, 2 July 1998); see Gargiulo (note 76), 98 (footnote 92); see also *Proposals for Definition of the War Crime Aggression*', CICC, 16 July 2001. <http://www.globalpolicy.org/intljustice/icc/2001/0716cicc.htm> accessed on 03-10-2001.
"1. The Security Council shall determine the existence of aggression in accordance with the pertinent provisions of the Charter of the United Nations before any proceedings take place in the Court in regard to a crime of aggression.
2. The Security Council may determine the existence of aggression in accordance with paragraph 1 of this article: a) On its own initiative; b) At the request of a State which consider itself the victim of aggression; c) At the request of the Court when a complaint relating to a crime of aggression has been submitted to it; d) At the request of any other organ of the United Nations which, under the Charter, is able to draw the attention of the Security Council to a situation likely to endanger the maintenance of international peace and security.
3. The Court, when a complaint relating to a crime of aggression has been submitted to it, shall suspend its deliberation and refer the matter to the Security Council for a declaration, in

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determining the crime of aggression.[150] However, other actors such as States parties, the Court and any competent UN organ can requisition the Security Council to determine the existence of aggression.[151] In addition, the proposal calls on the Court to suspend its activities on a complaint relating to a crime of aggression and refer the matter to Security for a declaration.[152] The proposal nevertheless creates an opportunity for the Court to establish the existence of a crime of aggression under the Statute if the Security Council, having had the matter referred by the Court, did not reply within a reasonable time.[153]

It is rather disturbing that the whole issue of the crime of aggression seems to revolve around the power of the Security Council under Chapter VII of the UN Charter. As stated above, an abuse of this power will have the consequence of frustrating the Court in certain instances. While the proposal of Cameroon may not be ideal for an independent ICC, it constitutes a reasonable basis for greater bargain in the future.

In a nutshell, the ICC will have the powers to investigate and prosecute individuals for four core international crimes, genocide, crimes against humanity, war crimes and when defined the crime of aggression.

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accordance with the pertinent provisions of the Charter that the aggression does or does not exist. A letter from the President of the Security Council shall convey the Security Council's finding to the Prosecutor of the Court, accompanied by all supporting material available to the Council in regard to the aggression whose existence it has determined.

4. Notwithstanding the provisions of paragraph 1 of this article, the Court may commence an investigation for the purpose of establishing whether a crime of aggression within the meaning of the present Statute exists, if the Security Council, having had the matter referred to it by the Court under paragraph 3 of the present article does not reply within a reasonable time.

5. The Security Council, on the basis of a formal decision under Chapter VI of the Charter of the United Nations, may lodge a complaint with the Prosecutor specifying that crimes referred to in article 5 appear to have been committed.

6. The Court may request the assistance of the Security Council in conducting investigations into cases submitted to it, in arresting persons who are being prosecuted or have escaped from custody, or in enforcing its decisions".

150 Ibid, para; 1.

151 Ibid, para; 2.

152 Ibid, para; 3.

153 Ibid, para; 4. As Gargiulo points out (note 76), 99, the Cameroonian proposal has the merit of attempting to guarantee greater independence for the Court, and has the potential to work out well if one considers the difficulties the Security Council has encountered in establishing the existence of aggression in its practices.

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CHAPTER 4

4. THE ICC AND HUMAN RIGHTS IN AFRICA

This chapter looks at other potential implications of the ICC for the African continent. Aspects to be considered here include how the Court can exercise its jurisdiction over non-States parties, the principles of complementality, the principles of non-retroactivity in the Rome Statute, and the effect of amnesty. It begins by having a look at the ratification exercise.

4.1. Formal commitment for an ICC (Ratification)

African States played an important role in the establishment of the ICC.[154] 21 African States featured among the first 72 States that signed the ICC Statute in the year 1998.[155] This was a good signal for Africa, and in 1999 African States registered seven out of the 20 signatures that year.[156] In the year 2000, Africa recorded 15 among the 46 signatures to the Rome Statute.[157] Signing is at least and indication to ratify and the move by African States in signing the ICC Statute have been encouraging. At present,[158] Africa counts 43 signatories implying that less than a quarter of OAU member States have not signed the Statute.[159] The wish is for these States to do so in the near future.

The first State to ratify the ICC Statute was from the African continent.[160] This was a positive move and illustrated the enthusiasm of an Africa State to see the end of impunity for gross human rights violations. Among the first six States that ratified the

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[154] African States were part of the mandated group that pioneered the Statute and played an important role on the Rome Conference, Dugard (note 43), 9.

[155] Angola, Burkina-Faso, Cameroon, Congo, Ivory Coast, Eritrea, Gabon, Gambia, Ghana, Lesotho, Liberia, Madagascar, Mali, Mauritius, Namibia, Niger, Senegal, Sierra Leone, South Africa, Zambia, Zimbabwe.

[156] Benin, Burundi, CAR, Chad, Kenya, Malawi, Uganda.

[157] Algeria, Botswana, Cape Verde, Comoros, DRC, Egypt, Guinea, Guinea-Bissau, Morocco, Mozambique, Nigeria, Sao Tome & Principe, Seychelles, Sudan, Tanzania.

[158] As of 10 Nov. 2001.

[159] This include Djibouti, Equatorial Guinea, Ethiopia, Libya, Mauritania, Sahrawi Arab Democratic Republic (SADR), Somalia, Swaziland, Togo, Tunisia.

[160] Senegal was the first State to ratify the ICC Statute and it did so on 2 Feb. 1999;The Statute needs 60 ratifications to enter into force (art; 126(1)).

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Statute in 1999, Senegal and Ghana[161] featured as Africa's emissaries of the fight for international justice. Africa's formal commitment to the existence of the ICC saw six further ratifications in the year 2000,[162] of the 21 instruments of ratifications that were deposited that year. African has registered two additional ratifications[163] out of the 11 ratification instruments that have been deposited in the year 2001.[164]

4.2. Exercise of jurisdiction over non-states parties

At the moment Africa counts only ten out of 43 instruments of ratifications that have been deposited. This is obviously not encouraging enough. Treaties are binding only on States parties and non-States parties undertake no obligation under it.[165] This point is significant if one considers that the exercise of jurisdiction by the ICC will be premised on the fact that the State in which the act occurred, or the State of nationality of the violator is a party to the Statute.[166] Hence the presence of the ICC will be of no consequence in Africa if African States do not ratify the Statute. This is because; States not parties to the Statute can in some instances hinder or even prevent the Court from exercising its functions and powers.[167] It is therefore imperative that African States that have not ratified the Statute follow the footsteps of the others.

Notwithstanding, the ICC provides for mechanisms to overcome this dilemma. It has devised other means of exercising jurisdiction over acts committed in States not parties to the Statute, or by nationals of such States. The Statute creates the opportunity for

161 Ghana ratified the Statute on 20 Dec. 1999.

162 Botswana (8 Sept. 2000); Gabon (21 Sept. 2000); Lesotho (6 Sept. 2000); Mali (16 Aug. 2000); Sierra Leone (15 Sept. 2000), South Africa (27 Nov. 2000).

163 CAR (03 Oct. 2001), Nigeria (27 Sept. 2001).

164 As of 10 Nov. 2001.

165 Beyani (note 1), 30; C Chinkin (1993), 134-144; This principle is in line with the Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force on 27 Jan. 1980); reprinted in B Carter & P Trimble (1991), 51-75. Art; 34 provides that "a treaty does not create either obligations or rights for a third State without its consent".

166 ICC Statute, art; 12. This situation is further worsened by the Transitional provision of art; 124 which provides the opportunity for a State to opt-out of the Court's competence for war crimes when the crime is committed by its national or on its territory, for a period of seven years starting from the entry into force of the Statute. Such an opting-out may be withdrawn at any time. Since art; 124 will be a subject of the Review Conference to consider any amendments to the ICC Statute (art;123), it would be a positive move for delegates to fight for a renunciation of the opt-out clause.

167 G Palmisano in Lattanzi & Schabas (eds) Vol.1 (1999), 391-392.

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States to accept the jurisdiction of the ICC with respect to specific acts even when they are not parties to the Statute.[168] Through this device, it is possible to say that the ICC will be in a position to exercise its jurisdiction over African States not parties to the Statute, insofar as they are willing to requisition the Court's *ad hoc* jurisdiction.

Besides, the limitation of territoriality and nationality as preconditions for the exercise of the Court's jurisdiction only applies to cases instituted either by a State party or by the Prosecutor.[169] In essence, the Court can still effectively exercise its jurisdiction over non-States parties, for acts constituting crimes within its jurisdiction if the Security Council acting under Chapter VII of the UN Charter refers a case to it.[170] Through this device, the Security Council gives the ICC competence over UN member States independently of their acceptance of the Statute. Since all African States are members of the UN,[171] it becomes difficult at this juncture to see how feasible it will be for African States to completely evade justice by merely refraining to ratify the ICC Statute.

4.3. The principle of Complementarity

A main characteristic of the ICC is that its jurisdiction would not override, but merely complement national criminal jurisdiction of States parties.[172] Hence, article 1 of the ICC Statute states that the Court shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concerns, as referred to in the

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168 Art; 12(3) is to the effect that states which are not parties to the ICC Statute may by declaration lodged with the Registrar of the Court, accept the jurisdiction of the Court with respect to the crime in question. The rationale behind this article is to increase the chances of the Court exercising its jurisdiction by offering to States that do not ratify the Statute, but that are connected to the crime in question (the territorial State or the State of nationality of the accused), the possibility of accepting the Court's jurisdiction on an *ad hoc* basis. Through this means, the Court can extend its jurisdiction to cases not connected to States parties, as well as giving non-States parties the possibility to make use of an international judicial mechanism to improve the prosecution of international crimes; see Palmisano (ibid), 393.

169 Art; 12(2).

170 Art; 13(b). Note that art; 12(2) does not include cases referred to the Court by the Security Council within the realm of the limitation. The practice in art; 13(b) is premised on the power of the Security Council to establish a criminal jurisdiction under Chapter VII of the UN Charter (see the ICTY and ICTR). Art; 13(b) therefore becomes relevant as it avoid the proliferation of *ad hoc* tribunals which are not only expensive to run, but also inhibit the establishment of a consistent international criminal case law, see Gargiulo (note 76), 73 & 78.

171 With the exception of SADR, which has since been recognised by the OAU, but not by the UN.

172 ICC Statute, preamble, paras; 4, 6, 10, & arts; 1, 17 & 18. It should be pointed out that some of the difficulties involved in the process of the adoption of the ICC Statute were mainly attributed to the concern that the jurisdiction of the Court could infringe upon States' sovereignty; see generally Lattanzi (note 148), 51-66.

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Statute, and shall be complementary to national criminal jurisdiction. This approach differs from that of *ad hoc* tribunals.[173]

The inclusion of the principle of complementarity is to ensure that the ICC does not substitute itself for national courts, and demonstrates that States unavoidably continue to bear the primary obligation to ensure respect for human rights and humanitarian law, and to prevent and punish violators.[174] Thus the jurisdiction of the ICC will only come to the fore and take the place of national jurisdictions not at the beginning, but rather in the second phase, when States fail to manage correctly their sovereignty by allowing serious crimes to go unpunished.[175] Hence, in spite of the presence of the ICC, there is the need for effective national criminal jurisdiction. This is because States are not released from their responsibilities and obligations; rather they maintain their fundamental and sovereign prerogative, and the duty to prosecute alleged criminals.[176]

The big question that remains to be answered is whether African States are ready to take up this responsibility. The low level of ratification examined above is illustrative of the fact that most African States at present, are not. For the ICC to be able to operate as a complement to national jurisdiction, domestic courts must be ready to invoke the principle of universal jurisdiction to effectively prosecute international criminals. However, States at large have been reluctant to invoke this principle in criminal

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173 This position is different form the superior status granted the *ad hoc* tribunals. According to arts; 9(1) and 8(1) of the Statutes of the ICTY and ICTR respectively, the tribunals have concurrent jurisdiction to prosecute persons for serious violations of international criminal law committed in the territory of Yugoslavia and Rwanda. Arts; 9(2) and 8(2) respectively elevates the status of the ICTY and ICTR by according them primacy over national courts of all States and specifies that at any stage of the procedure, these tribunals may formally request national courts to defer to their competence. This position is further confirmed in the Rules of Procedure and Evidence of both tribunals, see Rules 7-13 of the Rules of Procedure and Evidence of the ICTY, 12 July 2001; and Rules 8-13 of the Rules of Procedure and Evidence of the ICTR, 26 June 2000.

174 Dugard (note 76), 141; Nanda (note 76), 421; Lattanzi (note 148), 53.

175 P Benvenuti in Lattanzi & Schabas (eds) Vol.1 (1999), 22.

176 Not all international crimes are covered by the Court's jurisdiction. As such domestic legal mechanisms remain the main channels for suppressing other crimes of international concern not covered by the ICC Statute. Besides, the ICC Statute provides for high thresholds when establishing the Court's jurisdiction over crimes. For instance the Court shall only have jurisdiction over war crimes "when committed as part of a plan or policy or as part of a large-scale commission of such crimes" [art; 8(1)], meaning that the Court may not try war crimes that do not meet these criteria. In the same vein, the Court will only exercise its jurisdiction for crimes against humanity "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" [art; 7(1)]. Therefore crimes against humanity that do not satisfy these conditions remain excluded under the Court's jurisdiction. The consequence of all these provisions is that exclusive competence for the suppression of international crimes in general remains at all times with States jurisdictions.

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proceedings.[177] This aspect is very crucial for African States since they face numerous challenges. First, international law requires domestic legislation to give effect to their enforcement. Few national legal systems particularly in Africa provide for the exercise of universal jurisdiction, or do have national legislations criminalizing international crimes.[178] The emphasis on domestic legislations as a precondition for the activation of national courts shows that this remains a major obstacle to the exercise of universal jurisdiction.[179]

Other hurdles to the exercise of universal jurisdiction include the high cost of undertaking such trials by poor countries where evidence is outside borders, and the difficulties in securing witness testimony.[180] Also, political expediency plays a great role, as political actors may not want to be seen to "interfere" in the affairs of other States. Linked to this is the fact that most States may actually be afraid of criticisms because of lack of will among ordinary citizens to see their resources applied to cases that have nothing to do with them. Moreover, African States have shown a flagrant unwillingness to prosecute international criminals.[181] Above all, States unwilling to prosecute have also failed to extradite violators to requesting States. The issue here ranges from lack of extradition treaty between the hosting and the requesting State,[182] lack of political will to extradite,[183] to the well-founded fear of the lack of fair trial guarantees, and the possibilities of the imposition of the death penalty.[184]

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177 Goodwin-Gill (note 96), 204 & 214; Y Sandoz in Bassiouni (ed), 2nd ed (1999), 414.

178 Dugard (note 43), 8; Benvenuti (note 175), 29.

179 South Africa for instance could not prosecute Mengistu while on a medical visit, because there was no legislation in place to prosecute torture, crimes against humanity or genocide under domestic law.

180 Goodwin-Gill (note 96), 214.

181 This point is illustrated by the lack of will by the Zimbabwean government to extradite or prosecute ex-dictator Mengistu of Ethiopia who has been living in that country since his overthrow. See also the frustrating decision of the Cour de Cassation (Senegal's highest court) on March 2001, that Chad's exiled dictator Habré, could not stand trial on torture charges because his alleged crimes were not committed in Senegal. In effect the court ruled that Senegal had no jurisdiction to pursue crimes not committed in Senegal, despite the fact that Senegal is a State party to the Torture Convention.

182 The situation of Ethiopia and South Africa over the extradition of Mengistu is an example.

183 Senegal over Habre, Zimbabwe over Mengistu, and South Africa over Mengistu are illustrative.

184 Ethiopia and Rwanda are good examples.

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The point must be heralded that, cooperation among governments in investigation and extradition is of paramount importance to combating international crimes,[185] and States that fail in this duty should consider themselves as encouraging violations of international criminal law. In any case, the principle of complemetarity enshrined in the ICC Statute is laudable in the situation of Africa[186] as it puts States on the alert that should they be unwilling to prosecute, there is an international institution ready to so.

4.4. Non-retroactivity of the ICC jurisdiction

The principle of non-retroactivity[187] of criminal law is embodied in a number of international instruments including the UDHR,[188] ICCPR,[189] and Geneva Convention III.[190] Although a well-established principle under international law, the establishment of all international tribunals (with the exception of the ICC) have in one way or the other suppressed it.[191]

The Statute of the ICC bars it from exercising retrospective jurisdiction over crimes within its jurisdiction.[192] By this, the jurisdiction of the ICC will be limited to offences committed after the ICC comes into force. This signifies that, the ICC will not try Africa's past and current enemies of humankind. This is a serious limitation to the Court's jurisdiction. But then, perpetrators of international crimes committed before the Statute enters into force need to be tried. Consequently, the role of national courts to fight against impunity remains the main mechanism through which international criminals can be made accountable.

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185 C Blakesley in Bassiouni (ed) (1999), 2nd ed, Vol. II; 37.

186 This point is however of global importance considering the low level of prosecutions for international crimes, when compared to the amount of violations.

187 For its legality and use under the ICC Statute, see P Pangalangan in Triffterer (ed) (1999), 467-473.

188 Art; 11(2).

189 Art; 15(1).

190 Art; 99(1).

191 Both the Nuremberg and Tokyo IMT and the ICTY and ICTR were all established to try offences committed prior to their establishment. This notwithstanding, it is still possible to justify the creation of the ICTY and ICTR under art; 15(1) & (2) of the ICCPR, which is to the effect that acts which constitute crimes under international law or the general principles of law recognised by the community of nations can be punished even if national legislations do not provide for them.

192 Art; 24(1) provides that no person shall be criminally responsible under the Statute for conduct committed prior to its entry into force.

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As per article 22(3) of the ICC Statute, the definition of crimes under the Statute shall not affect the characterisation of any conduct as criminal under international law independently of this Statute.[193] As such it leaves open the possibility of prosecuting international crimes under various principles of international law, the most effective of these being the duty to exercise universal jurisdiction over international crimes. States have a duty under international human rights instruments to either prosecute gross human rights violators, or hand them over to requesting States for prosecution.[194] Through this device there is a guarantee that Africa's past and current gross human rights violators cannot escape the demands of justice. Although they will never be brought before the ICC for trial, they remain the most wanted persons of international criminal law and should expect such a normal embarrassment at any time, and regardless of where they are.

4.5. Amnesty

The development of amnesty over the years reveals that it now represents a political device employed by States in difficult situations as a price for transition to democracy. Most often is has been adopted because the new regime lacks the power to embark on prosecution.[195] Amnesty has been used in several African States and represents a major obstacle to prosecution for gross violations of human rights. Although this has worked out favourably for perpetrators in the past, it necessitates a challenge.

In Algeria, concerns about impunity caught international attention as members of armed groups were granted amnesty and exempted from prosecution for serious human rights violations. Despite murder, torture, abduction and sexual assault inflicted on the civilian population,[196] President Bouteflika on 10 January 2000 issued a decree granting a pardon with the force of amnesty (*grâce amnistiante*) to members of armed groups responsible for these atrocities. It was in effect a blanket amnesty for all crimes no

[193] The provision is made against the background of article 22(1), which is to the effect that no one shall be prosecuted under the ICC Statute unless the conduct in question constituted, at the time of commission, a crime within the jurisdiction of the Court.

[194] See note 207.

[195] J Dugard, *12 Leiden Journal of International Law,* (1999), 1005.

[196] AI, <http://web.amnesty.org/web/ar2001.nsf/webmepcountries/ALGERIA?OpenDocument> accessed on 26-09-2001; HRW; <http://www.hrw.org/wr2k1/mideast/algeria.html> accessed on 26-09-2001.

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matter how heinous. The lack of political will to investigate persons allegedly involved in these serious human rights abuses and the Presidential decision granting amnesty have seriously curtailed the power of the courts to investigate and punish gross human rights violations in that country.

In Chad, the practice was no different. The granting of amnesty as a political compromise continued to prevail. Impunity is widespread and the Government readily grants amnesty to rebels who made peace with it.[197] In April 1999, a peace accord was signed between the Government of President Idriss Déby's and the Forces Armées pour la République Fédérale (FARF).[198] It provided an amnesty to all members of the FARF and for their integration into the army. In August 1999, the National Assembly passed a law giving amnesty to members of this group, regardless of their misdeeds.[199]

In Sierra Leone, the long civil war has seen dreadful atrocities committed on the civilian population. Nonetheless, a negotiated peace agreement[200] between the Sierra Leone Government and the Revolutionary United Front (RUF) of Foday Sanko led to the granting of blanket amnesties to the belligerents for all crimes during the war.[201] It committed them to lay down their arms in exchange for representation in a new government,[202] in spite of killings, amputations, and other barbarous acts inflicted on the Sierra Leonean people.

Another situation of amnesty in Africa is South Africa, which disregarded the awful atrocities committed under the monstrous apartheid regime for amnesty via a Truth Commission. The Promotion of Unity and Reconciliation Act[203] established a Truth and Reconciliation Commission with a dual task: the compilation of a complete picture of the

197 The International Commission of Jurists (ICJ), *"Attack on Justice"* <http://www.icj.org/attacks/cases00/cases00.htm> accessed on 26-09-2001; AI *1998 report on Chad,* <http://www.amnesty.org/ailib/aireport/ar98/afr20.htm> accessed on 26-09-2001.

198 Armed Forces for the Federal Republic; an armed opposition in the South and East of Chad.

199 ICJ (note 197).

200 The Lome Accord of 7 July 1999.

201 Ankumah & Dugard (note 43).

202 HRW, *"Rebel Abuses Near Sierra Leone Capital: United Nations Should Act, Says Rights Group";* <http://www.hrw.org/capaigns/sierra> accessed on 25-09-2001.

203 Act 34 of 1995.

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human rights violations of the past; and the facilitation of amnesty.[204] An Amnesty committee established for the latter purpose had the task of considering applications for amnesty and may grant amnesty if it is satisfied that the applicant has committed an act constituting a gross violation of human rights, made a full disclosure of all relevant facts, and that the act to which the application relates is an act associated with a political objective committed in the course of conflict of the past.[205] A person granted amnesty with respect to any act, omission, or offence automatically enjoys total immunity from all criminal and civil actions related to those crimes.[206]

The approach of pardons for egregious human rights violations is utterly incompatible with international provisions on international criminal law. International criminal law imposes an obligation on States to prosecute and not to excuse human rights violators. This principle is well entrenched in international human rights covenants. They obligate states to either prosecute or extradite persons guilty of these crimes.[207] The explicit duty to institute criminal proceedings against violators precludes States therefore from enacting or applying amnesty laws that have the effect to foreclose prosecution.[208]

In light of this obligation, the granting of amnesty becomes questionable. The concern at this point is whether this is the best way of dealing with atrocities in Africa. What justice is there in the excuse of perpetrators of appalling misdeeds? It is indisputable that in certain circumstances, truth commissions may provide a valuable alternative to the more adversarial process of criminal prosecutions, and may easily lead to the discovery of the truth. However, the price for the pursuit of truth through the voluntary rendering of

204 See generally, N Boiter & R Burchill, *AJICL,* (1999), Vol.11, No.4, 620-622.

205 Sec; 20 of Act 34 of 1995.

206 Sec; 22 of Act 34 of 1995.

207 Genocide Convention (arts; 1, 5 & 6); Geneva Conventions, arts; 49, 50, 129, 146 of the four Conventions respectively & art; 85 of Protocol I; Apartheid Convention (arts; 2 & 5); Convention Against Torture (arts; 4 & 8); Convention on the Non-Applicability of Statutory Limitation (art; 4). They all take a strict and positive approach towards the punishment of gross human rights violators.

208 As Wise puts it, "the efficacy of any system of international criminal law requires that States accept an obligation to try international offenders before their own courts or else surrender them for trial before a foreign or international court. To the extent that States accept and act on this obligation, the idea of an international community comes closer to reality; to the extend that they do not, efforts to realise that idea suffer a setback"; see E Wise (note 81), 16.

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confessions may be amnesties for criminals, and the signal that impunity still reigns for massive crimes.[209]

The reasoning of the Constitutional Court of South Africa in the case of, *The Azanian People's Organisation & Others v The President of the Republic of South Africa & Others*[210] shows that South Africa chose forgiveness and *ubuntu* over prosecution. According to this case therefore, in South Africa the granting of amnesty by the Truth and Reconciliation Commission for dreadful human rights violations in apartheid South Africa is constitutional.[211] But as Donen argues,[212] it is questionable how the granting of impunity for gross human rights violations, which deprives victims of effective remedies, could ever be built on justice. He argues further that legal impunity for torture cannot be based on justice because the Constitution cannot provide a bridge between the past and the future if it is to be interpreted in favour of the perpetrators of the inexcusable international crimes, which South Africa independently has no authority to excuse.[213]

States that fail to prosecute crimes of the past do not solve but rather leave open the wounds in the society. Prosecutions can be an effective signal to potential violators of human rights that their actions will not be forgotten in some political compromise.[214] Failure to bring to justice those responsible for human rights violations feeds the cycle of violence, encourages further abuses and denies the victims right to justice.[215] Tackling

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209 Sunga (note 89), 329.

210 1996(4) SA 671(CC) 1996(8) BCLR 1015(CC).

211 "*The right to have a dispute settled by a court of law: Granting of Amnesty*" <http://www.lhr.org.za/cip/dcid1.htm> accessed on 26-09-2001. The South African Constitutional Court relied on art; 6(5) of Additional Protocol II to the Geneva Conventions, which provides for the granting of the broadest possible amnesty to persons who have participated in non-international armed conflicts, or who have been deprived of their liberty for reasons related to the armed conflict. But then it is clear that apartheid in South Africa was merely a barbaric policy of governance. Its introduction in 1948 had nothing to do with internal armed conflict and I find the Court's decision absurd. I find it permissible to separate violence resulting from liberation struggle, which I consider to be a genuine struggle and qualified for amnesty, but not perpetrators of the apartheid policy, whose misdeeds where not dependent upon any just or genuine cause, and I hold strong that these individuals should be brought to justice.

212 M Donen, *E Law–Murdoch University Electronic Journal of Law*, Vol 7, No.2(June 2000); para; 6; <http://www.murdoch.edu.au/elaw/issues/v7n2/donen72_text.html> accessed on 25-09-2001.

213 Ibid, para; 17.

214 Ratner & Abrams (note 2), 295.

215 AI; <http://web.amnesty.org/web/ar2001.nsf/intro5/intro5?OpenDocument> accessed on 25-09-2001.

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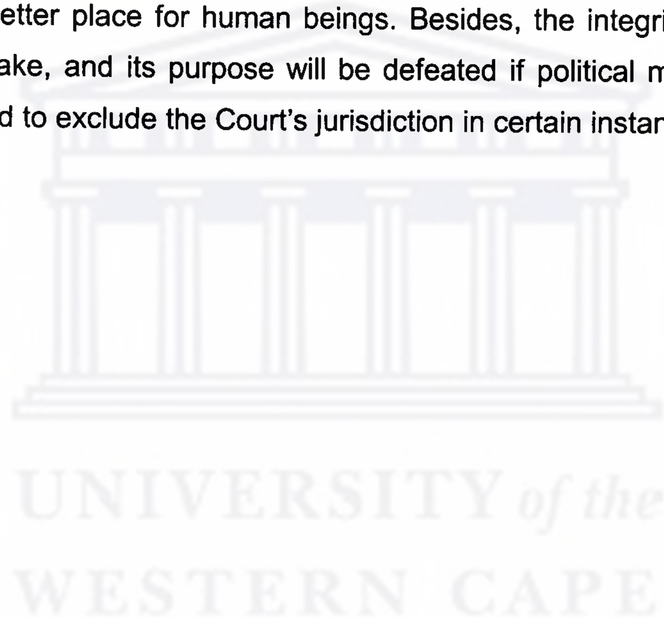
impunity is a vital step in building a vigilant society where human rights are respected and protected, where routine abusive practices cannot persist, and where isolated cases, should they occur, are dealt with promptly and effectively.[216]

Inspired by the establishment of the ICTY and the ICTR, prosecution has become the preferred choice.[217] More over, the prospects for the setting up of the Special Court for Sierra Leone is also illustrative of the fact that amnesty may no longer be considered as the natural price to be paid for peace. That amnesty has no place under international law has also been buttressed by the failure of the ICC Statute to recognise amnesty as a defence to prosecution.[218] But then it remains to be seen how the ICC will deal with the question of amnesty when it come into existence. The fact remains however that, amnesty should never take precedence over human rights, if Africa and the world at large is to be a better place for human beings. Besides, the integrity of the Court will seriously be at stake, and its purpose will be defeated if political manipulations within States can be used to exclude the Court's jurisdiction in certain instances.



216 Ibid.

217 Dugard (note 195), 1001.

218 Ibid.

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CHAPTER 5

5. RECOMMENDATIONS AND CONCLUSIONS

5.1. RECOMMENDATIONS

5.1.1. Universal jurisdiction

As stated above, the ICC will only act as a complement to national jurisdiction. Also, the principles of non-retroactivity reveals that the ICC will not be able to try offences committed before it comes into existence. Besides, the Court will only be able to try offenders who are nationals of States parties or whose acts are committed in the territory of a State party; but then, only less than a quarter of States in Africa have (as of 10 Nov. 2001) ratified the ICC Statute. It should therefore be emphasised that if the commitment to international criminal justice is to be upheld, national courts must unavoidably play their required role.

There are apparently many African tyrants and some present African leaders whose conduct falls within the meaning of crimes against humanity,[219] but who will not be brought to trial before the ICC.[220] Consequently, it is clear that if any of these gross violators of human rights on the continent are to be tried, it will be before a national court. Among other grounds under which States do claim criminal jurisdiction, the exercise of universal jurisdiction[221] will offer the widest possibility whereby national courts in Africa or elsewhere can bring Africans and others accused of international crimes to justice.[222]

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219 Dugard (note 43), 7.

220 The ICC will only have prospective operation when it comes into existence. Besides the ICJ does not deal with individual criminal responsibility, while the ICTY and ICTR are concerned with crimes committed in former Yugoslavia and Rwandan respectively.

221 Universal jurisdiction describes the competence of a State to define and to prescribe punishment for international crimes even in the absence of any of the traditional judicial links Goodwin-Gill (note 96), 204; For other grounds for which States can claim criminal jurisdiction, see note 222.

222 States can also claim criminal jurisdiction on other grounds:
1. territorial; if the offence was committed within the state's territory;
2. nationality; the offender is a national of the prosecuting state no matter where he committed the crime;
3. protective; where the state can show that its national interest has been threatened by the offence;

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Given the fact that the ICC itself will not be able to freely exercise universal jurisdiction because of some jurisdictional limitations,[223] there has been some renewed interest in the doctrine of universal jurisdiction to permit domestic legal systems to prosecute individuals for serious violations of international criminal law.[224] Universal jurisdiction is based on the principle that certain crimes are sufficiently heinous to be crimes against the international community. The perpetrators of these crimes are deemed to be enemies of humankind. According to this principle, any nation where the perpetrator is found is expected to arrest and try or extradite the perpetrator to a State willing to prosecute.[225] In principle therefore, where international criminal law is adequately enforced by domestic legal organs, international mechanisms to pursue the same ends would be superfluous.[226]

States entitlement to prosecute perpetrators of genocide, crimes against humanity and war crimes, regardless of who they are has got a secured foundation not only in the relevant treaties,[227] but also under customary international law.[228] The significance of punishing these crimes under customary international law is that non-State parties to such treaties are nonetheless bound by customary international law.[229] The principle of universal jurisdiction is fundamental to the effective functioning of the international criminal regime for two reasons:

First, anyone who perpetrates a criminal act in an area beyond the jurisdiction of a State should not be immune from prosecution merely because the place in which the crime

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4. passive personality; where a state will seek jurisdiction if the person injured by the offence is its national.

See generally, I Brownlie (1998), 5th ed, 303-309; Dugard (note 76), 133-142; M Shaw, (1991), 3rd ed, 400-414; Slomanson (note 76), 208-215.

223 The ICC will only be able try persons whose acts are committed within the jurisdiction of a State party or who are nationals of States parties. But if the Security Council refers the case to the Court, these limitations cease to exist.

224 See H Butler, *1 Criminal Law Forum,* (2000), 354.

225 Slomanson (note 76), 214.

226 Sunga (note 89), 249.

227 See note 207.

228 Goodwin-Gill (note 96), 206-207.

229 Beyani (note 1), 32.

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was committed may not be covered by the domestic criminal law of any State. Instead, such acts should be made subject to the criminal jurisdiction of every state equally to increase deterrence.[230]

Second is the fact that certain acts, no matter where committed; whether in territory *res communis omnium* (a place where no State has authority to exercise jurisdiction) or within the territory of a State or States are of such gravity that every State should be authorised to exercise criminal jurisdiction over the offender.[231]

Therefore a principal pragmatic reason why international law provides for universal jurisdiction is to make sure that there is no "safe haven" for those responsible for the most serious crimes. Piracy was the classical universal crimes, later joined by slave trading, terrorism and hijacking because these crimes occurred across borders or on the open seas.[232] Since World War II, the list of crimes giving rise to universal jurisdiction has grown to include what is today regarded as serious violations of international human rights and humanitarian law. These crimes include genocide, apartheid, torture and war crimes.[233] As mentioned above, these crimes have also acquired the status of customary international law with the effect that even States not parties to the relevant conventions are still bound by their provisions.

Some countries have invoked the principles of universal jurisdiction as the main basis for action, some attempts being on the African continent.
After World War II, the victorious allies conducted thousands of trial before national courts of Germans and Japanese accused of crimes against peace, war crimes and crimes against humanity. These trials were based largely on the principles of universal jurisdiction.[234]

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[230] Sunga (note 89), 252.

[231] Ibid.

[232] See S Schairer & C Eboe-Osuji, *African Legal Aid,* April-June 2000, 13; Butler (note 224), 355-357.

[233] See note 207.

[234] The Allies Nov. 1943 Moscow Declaration stated that axis criminals would be judged and punished in the countries where they committed their crimes. National jurisdiction over such persons was accordingly preserved under the Charter of the IMT (arts; 1, 4 & 6).

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In 1961, Israel tried and convicted Adolf Eichmann for his responsibilities in the atrocities committed in Europe during World War II.[235] He was prosecuted for war crimes, crimes against the Jewish people and crimes against humanity. The trial was based in part on the principles of universal jurisdiction.[236]

In 1998, Augusto Pinochet, the former Chilean Dictator was arrested in London following an international arrest warrant issued by Spain for his alleged involvement in international crimes committed during his reign as President of Chile.[237] Spain later sought Pinochet's extradition, as did France and Switzerland. Although the UK never extradited the ex-dictator, the Pinochet case remains remarkable at least for two reasons. Firstly, the House of Lords held on two occasions that Pinochet did not have immunity from prosecution; that while a former head of State enjoys immunity for acts committed in his official function, international crimes such as torture and crimes against humanity were not functions of a head of State.[238] Secondly, the fact that the UK was urged to act upon a request from a State which was not the State of nationality of the accused or the State on whose territory the acts were committed was a noteworthy achievement in the fight for international justice, the fight against impunity, and a significant encouragement to other States to exploit the "fertility" of the principle of universal jurisdiction.

Perhaps the only opportunity where Africans responsible for international crimes have been brought to justice through the exercise of universal jurisdiction has been the Belgian experience.[239] On 8 June 2001, a Belgian Court convicted four Rwandans for their role in the 1994 Rwandan genocide. The four were tried under a 1993 Belgian

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235 *Attorney General of the Government of Israel v Eichmann.* District Court of Jerusalem; 36 I.L.R 5 (1961).

236 The case is reprinted in D J Harris (ed), (1991), 4th ed, 266-278.

237 *R v Bow Street Metropolitan Stpendiary Magistrate & Others, ex parte Pinochet Ugarte;* see Boiter & Burchill (note 204); Schairer & Osuji (note 232); HRW, *The Pinochet Precedent: How victims can pursue human rights criminals abroad:* <http://www.hrw.org/campaigns/chile98/precedent.htm> accessed on 02-07-2001.

238 This represent the first judgment of the House of Lords, and although later annulled, the lost of immunity was again upheld in the second judgment eventhough the judgment as a whole was restrictive.

239 See, Richburg (note 56); *Afrol News* (note 56); Listoe (note 56); *Foundation Hirondelle* (note 56).

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statute giving the country's courts universal jurisdiction for crimes against humanity, no matter where they occur in the world.[240]

In Africa, attempts to invoke the principle of universal jurisdiction have often been frustrated. In 1999, the South African government flagrantly failed to arrest former dictator of Ethiopia, Mengistu who was in that country for medical treatment.[241] Despite calls by Human Rights NGOs and victims, for South Africa to invoke the principle of universal jurisdiction and prosecute Mengistu for crimes against humanity committed during his rule, or extradite him for prosecution, the South African government deliberately remained inactive until his safe return to Zimbabwe.

Supported by Human Rights NGOs, victims of the atrocities of exile President Habre of Chad brought an action against him in Senegal in February 2000. The action was based on the principle of universal jurisdiction for torture and other crimes against humanity committed during his reign in Chad. This action met with the disappointing judgment of Senegal's highest court (Cour de Cassation) that Habré could not stand trial on the charges because his alleged crimes were not committed in Senegal.[242]

Accordingly, it is recommended that African States should put in place the necessary legislations and other mechanisms required to give their courts criminal jurisdiction over international crimes. This is not only their entitlement but also an obligation on them, and it is must be given effect if impunity has to be replaced with legal accountability.[243] Putting in place the appropriate mechanisms will enable States to easily prosecute individuals for heinous crimes, whether committed within the State or not; whether the prosecuting State suffered directly from the act or not; and regardless of the official capacity of the alleged criminal. This will help a great deal in accomplishing the

240 Two Roman Catholic nuns; Maria Kisito and Gertrude were sentenced to 12 and 15 years imprisonment respectively; while a former university professor Vincent Ntezimana and a businessman Alphonse Higaniro were jailed for 12 and 20 years respectively.

241 G Barrow, *'Ethiopians push SA for Mengistu's extradition'*, BBC News 3 December 1999, <http://news.bbc.co.uk/hi/english/world/africa/newsid_548000/548580.stm> accessed on 05-10-2001; *'Mengistu skips South Africa'*, BBC News, 8 December 1999, <http://news.bbc.co.uk/hi/english/world/africa/newsid_555000/555304.stm> accessed on 05-10-2001.

242 See HRW, *Senegal bars charges against ex Chad dictator: Habre's victims vow to fight on'*, <http://www.hrw.org/press/2001/03/habre0320.htm> accessed on 20-09-2001.

243 See CAT, arts; 2(1), 4, 8 & 9; Apartheid Convention, art; 4; Genocide Convention, art; 5; The Four Geneva Conventions, arts; 49(1) & 54, art; 50; 129(1) and art; 146 respectively.

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complementary role of States enshrined in the ICC Statute. It will also go a long way to discourage gross human rights violations on the continent and the world at large. Besides, it will make Africa a continent where justice prevail, and contribute enormously to the global fight for international justice.

Equally, the principle *aut dedere aut judicare* (prosecute or extradite) is a well-founded principle under international law and is recognised in international instruments. But then, a major difficulty in the exercise of universal jurisdiction remains the lack of a harmonised approach at the State level. This situation will continue to pose as a major obstacle to the effective enforcement of international criminal law until a more constructive approach is taken. It is thus recommended that the international community should consider the harmonisation of this principle by laying down an international set of principles and procedures that will help States to appropriately act under the *aut dedere aut judicare* principles. This will make easy the exercise of universal jurisdiction for international crimes at the domestic level. Such set of rules and procedures should take the form of an international convention whereby States will free undertake obligations through ratification. However, it should not diminish in any way States responsibilities on the *aut dedere aut judicare* principle under other international instruments.

5.1.2. Other recommendations

In addition to strengthening national legal system to assist the ICC is realising its objectives, the following recommendations should also be considered.

African States that have not yet ratified the ICC Statute should take up the initiative to ratify it. This will not only reflect their commitment to human rights principles, but also an indication of their willingness to see that justice is done to the people of the world.

Also, it is my recommendation to all African States who by the time the ICC comes into existence are still considering ratification, that they should make great use of the *ad hoc* jurisdiction of the Court if an act constituting a crime within the jurisdiction of the Court is committed either on their territory or by their nationals.[244]

[244] On the *ad hoc* jurisdiction of the Court, see pp. 32-33 (exercise of jurisdiction over non-States parties).

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In defining the crime of aggression, criminal responsibility should be extended to top members of corporations whose activities have a direct or indirect bearing to the rise of armed insurgency. Similarly, criminal responsibility should be extended to members of other institutions, sponsoring wars either through the supply of weapons or other financial assistance.[245]

The power to determine an act of aggression should not be the sole prerogative of the Security Council. Other actors, especially States parties and the Prosecutor should be able to independently bring aggression cases before the ICC. Also, in spite of the fact that the Security Council retains the power to determine that an act of aggression has occurred which threatens world peace; the ICC should also be given the capacity to be able to determine an act of aggression with or without a declaration of the Security Council.[246]

The power of the Security Council under article 16 to suspend investigations or proceedings for a period of one year and with the possibility of renewal is a precarious "weapon". Therefore it is hoped that the entrustment of this function to this reputable organ of the UN will be used in a very responsible way.[247]

Finally, although States parties to the ICC have the possibility of opting out of the Court's jurisdiction for war crimes for a period of seven years when such crime is committed by its national or on its territory,[248] it is my plea that States should not make such a declaration upon ratification of the Statute. This will work out well for Africa, as it will leave open the possibility of bringing to justice perpetrators of gross atrocities in most of its war ravaged States. In addition, since the transitional provision of article 124 will be a subject of the Review Conference (to consider amendments to the ICC Statute), it will be a positive move for delegates to fight for a renunciation of the opt-out clause.

245 See generally the pp. 27-30 (section on the crime of aggression).

246 Ibid.

247 See note 148.

248 Art; 124 (see note 166).

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5.2. CONCLUSIONS

This work sought to assess whether the ICC will contribute to the respect for human rights in Africa. It portrays clearly that although the human rights situation is not totally bleak, gross violations continue to occur on the African continent. It also shows that the inability of existing mechanisms, (both national and international) to deal with gross human rights violations makes the establishment of the ICC imperative. In addition, the crimes the ICC seeks to punish satisfactorily cover the category of gross violations the continent has witnessed. Besides, a scrutiny of other features of the ICC also reveals that the Court has a greater potential than previous international tribunals and is capable of really advancing the international criminal justice system.

However, it should be emphasised that the ICC in itself will not put an end to atrocities that continue to shock the conscience of humanity.[249] But with support from the international community, it can help deter some of the worst crimes and help uphold stability and the rule of law not only in Africa but the world at large. The ICC is therefore and effective complement to national mechanism and will be instrumental in replacing a culture of impunity with a culture of accountability.

While the work cannot be regarded as the most comprehensive assessment of the topic it covers, it is hoped that it will spur in African scholars a new dimension of deliberations, and encourage writings on the dynamics and relevance of international criminal justice to Africa. Better than ever before, the ICC represents the most effective means so far attained to deter and punish gross violators of human rights and humanitarian law. It is in fact a welcomed development and will advance the respect for human rights not only in Africa, but the world at large.

WORD COUNT: 18 160.

249 Kirsch (note 76), XXVIII.

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APPENDIX

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT*

[* as corrected by the procés-verbaux of 10 November 1998 and 12 July 1999][1]

PREAMBLE

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows

PART 1. ESTABLISHMENT OF THE COURT

Article 1
The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

1 This Statute was downloaded from the ICC website, <http://www.un.org/law/icc/statute/romefra.htm>

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Article 2
Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3
Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4
Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for exercise of its functions and the fulfilment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5
Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United nations.

Article 6
Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

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(e) Forcibly transferring children of the group to another group.

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

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(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8
War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

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(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

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(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely any of the following acts.

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

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(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9
Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

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Article 11
Jurisdiction ratione temporis

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12
Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

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(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13
Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14
Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15
Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

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Article 16
Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17
Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18
Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

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4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such request without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

Article 19
Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(c) A State from which acceptance of jurisdiction is required under article 12.

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).

5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

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9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had preciously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20
Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21
Applicable law

1. The Court shall apply:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22
Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

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3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23
Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24
Non-retroactivity ratione personae

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.

2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25
Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26
Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

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Article 27
Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29
Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30
Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

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3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31
Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

(a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32
Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33
Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

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(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT

Article 34
Organs of the Court

The Court shall be composed of the following organs:

(a) The Presidency;

(b) An Appeals Division, a Trial Division and a Pre-Trial Division;

(c) The Office of the Prosecutor;

(d) The Registry.

Article 35
Service of judges

1. All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.

2. The judges composing the Presidency shall serve on a full-time basis as soon as they are elected.

3. The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

4. The financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49.

Article 36
Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

2. (a) The Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The registrar shall promptly circulate any such proposal to all State Parties.

(b) Any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

(c) (i) Once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2;

(ii) Once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving judges expire, until the necessary number has been reached.

3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

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(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent n at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirement of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and

List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).
A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

(i) The representation of the principal legal systems of the world;

(ii) Equitable geographical representation; and

(iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

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9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of none years.

(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 37
Judicial vacancies

1. In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.

2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36.

Article 38
The Presidency

1. The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.

2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for:

(a) The proper administration of the Court, with the exception of the Office of the Prosecutor; and

(b) The other functions conferred upon it in accordance with this Statute.

4. In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern.

Article 39
Chambers

1. As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

2. (a) The judicial functions of the Court shall be carried out in each division by Chambers.

(b) (i) The Appeals Chamber shall be composed of all the judges of the Appeals Division;
(ii) The functions of the Trial Chamber shall be carried out by three judges of the Trial Division;

(iii) The functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with the Statute and the Riles of Procedure and Evidence;

(c) Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

3. (a) Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned.

(b) Judges assigned to the Appeals Division shall serve in that division for their entire term of office.

4. Judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the

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Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case.

Article 40
Independence of the judges

1. The judges shall be independent in the performance of their functions.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

4. Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge, that judge shall not take part in the decision.

Article 41
Excusing and disqualification of judges

1. The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

Article 42
The Office of the Prosecutor

1. The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals. and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external course.

2. The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

3. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of none years and shall not be eligible for re-election.

5. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature.
6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

7. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

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8. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber.

(a) The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article;

(b) The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter;

9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 43
The Registry

1. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42.

2. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.

3. The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy registrar.

5. The Registrar shall hold office for a term of five years, shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy registrar shall be called upon to serve as required.

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 44
Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8.

3. The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

4. The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties.

Article 45
Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 46
Removal from office

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person:

(a) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or

(b) Is unable to exercise the functions required by this Statute.

2. A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot:

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(a) In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges;
(b) In the case of the Prosecutor, by an absolute majority of the States Parties;
(c) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

3. A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

4. A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter.

Article 47
Disciplinary measures

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence.

Article 48
Privileges and immunities

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

3. The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

5. The privileges and immunities of:
(a) A judge or the Prosecutor may be waived by an absolute majority of the judges;
(b) The Registrar may be waived by the Presidency;
(c) The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor;
(d) The Deputy Registrar and staff of the Registry may be waived by the Registrar.

Article 49
Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office.

Article 50
Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgments of the Court, as well as other decisions resolving fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

2. The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages.

3. At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

Article 51
Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

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2. Amendments to the Rules of Procedure and Evidence may be proposed by:
   (a) Any State Party;
   (b) The judges acting by an absolute majority; or
   (c) The Prosecutor.
   Such amendments shall enter into force upon adoption by a two-thirds majority of the members of the Assembly of States Parties.

3. After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties.

4. The Rules of Procedure and Evidence, amendments thereto and any provisional Rule shall be consistent with this Statute. Amendments to the Rules of Procedure and Evidence as well as provisional Rules shall not be applied retroactively to the detriment of the person who is being investigated or prosecuted or who has been convicted.

5. In the event of conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall prevail.

Article 52
Regulations of the Court

1. The judges shall, in accordance with this Statute and the Rules of Procedure and Evidence, adopt, by an absolute majority, the Regulations of the Court necessary for its routine functioning.

2. The Prosecutor and the Registrar shall be consulted in the elaboration of the Regulations and any amendments thereto.

3. The Regulations and any amendments thereto shall take effect upon adoption unless otherwise decided by the judges. Immediately upon adoption, they shall be circulated to States Parties for comments. If within six months there are no objections from a majority of States Parties, they shall remain in force.

PART 5. INVESTIGATION AND PROSECUTION

Article 53
Initiation of an investigation

1. The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
   (a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
   (b) The case is or would be admissible under article 17; and
   (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.
   If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber.
2. If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because:
   (a) There is not a sufficient legal or factual basis to seek a warrant or summons under article 58;
   (b) The case is inadmissible under article 17; or
   (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime;

the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.
3. (a) At the request of the State making a referral under article 14 or the Security Council under article 13, paragraph (b), the Pre-Trial Chamber may review a decision of the Prosecutor under paragraph 1 or 2 not to proceed and may request the Prosecutor to reconsider that decision.
   (b) In addition, the Pre-Trial Chamber may, on its own initiative, review a decision of the Prosecutor not to proceed if it is based solely on paragraph 1 (c) or 2 (c). In such a case, the decision of the Prosecutor shall be effective only if confirmed by the Pre-trial Chamber.
4. The Prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts or information.

Article 54
Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:
   (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;
   (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and

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witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute.

2. The Prosecutor may conduct investigations on the territory of a State:

(a) In accordance with the provisions of Part 9; or

(b) As authorized by the Pre-Trial Chamber under article 57, paragraph 3 (d).

3. The Prosecutor may:

(a) Collect and examine evidence;

(b) Request the presence of and question persons being investigated, victims and witnesses;

(c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;

(d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

(e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and

(f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

Article 55
Rights of persons during an investigation

1. In respect of an investigation under this Statute, a person:

(a) Shall not be compelled to incriminate himself or herself or to confess guilt;

(b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;

(c) Shall, if questioned in a language other than a language the person fully understands and speaks, have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness; and

(d) Shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established in this Statute.

2. Where there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9, that person shall also have the following rights of which he or she shall be informed prior to being questioned:

(a) To be informed, prior to being questioned, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Court;

(b) To remain silent, without such silence being a consideration in the determination of guilt or innocence;

(c) To have legal assistance of the person's choosing, or, if the person does not have legal assistance, to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by the person in any such case if the person does not have sufficient means to pay for it; and

(d) To be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel.

Article 56
Role of the Pre-Trial Chamber in relation to a unique investigative opportunity

1. (a) Where the Prosecutor considers an investigation to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial, the Prosecutor shall so inform the Pre-Trial Chamber.

(b) In that case, the Pre-Trial Chamber may, upon request of the Prosecutor, take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to protect the rights of the defence.

(c) Unless the Pre-Trial Chamber orders otherwise, the Prosecutor shall provide the relevant information to the person who has been arrested or appeared in response to a summons in connection with the investigation referred to in subparagraph (a), in order that he or she may be heard on the matter.

2. The measures referred to in paragraph 1 (b) may include:

(a) Making recommendations or orders regarding procedures to be followed;

(b) Directing that a record be made of the proceedings;

(c) Appointing an expert to assist;

(d) Authorizing counsel for a person who has been arrested, or appeared before the Court in response to a summons, to participate, or where there has not yet been such an arrest or appearance or counsel has not been designated, appointing another counsel to attend and represent the interests of the defence;

(e) Naming one of its members or, if necessary, another available judge of the Pre-Trial or Trial Division to observe and make recommendations or orders regarding the collection and preservation of evidence and the questioning of persons;

(f) Taking such other action as may be necessary to collect or preserve evidence.

3. (a) Where the Prosecutor has not sought measures pursuant to this article but the Pre-Trial Chamber considers that such measures are required to preserve evidence that it deems would be essential for the defence at trial, it shall consult with the Prosecutor as to whether there is good reason for the Prosecutor's failure to request the measures. If

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upon consultation, the Pre-Trial Chamber concludes that the Prosecutor's failure to request such measures is unjustified, the Pre-Trial Chamber may take such measures on its own initiative.

(b) A decision of the Pre-Trial Chamber to act on its own initiative under this paragraph may be appealed by the Prosecutor. The appeal shall be heard on an expedited basis.

4. The admissibility of evidence preserved or collected for trial pursuant to this article, or the record thereof, shall be governed at trial by article 69, and given such weight as determined by the Trial Chamber.

Article 57
Functions and powers of the Pre-Trial Chamber

1. Unless otherwise provided in this Statute, the Pre-Trial Chamber shall exercise its functions in accordance with the provisions of this article.

2. (a) Orders or rulings of the Pre-Trial Chamber issued under articles 15, 18, 19, 54, paragraph 2, 61, paragraph 7, and 72 must be concurred in by a majority of its judges.

(b) In all other cases, a single judge of the Pre-Trial Chamber may exercise the functions provided for in this Statute, unless otherwise provided for in the Rules of Procedure and Evidence or by a majority of the Pre-Trial Chamber.

3. In addition to its other functions under this Statute, the Pre-Trial Chamber may:
(a) At the request of the Prosecutor, issue such orders and warrants as may be required for the purposes of an investigation;
(b) Upon the request of a person who has been arrested or has appeared pursuant to a summons under article 58, issue such orders, including measures such as those described in article 56, or seek such cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence;
(c) Where necessary, provide for the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information;
(d) Authorize the Prosecutor to take specific investigative steps within the territory of a State Party without having secured the cooperation of that State under Part 9 if, whenever possible having regard to the views of the State concerned, the Pre-Trial Chamber has determined in that case that the State is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation under Part 9.
(e) Where a warrant of arrest or a summons has been issued under article 58, and having due regard to the strength of the evidence and the rights of the parties concerned, as provided for in this Statute and the Rules of Procedure and Evidence, seek the cooperation of States pursuant to article 93, paragraph 1 (k), to take protective measures for the purpose of forfeiture, in particular for the ultimate benefit of victims.

Article 58
Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:
(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and
(b) There arrest of the person appears necessary;
(i) To ensure the person's appearance at trial,
(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings, or
(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.
2. The application of the Prosecutor shall contain:
(a) The name of the person and any other relevant identifying information;
(b) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed;
(c) A concise statement of the facts which are alleged to constitute those crimes;
(d) A summary of the evidence and any other information which establish reasonable grounds to believe that the person committed those crimes; and
(e) The reason why the Prosecutor believes that the arrest of the person is necessary.
3. The warrant of arrest shall contain:
(a) The name of the person and any other relevant identifying information;
(b) A specific reference to the crimes within the jurisdiction of the Court for which the person's arrest is sought; and
(c) A concise statement of the facts which are alleged to constitute those crimes.
4. The warrant of arrest shall remain in effect until otherwise ordered by the Court.

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5. On the basis of the warrant of arrest, the Court may request the provisional arrest or the arrest and surrender of the person under Part 9.

6. The Prosecutor may request the Pre-Trial Chamber to amend the warrant of arrest by modifying or adding to the crimes specified therein. The Pre-Trial Chamber shall so amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed the modified or additional crimes.

7. As an alternative to seeking a warrant of arrest, the Prosecutor may submit an application requesting that the Pre-Trial Chamber issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons, with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear. The summons shall contain:

(a) The name of the person and any other relevant identifying information;
(b) The specified date on which the person is to appear;
(c) A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
(d) A concise statement of the facts which are alleged to constitute the crime.

The summons shall be served on the person.

Article 59
Arrest proceedings in the custodial State

1. A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws and the provisions of Part 9.

2. A person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

(a) The warrant applies to that person;
(b) The person has been arrested in accordance with the proper process; and
(c) The person's rights have been respected.

3. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender.

4. In reaching a decision on any such application, the competent authority in the custodial State shall consider whether, given the gravity of the alleged crimes, there are urgent and exceptional circumstances to justify interim release and whether necessary safeguards exist to ensure that the custodial State can fulfil its duty to surrender the person to the Court. It shall not be open to the competent authority of the custodial State to consider whether the warrant of arrest was properly issued in accordance with article 58, paragraph
1 (a) and (b).

5. The Pre-Trial Chamber shall be notified of any request for interim release and shall make recommendations to the competent authority in the custodial State. The competent authority in the custodial State shall give full consideration to such recommendations, including any recommendations on measures to prevent the escape of the person, before rendering its decision.

6. If the person is granted interim release, the Pre-Trial Chamber may request periodic reports on the status of the interim release.

7. Once ordered to be surrendered by the custodial State, the person shall be delivered to the Court as soon as possible.

Article 60
Initial proceedings before the Court

1. Upon the surrender of the person to the Court, or the person's appearance before the Court voluntarily or pursuant to a summons, the Pre-Trial Chamber shall satisfy itself that the person has been informed of the crimes which he or she is alleged to have committed, and of his or her rights under this Statute including the right to apply for interim release lending trial.

2. A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without conditions.

3. The Pre-Trial Chamber shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

4. The Pre-Trial Chamber shall ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. If such delay occurs, the Court shall consider releasing the person, with or without conditions.

5. If necessary, the Pre-Trial Chamber may issue a warrant of arrest to secure the presence of a person who has been released.

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Article 61
Confirmation of the charges before trial

1. Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the Pre-Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel.
2. The Pre-Trial Chamber may, upon request of the Prosecutor or on its own motion, hold a hearing in the absence of the person charged to confirm the charges on which the Prosecutor intends to seek trial when the person has:
   (a) Waived his or her right to be present; or
   (b) Fled or cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges and that a hearing to confirm those charges will be held.

In that case, the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.
3. Within a reasonable time before the hearing, the person shall:
   (a) Be provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial; and
   (b) Be informed of the evidence on which the Prosecutor intends to rely at the hearing.

The Pre-Trial Chamber may issue orders regarding the disclosure of information for the purposes of the hearing.

4. Before the hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Chamber of the reasons for the withdrawal.
5. At the hearing, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial.
6. At the hearing, the person may:
   (a) Object to the charges;
   (b) Challenge the evidence presented by the Prosecutor; and
   (c) Present evidence.
7. The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:
   (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
   (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
   (c) Adjourn the hearing and request the Prosecutor to consider:
      (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
      (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.
8. Where the Pre-Trial Chamber declines to confirm a charge, the Prosecutor shall not be precluded from subsequently requesting its confirmation if the request is supported by additional evidence.
9. After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.
10. Any warrant previously issued shall cease to have effect with respect to any charges which have not been confirmed by the Pre-Trial Chamber or which have been withdrawn by the Prosecutor.
11. Once the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, subject to paragraph 9 and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings.

PART 6. THE TRIAL

Article 62
Place of trial

Unless otherwise decided, the place of the trial shall be the seat of the Court.

Article 63
Trial in the presence of the accused

1. The accused shall be present during the trial.
2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

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Article 64
Functions and powers of the Trial Chamber

1. The functions and powers of the Trial Chamber set out in this article shall be exercised in accordance with this Statute and the Rules of Procedure and Evidence.
2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall:
(a) Confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of the proceedings;
(b) Determine the language or languages to be used at trial; and
(c) Subject to any other relevant provisions of this Statute, provide for disclosure of documents or information not previously disclosed, sufficiently in advance of the commencement of the trial to enable adequate preparation for trial.
4. The Trial Chamber may, if necessary for its effective and fair functioning, refer preliminary issues to the Pre-Trial Chamber or, if necessary, to another available judge of the Pre-Trial Division.
5. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary:
(a) Exercise any functions of the Pre-Trial Chamber referred to in article 61, paragraph 11;
(b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute;
(c) Provide for the protection of confidential information;
(d) Order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties;
(e) Provide for the protection of the accused, witnesses and victims; and
(f) Rule on any other relevant matters.
7. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence.

8. (a) At the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that the accused understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 65 or to plead not guilty.

(b) At the trial, the presiding judge may give directions for the conduct of proceedings, including to ensure that they are conducted in a fair and impartial manner. Subject to any directions of the presiding judge, the parties may submit evidence in accordance with the provisions of this Statute.

9. The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:
(a) Rule on the admissibility or relevance of evidence; and
(b) Take all necessary steps to maintain order in the course of a hearing.
10. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar.

Article 65
Proceedings on an admission of guilt

1. Where the accused makes an admission of guilt pursuant to article 64, paragraph 8 (a), the Trial Chamber shall determine whether:
(a) The accused understands the nature and consequences of the admission of guilt;
(b) The admission is voluntarily made by the accused after sufficient consultation with defence counsel; and
(c) The admission of guilt is supported by the facts of the case that are contained in:
(i) The charges brought by the Prosecutor and admitted by the accused;
(ii) Any materials presented by the Prosecutor which supplement the charges and which the accused accepts; and
(iii) Any other evidence, such as the testimony of witnesses, presented by the Prosecutor or the accused.
2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt, together with any additional evidence presented, as establishing all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the accused of that crime.
3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.
4. Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the victims, the Trial Chamber may:
(a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or
(b) Order that the trial be continued under the ordinary trial procedures provided by this Statute, in which case it shall consider the admission of guilt as not having been made and may remit the case to another Trial Chamber.

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5. Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.

Article 66
Presumption of innocence

1. Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.
2. The onus is on the Prosecutor to prove the guilt of the accused.
3. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt.

Article 67
Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

(c) To be tried without undue delay;

(d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;

(f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks;

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence; and

(i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph the Court shall decide.

Article 68
Protection of the victims and witnesses and their participation in the proceedings

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.
3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
6. A State may make an application for necessary measures to be taken in respect of the protection of its servant or agent and the protection of confidential or sensitive information.

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Article 69
Evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.
5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.
6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:
   (a) The violation casts substantial doubt on the reliability of the evidence; or
   (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.
8. When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.

Article 70
Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:
   (a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;
   (b) Presenting evidence that the party knows is false or forged;
   (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;
   (d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;
   (e) Retaliating against an official of the Court on account of duties performed by that or another official;
   (f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.
2. The principles and procedures governing the Court's exercise of jurisdiction over offences under this article shall be those provided for in the Rules of Procedure and Evidence. The conditions for providing international cooperation to the Court with respect to its proceedings under this article shall be governed by the domestic laws of the requested State.
3. In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both.
4. (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;
   (b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligent and devoted sufficient resources to enable them to be conducted effectively.

Article 71
Sanctions for misconduct before the Court

1. The Court may sanction persons present before it who commit misconduct, including disruption of its proceedings or deliberate refusal to comply with its directions, by administrative measures other than imprisonment, such as temporary or permanent removal from the courtroom, a fine or other similar measures provided for in the Rules of Procedure and Evidence.
2. The procedures governing the imposition of the measures set forth in paragraph 1 shall be those provided for in the Rules of Procedure and Evidence.

Article 72
Protection of national security information

1. This article applies in any case where the disclosure of the information or documents of a State would, in the opinion of that State, prejudice its national security interests. Such cases include those falling within the scope of article 56, paragraphs 2 and 3, article 61, paragraph 3, article 64, paragraph 3, article 67, paragraph 2, article 68, paragraph 6, article 87, paragraph 6 and article 93, as well as cases arising at any other stage of the proceedings where such disclosure may be at issue.
2. This article shall also apply when a person who has been requested to give information or evidence has refused to do so or has referred the matter to the State on the ground that disclosure would prejudice the national security interests

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of a State and the State concerned confirms that it is of the opinion that disclosure would prejudice its national security interests.

3. Nothing in this article shall prejudice the requirements of confidentiality applicable under article 54, paragraph 3 (e) and (f), or the application of article 73.

4. If a State learns that information or documents of the State are being, or are likely to be, disclosed at any stage of the proceedings, and it is of the opinion that disclosure would prejudice its national security interests, that State shall have the right to intervene in order to obtain resolution of the issue in accordance with this article.

5. If, in the opinion of a State, disclosure of information would prejudice its national security interests, all reasonable steps will be taken by the State, acting in conjunction with the Prosecutor, the defence or the Pre-Trial Chamber or Trial Chamber, as the case may be, to seek to resolve the matter by cooperative means. Such steps may include:

(a) Modification or clarification of the request;

(b) A determination by the Court regarding the relevance of the information or evidence sought, or a determination as to whether the evidence, though relevant, could be or has been obtained from a source other than the requested State;

(c) Obtaining the information or evidence from a different source or in a different form; or

(d) Agreement on conditions under which the assistance could be provided including, among other things, providing summaries or redactions, limitations on disclosure, use of in camera or ex parte proceedings, or other protective measures permissible under the Statute and the Rules of Procedure and Evidence.

6. Once all reasonable steps have been taken to resolve the matter through cooperative means, and if the State considers that there are no means or conditions under which the information or documents could be provided or disclosed without prejudice to its national security interests, it shall so notify the Prosecutor or the Court of the specific reasons for its decision, unless a specific description of the reasons would itself necessarily result in such prejudice to the State's national security interests.

7. Thereafter, if the Court determines that the evidence is relevant and necessary for the establishment of the guilt or innocence of the accused, the Court may undertake the following actions:

(a) Where disclosure of the information or document is sought pursuant to a request for cooperation under Part 9 or the circumstances described in paragraph 2, and the State has invoked the ground for refusal referred to in article 93, paragraph 4:

(i) The Court may, before making any conclusion referred to in subparagraph 7 (a) (ii), request further consultations for the purpose of considering the State's representations, which may include, as appropriate, hearings in camera and ex parte;

(ii) If the Court concludes that, by invoking the ground for refusal under article 93, paragraph 4, in the circumstances of the case, the requested State is not acting in accordance with its obligations under this Statute, the Court may refer the matter in accordance with article 87, paragraph 7, specifying the reasons for its conclusion; and

(iii) The Court may make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances; or

(b) In all other circumstances:

(i) Order disclosure; or

(ii) To the extent it does not order disclosure, make such inference in the trial of the accused as to the existence or non-existence of a fact, as may be appropriate in the circumstances.

Article 73
Third-party information or documents

If a State Party is requested by the Court to provide a document or information in its custody, possession or control, which was disclosed to it in confidence by a State, intergovernmental organization or international organization, it shall seek the consent of the originator to disclose that document or information. If the originator is a State Party, it shall either consent to disclosure of the information or document or undertake to resolve the issue of disclosure with the Court, subject to the provisions of article 72. If the originator is not a State Party and refuses to consent to disclosure, the requested State shall inform the Court that it is unable to provide the document or information because of a pre-existing obligation of confidentiality to the originator.

Article 74
Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.

4. The deliberations of the Trial Chamber shall remain secret.

5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court.

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Article 75
Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.
2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.
Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.
4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1.
5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.
6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

Article 76
Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented and submissions made during the trial that are relevant to the sentence.
2. Except where article 65 applies and before the completion of the trial, the Trial Chamber may on its own motion and shall, at the request of the Prosecutor or the accused, hold a further hearing to hear any additional evidence or submissions relevant to the sentence, in accordance with the Rules of Procedure and Evidence.
3. Where paragraph 2 applies, any representations under article 75 shall be heard during the further hearing referred to in paragraph 2 and, if necessary, during any additional hearing.
4. The sentence shall be pronounced in public and, wherever possible, in the presence of the accused.

PART 7. PENALTIES

Article 77
Applicable penalties

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:
   (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
   (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
2. In addition to imprisonment, the Court may order:
   (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
   (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Article 78
Determination of the sentence

1. In determining the sentence, the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.
2. In imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court. The Court may deduct any time otherwise spent in detention in connection with conduct underlying the crime.
3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b).

Article 79
Trust Fund

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.
2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.
3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

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Article 80
Non-prejudice to national application of penalties and national laws

Nothing in this Part affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this Part.

PART 8. APPEAL AND REVISION

Article 81
Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 74 may be appealed in accordance with the Rules of Procedure and Evidence as follows:
   (a) The Prosecutor may make an appeal on any of the following grounds:
      (i) Procedural error,
      (ii) Error of fact, or
      (iii) Error of law;

   (b) The convicted person, or the Prosecutor on that person's behalf, 'may make an appeal on any of the following grounds:
      (i) Procedural error,
      (ii) Error of fact,
      (iii) Error of law, or
      (iv) Any other ground that affects the fairness or reliability of the proceedings or decision.

2. (a) A sentence may be appealed, in accordance with the Rules of Procedure and Evidence, by the Prosecutor or the convicted person on the ground of disproportion between the crime and the sentence;
   (b) If on an appeal against sentence the Court considers that there are grounds on which the conviction might be set aside, wholly or in part, it may invite the Prosecutor and the convicted person to submit grounds under article 81, paragraph 1 (a) or (b), and may render a decision on conviction in accordance with article 83;
   (c) The same procedure applies when the Court, on an appeal against conviction only, considers that there are grounds to reduce the sentence under paragraph 2 (a).

3. (a) Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending an appeal;
   (b) When a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below;
   (c) In case of an acquittal, the accused shall be released immediately, subject to the following:

      (i) Under exceptional circumstances, and having regard, inter alia, to the concrete risk of flight, the seriousness of the offence charged and the probability of success on appeal, the Trial Chamber, at the request of the Prosecutor, may maintain the detention of the person pending appeal;

      (ii) A decision by the Trial Chamber under subparagraph (c) (i) may be appealed in accordance with the Rules of Procedure and Evidence.

4. Subject to the provisions of paragraph 3 (a) and (b), execution of the decision or sentence shall be suspended during the period allowed for appeal and for the duration of the appeal proceedings.

Article 82
Appeal against other decisions

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:
   (a) A decision with respect to jurisdiction or admissibility;
   (b) A decision granting or denying release of the person being investigated or prosecuted;
   (c) A decision of the Pre-Trial Chamber to act on its own initiative under article 56, paragraph 3;
   (d) A decision that involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Pre-Trial or Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
2. A decision of the Pre-Trial Chamber under article 57, paragraph 3 (d), may be appealed against by the State concerned or by the Prosecutor, with the leave of the Pre-Trial Chamber. The appeal shall be heard on an expedited basis.
3. An appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence.
4. A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 75 may appeal against the order for reparations, as provided in the Rules of Procedure and Evidence.

Article 83
Proceedings on appeal

1. For the purposes of proceedings under article 81 and this article, the Appeals Chamber shall have all the powers of the Trial Chamber.

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2. If the Appeals Chamber finds that the proceedings appealed from were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence appealed from was materially affected by error of fact or law or procedural error, it may:

(a) Reverse or amend the decision or sentence; or

(b) Order a new trial before a different Trial Chamber.

For these purposes, the Appeals Chamber may remand a factual issue to the original Trial Chamber for it to determine the issue and to report back accordingly, or may itself call evidence to determine the issue. When the decision or sentence has been appealed only by the person convicted, or the Prosecutor on that person's behalf, it cannot be amended to his or her detriment.

3. If in an appeal against sentence the Appeals Chamber finds that the sentence is disproportionate to the crime, it may vary the sentence in accordance with Part 7.

4. The judgement of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court. The judgement shall state the reasons on which it is based. When there is no unanimity, the judgement of the Appeals Chamber shall contain the views of the majority and the minority, but a judge may deliver a separate or dissenting opinion on a question of law.

5. The Appeals Chamber may deliver its judgement in the absence of the person acquitted or convicted.

Article 84
Revision of conviction or sentence

1. The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgement of conviction or sentence on the grounds that:

(a) New evidence has been discovered:

(i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

(ii) Is sufficiently important that had it been proved at trial it would have been likely to have resulted in a different verdict;

(b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

(c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under article 46.

2. The Appeals Chamber shall reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

(a) Reconvene the original Trial Chamber;

(b) Constitute a new Trial Chamber; or

(c) Retain jurisdiction over the matter,

with a view to, after hearing the parties in the manner set forth in the Rules of Procedure and Evidence, arriving at a determination on whether the judgment should be revised.

Article 85
Compensation to an arrested or convicted person

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 86
General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

Article 87
Requests for cooperation: general provisions

1. (a) The Court shall have the authority to make requests to States Parties for cooperation. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each State Party upon ratification, acceptance, approval or accession.

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Subsequent changes to the designation shall be made by each State Party in accordance with the Rules of Procedure and Evidence.

(b) When appropriate, without prejudice to the provisions of subparagraph (a), requests may also be transmitted through the International Criminal Police Organization or any appropriate regional organization.

2. Requests for cooperation and any documents supporting the request shall either be in or be accompanied by a translation into an official language of the requested State or one of the working languages of the Court, in accordance with the choice made by that State upon ratification, acceptance, approval or accession.

Subsequent changes to this choice shall be made in accordance with the Rules of Procedure and Evidence.

3. The requested State shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families.

5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

(b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

6. The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

Article 88
Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.

Article 89
Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of ne bis in idem as provided in article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

(i) A description of the person being transported;

(ii) A brief statement of the facts of the case and their legal characterization; and

(iii) The warrant for arrest and surrender;

(c) A person being transported shall be detained in custody during the period of transit;

(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

(e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

Article 90
Competing requests

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1. A State Party which receives a request from the Court for the surrender of a person under article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.
2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:
   (a) The Court has, pursuant to article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or
   (b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.
3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.
4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is admissible.
5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.
6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:
   (a) The respective dates of the requests;
   (b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and
   (c) The possibility of subsequent surrender between the Court and the requesting State.
7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:
   (a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;
   (b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.
8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

Article 91
Contents of request for arrest and surrender

1. A request for arrest and surrender shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).
2. In the case of a request for the arrest and surrender of a person for whom a warrant of arrest has been issued by the Pre-Trial Chamber under article 58, the request shall contain or be supported by:
   (a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
   (b) A copy of the warrant of arrest; and
   (c) Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.
3. In the case of a request for the arrest and surrender of a person already convicted, the request shall contain or be supported by:
   (a) A copy of any warrant of arrest for that person;
   (b) A copy of the judgement of conviction;
   (c) Information to demonstrate that the person sought is the one referred to in the judgement of conviction; and
   (d) If the person sought has been sentenced, a copy of the sentence imposed and, in the case of a sentence for imprisonment, a statement of any time already served and the time remaining to be served.
4. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (c). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.

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Article 92
Provisional arrest

1. In urgent cases, the Court may request the provisional arrest of the person sought, pending presentation of the request for surrender and the documents supporting the request as specified in article 91.
2. The request for provisional arrest shall be made by any medium capable of delivering a written record and shall contain:
(a) Information describing the person sought, sufficient to identify the person, and information as to that person's probable location;
(b) A concise statement of the crimes for which the person's arrest is sought and of the facts which are alleged to constitute those crimes, including, where possible, the date and location of the crime;
(c) A statement of the existence of a warrant of arrest or a judgement of conviction against the person sought; and
(d) A statement that a request for surrender of the person sought will follow.
3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.
4. The fact that the person sought has been released from custody pursuant to paragraph 3 shall not prejudice the subsequent arrest and surrender of that person if the request for surrender and the documents supporting the request are delivered at a later date.

Article 93
Other forms of cooperation

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions:
(a) The identification and whereabouts of persons or the location of items;
(b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court;
(c) The questioning of any person being investigated or prosecuted;
(d) The service of documents, including judicial documents;
(e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court;
(f) The temporary transfer of persons as provided in paragraph 7;
(g) The examination of places or sites, including the exhumation and examination of grave sites;
(h) The execution of searches and seizures;
(i) The provision of records and documents, including official records and documents;
(j) The protection of victims and witnesses and the preservation of evidence;
(k) The identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties; and
(l) Any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court.
2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State.
3. Where execution of a particular measure of assistance detailed in a request presented under paragraph 1, is prohibited in the requested State on the basis of an existing fundamental legal principle of general application, the requested State shall promptly consult with the Court to try to resolve the matter. In the consultations, consideration should be given to whether the assistance can be rendered in another manner or subject to conditions. If after consultations the matter cannot be resolved, the Court shall modify the request as necessary.
4. In accordance with article 72, a State Party may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security.
5. Before denying a request for assistance under paragraph 1 (l), the requested State shall consider whether the assistance can be provided subject to specified conditions, or whether the assistance can be provided at a later date or in an alternative manner, provided that if the Court or the Prosecutor accepts the assistance subject to conditions, the Court or the Prosecutor shall abide by them.
6. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.
7. (a) The Court may request the temporary transfer of a person in custody for purposes of identification or for obtaining testimony or other assistance. The person may be transferred if the following conditions are fulfilled:

(i) The person freely gives his or her informed consent to the transfer; and

(ii) The requested State agrees to the transfer, subject to such conditions as that State and the Court may agree.

(b) The person being transferred shall remain in custody. When the purposes of the transfer have been fulfilled, the Court shall return the person without delay to the requested State.
8. (a) The Court shall ensure the confidentiality of documents and information, except as required for the investigation and proceedings described in the request.

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(b) The requested State may, when necessary, transmit documents or information to the Prosecutor on a confidential basis. The Prosecutor may then use them solely for the purpose of generating new evidence.

(c) The requested State may, on its own motion or at the request of the Prosecutor, subsequently consent to the disclosure of such documents or information. They may then be used as evidence pursuant to the provisions of Parts 5 and 6 and in accordance with the Rules of Procedure and Evidence.

9. (a) (i) In the event that a State Party receives competing requests, other than for surrender or extradition, from the Court and from another State pursuant to an international obligation, the State Party shall endeavour, in consultation with the Court and the other State, to meet both requests, if necessary by postponing or attaching conditions to one or the other request.

(ii) Failing that, competing requests shall be resolved in accordance with the principles established in article 90.

(b) Where, however, the request from the Court concerns information, property or persons which are subject to the control of a third State or an international organization by virtue of an international agreement, the requested States shall so inform the Court and the Court shall direct its request to the third State or international organization.

10. (a) The Court may, upon request, cooperate with and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State.

(b) (i) The assistance provided under subparagraph (a) shall include, inter alia:

a. The transmission of statements, documents or other types of evidence obtained in the course of an investigation or a trial conducted by the Court; and

b. The questioning of any person detained by order of the Court;

(ii) In the case of assistance under subparagraph (b) (i) a:

a. If the documents or other types of evidence have been obtained with the assistance of a State, such transmission shall require the consent of that State;

b. If the statements, documents or other types of evidence have been provided by a witness or expert, such transmission shall be subject to the provisions of article 68.

(c) The Court may, under the conditions set out in this paragraph, grant a request for assistance under this paragraph from a State which is not a Party to this Statute.

Article 94
Postponement of execution of a request in respect of ongoing investigation or prosecution

1. If the immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested State may postpone the execution of the request for a period of time agreed upon with the Court. However, the postponement shall be no longer than is necessary to complete the relevant investigation or prosecution in the requested State. Before making a decision to postpone, the requested State should consider whether the assistance may be immediately provided subject to certain conditions.

2. If a decision to postpone is taken pursuant to paragraph 1, the Prosecutor may, however, seek measure to preserve evidence, pursuant to article 93, paragraph 1 (i).

Article 95
Postponement of execution of a request in respect of an admissibility challenge

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

Article 96
Contents of request for other forms of assistance under article 93

1. A request for other forms of assistance referred to in article 93 shall be made in writing. In urgent cases, a request may be made by any medium capable of delivering a written record, provided that the request shall be confirmed through the channel provided for in article 87, paragraph 1 (a).

2. The request shall, as applicable, contain or be supported by the following:

(a) A concise statement of the purpose of the request and the assistance sought, including the legal basis and the grounds for the request;

(b) As much detailed information as possible about the location or identification of any person or place that must be found or identified in order for the assistance sought to be provided;

(c) A concise statement of the essential facts underlying the request;

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(d) The reasons for and details of any procedure or requirement to be followed;
(e) Such information as may be required under the law of the requested State in order to execute the request; and
(f) Any other information relevant in order for the assistance sought to be provided.

3. Upon the request of the Court, a State Party shall consult with the Court, either generally or with respect to a specific matter, regarding any requirements under its national law that may apply under paragraph 2 (e). During the consultations, the State Party shall advise the Court of the specific requirements of its national law.
4. The provisions of this article shall, where applicable, also apply in respect of a request for assistance made to the Court.

Article 97
Consultations

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:
(a) Insufficient information to execute the request;
(b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or
(c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

Article 98
Cooperation with respect to waiver of immunity and consent to surrender

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Article 99
Execution of requests under articles 93 and 96

1. Requests for assistance shall be executed in accordance with the relevant procedure under the law of the requested State and, unless prohibited by such law, in the manner specified in the request, including following any procedure outlined therein or permitting persons specified in the request to be present at and assist in the execution process.
2. In the case of an urgent request, the documents or evidence produced in response shall, at the request of the Court, be sent urgently.
3. Replies from the requested State shall be transmitted in their original language and form.
4. Without prejudice to other articles in this Part, where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a State as follows:
(a) When the State Party requested is a State on the territory of which the crime is alleged to have been committed, and there has been a determination of admissibility pursuant to article 18 or 19, the Prosecutor may directly execute such request following all possible consultations with the requested State Party;
(b) In other cases, the Prosecutor may execute such request following consultations with the requested State Party and subject to any reasonable conditions or concerns raised by that State Party. Where the requested State Party identifies problems with the execution of a request pursuant to this subparagraph it shall, without delay, consult with the Court to resolve the matter.
5. Provisions allowing a person heard or examined by the Court under article 72 to invoke restrictions designed to prevent disclosure of confidential information connected with national security shall also apply to the execution of requests for assistance under this article.

Article 100
Costs

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:
(a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody;
(b) Costs of translation, interpretation and transcription;
(c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court;
(d) Costs of any expert opinion or report requested by the Court;

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(e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and
(f) Following consultations, any extraordinary costs that may result from the execution of a request.
2. The provisions of paragraph 1 shall, as appropriate, apply to requests from States Parties to the Court. In that case, the Court shall bear the ordinary costs of execution.

Article 101
Rule of speciality

1. A person surrendered to the Court under this Statute shall not be proceeded against, punished or detained for any conduct committed prior to surrender, other than the conduct or course of conduct which forms the basis of the crimes for which that person has been surrendered.
2. The Court may request a waiver of the requirements of paragraph 1 from the State which surrendered the person to the Court and, if necessary, the Court shall provide additional information in accordance with article 91. States Parties shall have the authority to provide a waiver to the Court and should endeavour to do so.

Article 102
Use of terms

For the purposes of this Statute:
(a) "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute.
(b) "extradition" means the delivering up of a person by one State to another as provided by treaty, convention or national legislation.

PART 10. ENFORCEMENT

Article 103
Role of States in enforcement of sentences of imprisonment

1. (a) 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 sentenced persons.
(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.
(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.
2. (a) The State of enforcement shall notify the Court of any circumstances, including the exercise of any conditions agreed under paragraph 1, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, the State of enforcement shall take no action that might prejudice its obligations under article 110.
(b) Where the Court cannot agree to the circumstances referred to in subparagraph (a), it shall notify the State of enforcement and proceed in accordance with article 104, paragraph 1.
3. In exercising its discretion to make a designation under paragraph 1, the Court shall take into account the following:
(a) The principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, as provided in the Rules of Procedure and Evidence;
(b) The application of widely accepted international treaty standards governing the treatment of prisoners;
(c) The views of the sentenced person;
(d) The nationality of the sentenced person;
(e) Such other factors regarding the circumstances of the crime or the person sentenced, or the effective enforcement of the sentence, as may be appropriate in designating the State of enforcement.
4. 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, in accordance with the conditions set out in the headquarters agreement referred to in article 3, paragraph 2. In such a case, the costs arising out of the enforcement of a sentence of imprisonment shall be borne by the Court.

Article 104
Change in designation of State of enforcement

1. The Court may, at any time, decide to transfer a sentenced person to a prison of another State.
2. A sentenced person may, at any time, apply to the Court to be transferred from the State of enforcement.

Article 105
Enforcement of the sentence

1. Subject to conditions which a State may have specified in accordance with article 103, paragraph 1 (b), the sentence of imprisonment shall be binding on the States Parties, which shall in no case modify it.
2. The Court alone shall have the right to decide any application for appeal and revision. The State of enforcement shall not impede the making of any such application by a sentenced person.

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Article 106
Supervision of enforcement of sentences and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.
2. The conditions of imprisonment shall be governed by the law of the State of enforcement and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 107
Transfer of the person upon completion of sentence

1. Following completion of the sentence, a person who is not a national of the State of enforcement may, in accordance with the law of the State of enforcement, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless the State of enforcement authorizes the person to remain in its territory.
2. If no State bears the costs arising out of transferring the person to another State pursuant to paragraph 1, such costs shall be borne by the Court.
3. Subject to the provisions of article 108, the State of enforcement may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purpose of trial or enforcement of a sentnce.

Article 108
Limitation on the prosecution or punishment of other offences

1. A sentenced person in the custody of the State of enforcement shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's delivery to the State of enforcement, unless such prosecution, punishment or extradition has been approved by the Court at the request of the State of enforcement.
2. The Court shall decide the matter after having heard the views of the sentenced person.
3. Paragraph 1 shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of the State of enforcement after having served the full sentence imposed by the Court, or return to the territory of that State after having left it.

Article 109
Enforcement of fines and forfeiture measures

1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.
2. If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.
3. Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgement of the Court shall be transferred to the Court.

Article 110
Review by the Court concerning reduction of sentence

1. The State of enforcement shall not release the person before expiry of the sentence pronounced by the Court.
2. The Court alone shall have the right to decide any reduction of sentence, and shall rule on the matter after having heard the person.
3. When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time.
4. In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:
   (a) The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions;
   (b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or
   (c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence.
5. If the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

Article 111
Escape

If a convicted person escapes from custody and flees the State of enforcement, that State may, after consultation with the Court, request the person's surrender from the State in which the person is located pursuant to existing bilateral or

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multilateral arrangements, or may request that the Court seek the person's surrender, in accordance with Part 9. It may direct that the person be delivered to the State in which he or she was serving the sentence or to another State designed by the Court.

PART 11. ASSEMBLY OF STATES PARTIES

Article 112
Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly.
2. The Assembly shall:
   (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
   (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
   (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
   (d) Consider and decide the budget for the Court;
   (e) Decide whether to alter, in accordance with article 36, the number of judges;
   (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
   (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.
3. (a) The Assembly shall have a Bureau consisting of a President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms.
   (b) The Bureau shall have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.
   (c) The Bureau shall meet as often as necessary, but at least once a year. It shall assist the Assembly in the discharge of its responsibilities.
4. The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.
5. The President of the Court, the Prosecutor and the Registrar or their representatives may participate, as appropriate, in meetings of the Assembly and of the Bureau.
6. The Assembly shall meet at the seat of the Court or at the Headquarters of the United Nations once a year and, when circumstances so require, hold special sessions. Except as otherwise specified in this Statute, special sessions shall be convened by the Bureau on its own initiative or at the request of one third of the States Parties.
7. Each State Party shall have one vote. Every effort shall be made to reach decisions by consensus in the Assembly and in the Bureau. If consensus cannot be reached, except as otherwise provided in the Statute:
   (a) Decisions on matters of substance must be approved by a two-thirds majority of those present and voting provided that an absolute majority of States Parties constitutes the quorum for voting;
   (b) Decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.
8. A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.
9. The Assembly shall adopt its own rules of procedure.
10. The official and working languages of the Assembly shall be those of the General Assembly of the United Nations.

PART 12. FINANCING

Article 113
Financial Regulations

Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties.

Article 114
Payment of expenses

Expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be paid from the funds of the Court.

Article 115
Funds of the Court and of the Assembly of States Parties

The expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, as provided for in the budget decided by the Assembly of States Parties, shall be provided by the following sources:
   (a) Assessed contributions made by States Parties;

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(b) Funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council.

Article 116
Voluntary contributions

Without prejudice to article 115, the Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

Article 117
Assessment of contributions

The contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

Article 118
Annual audit

The records, books and accounts of the Court, including its annual financial statements, shall be audited annually by an independent auditor.

PART 13. FINAL CLAUSES

Article 119
Settlement of disputes

1. Any dispute concerning the judicial functions of the Court shall be settled by the decision of the Court.
2. Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

Article 120
Reservations

No reservations may be made to this Statute.

Article 121
Amendments

1. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
2. No sooner than three months from the date of notification, the Assembly of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Assembly may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
3. The adoption of an amendment at a meeting of the Assembly of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.
4. Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them.
5. Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.
6 If an amendment has been accepted by seven-eighths of States Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect, notwithstanding article 127, paragraph 1, but subject to article 127, paragraph 2, by giving notice no later than one year after the entry into force of such amendment.
7. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Assembly of States Parties or at a Review Conference.

Article 122
Amendments to provisions of an institutional nature

1. Amendments to provisions of this Statute which are of an exclusively institutional nature, namely, article 35, article 36, paragraphs 8 and 9, article 37, article 38, article 39, paragraphs 1 (first two sentences), 2 and 4, article 42, paragraphs 4 to 9, article 43, paragraphs 2 and 3, and articles 44, 46, 47 and 49, may be proposed at any time, notwithstanding article 121, paragraph 1, by any State Party. The text of any proposed amendment shall be submitted to the Secretary-General

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of the United Nations or such other person designated by the Assembly of States Parties who shall promptly circulate it to all States Parties and to others participating in the Assembly.
2. Amendments under this article on which consensus cannot be reached shall be adopted by the Assembly of States Parties or by a Review Conference, by a two-thirds majority of States Parties. Such amendments shall enter into force for all States Parties six months after their adoption by the Assembly or, as the case may be, by the Conference.

Article 123
Review of the Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The Conference shall be open to those participating in the Assembly of States Parties and on the same conditions.
2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.
3. The provisions of article 121, paragraphs 3 to 7, shall apply to the adoption and entry into force of any amendment to the Statute considered at a Review Conference.

Article 124
Transitional Provision

Notwithstanding article 12, paragraphs 1 and 2, a State, on becoming a party to this Statute, may declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory. A declaration under this article may be withdrawn at any time. The provisions of this article shall be reviewed at the Review Conference convened in accordance with article 123, paragraph 1.

Article 125
Signature, ratification, acceptance, approval or accession

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.
2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 126
Entry into force

1. This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 127
Withdrawal

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 128
Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Statute.

DONE at Rome, this 17th day of July 1998.

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