

## DRAFT CONVENTION ON THE CRIME OF GENOCIDE

Note by the Secretary-General

1. The General Assembly, at the second part of its first session on 11 December 1946, adopted resolution 96 (I) as follows:

"THE GENERAL ASSEMBLY

.....

REQUESTS the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly."

2. At its fifth session, on 6 August 1947, the Economic and Social Council adopted the following resolution:

"THE ECONOMIC AND SOCIAL COUNCIL,

"CONSIDERING the General Assembly resolution 96 (I) of 11 December 1946, and

SEP 3 1947

"HAVING REGARD to paragraph (b) of the Council's resolution 47 (IV) of 28 March 1947 which provides for submission to the fifth session of the Economic and Social Council of a draft convention on genocide 'after consultation with the General Assembly Committee on the Development and Codification of International Law and, if feasible, the Commission on Human Rights, and after reference to all Member Governments for comments', and

"TAKING NOTE of the fact that the General Assembly's Committee on the Development and Codification of International Law and the Commission on Human Rights have not considered the draft convention on the crime of genocide prepared by the Secretariat, and that the comments of the Member Governments on this draft convention have not been received in time for consideration at the fifth session of the Economic and Social Council,

"CALLS UPON Member Governments, in view of the urgency of the matter, to submit to the Secretary-General as soon as possible their comments on the draft convention prepared by the Secretariat and transmitted to them with the Secretary-General's letter of 7 July 1947,

"INSTRUCTS the Secretary-General to collate such comments,

"DECIDES to inform the General Assembly that it proposes to proceed

as rapidly as possible with the consideration of the question, subject to any further instructions of the General Assembly, and

"REQUESTS the Secretary-General, in the meanwhile, to transmit to the General Assembly the draft convention on the crime of genocide prepared by the Secretariat in accordance with paragraph (a) of the Council resolution of 28 March 1947, together with any comments from Member Governments received in time for transmittal to the General Assembly.

3. In compliance with the request expressed by the Economic and Social Council, the Secretary-General has the honour to transmit to the General Assembly the following text of the draft convention on the crime of genocide prepared by the Secretariat.\* The Secretary-General will later transmit such comments thereon that he may receive from Member Governments.

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\* The draft convention, together with explanatory notes prepared by the Secretariat has already been distributed to Member Governments as

... 1947

/DRAFT CONVENTION

DRAFT CONVENTION FOR THE PREVENTION AND PUNISHMENT OF GENOCIDE

Preamble

The High Contracting Parties proclaim that genocide, which is the intentional destruction of a group of human beings, is an outrage against the universal conscience, inflicts irreparable loss on humanity by depriving it of the cultural and other contributions of the group so destroyed, and is in violent contradiction with the spirit and aims of the United Nations.

1. They appeal to the feelings of solidarity of all members of the international community and call upon them to oppose this odious crime.
2. They proclaim that the acts of genocide defined by the present Convention are crimes against the law of nations, and that the fundamental exigencies of civilization, international order and peace require their prevention and punishment.
3. They pledge themselves to prevent and to repress such acts wherever they may occur.

Article I

General Definitions

- |                              |   |
|------------------------------|---|
| (Protected groups)           | I. The purpose of this Convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.   |
| (Acts qualified as genocide) | II. In this Convention, the word "genocide" means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development. |
- Such acts consist of:
1. Causing the death of members of a group or injuring their health or physical integrity by:
    - (a) Group massacres or individual executions; or
    - (b) Subjection to conditions of life which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are likely to result in the debilitation or death of the individuals; or
    - (c) Mutilations and biological experiments imposed for other than curative purposes; or
    - (d) Deprivation of all means of livelihood, by confiscation of property, looting, prohibition to work, denial of housing and of supplies

2. Restricting births by:
  - (a) Sterilization and/or compulsory abortion; or
  - (b) Segregation of the sexes; or
  - (c) Obstacles to marriage.
3. Destroying the specific characteristics of the group by:
  - (a) Forced transfer of children to another human group; or
  - (b) Forced and systematic exile of individuals representing the culture of a group; or
  - (c) Prohibition of the use of the national language even in private intercourse; or
  - (d) Systematic destruction of books printed in the national language or of religious works, or prohibition of new publications; or
  - (e) Systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersal of documents and objects of historical, artistic or religious value and of objects used in religious worship.

#### Article II

(Punishable  
offences)

#### I. The following are likewise deemed to be crimes of genocide:

1. Any attempt to commit genocide;
2. The following preparatory acts:
  - (a) Studies and research for the purpose of developing the technique of genocide;
  - (b) Setting up of installations, manufacturing, obtaining, possessing or supplying of articles or substances with the knowledge that they are intended for genocide;
  - (c) Issuing instructions or orders, and distributing tasks with a view to committing genocide.

#### II. The following shall likewise be punishable:

1. Wilful participation in acts of genocide of whatever description;
2. Direct public incitement to any act of genocide, whether the incitement be successful or not;
3. Conspiracy to commit acts of genocide.

Article III

(Punishment of a particular offence)

All forms of public propaganda tending by their systematic and hateful character to provoke genocide, or tending to make it appear as a necessary, legitimate or excuseable act shall be punished.

Article IV

(Persons liable)

Those committing genocide shall be punished, be they rulers, public officials or private individuals.

Article V

(Command of the law and superior orders)

Command of the law or superior orders shall not justify genocide.

Article VI

(Provisions concerning genocide in municipal criminal law)

The High Contracting Parties shall make provision in their municipal criminal law for acts of genocide as defined by Articles I, II and III above, and for their effective punishment.

Article VII

(Universal enforcement of municipal criminal law)

The High Contracting Parties pledge themselves to punish any offender under this Convention within any territory under their jurisdiction, irrespective of the nationality of the offender or of the place where the offence has been committed.

Article VIII

(Extradition)

The High Contracting Parties declare that genocide shall not be considered as a political crime and therefore shall be a cause for extradition.

The High Contracting Parties pledge themselves to grant extradition in cases of genocide.

Article IX

(Trial of genocide by an international court)

The High Contracting Parties pledge themselves to commit all persons guilty of genocide under this Convention for trial by an international court in the following cases:

1. When they are unwilling to try such offenders themselves under Article VII or to grant their extradition under Article VIII.
2. If the acts of genocide have been committed by individuals acting as organs of the State or with the support or toleration of the State.

Article X

(International court competent to try genocide)

Two drafts are submitted for this article (vide appendices):

(First draft)

The court of criminal jurisdiction under Article IX shall be the International Court having jurisdiction in all matters connected with international crimes.

(Second Draft)

An international court shall be set up to try crimes of genocide.

Article XI

(Disbanding of groups or organizations having participated in genocide)

The High Contracting Parties pledge themselves to disband any group or organization which has participated in any act of genocide mentioned in Articles I, II and III above.

Article XII

(Action by the United Nations to prevent or to stop genocide)

Irrespective of any provisions in the foregoing articles, should the crimes as defined in this Convention be committed in any part of the world, or should there be serious reasons for suspecting that such crimes have been committed, the High Contracting Parties may call upon the competent organs of the United Nations to take measures for the suppression or prevention of such crimes.

In such case the said Parties shall do everything in their power to give full effect to the intervention of the United Nations.

Article XIII

(Reparations to victims of genocide)

When genocide is committed in a country by the Government in power or by sections of the population, and if the Government fails to resist it successfully, the State shall grant to the survivors of the human group that is a victim of genocide redress of a nature and in amount to be determined by the United Nations.

Article XIV

(Settlement of disputes on the interpretation or application of the Convention)

Disputes relating to the interpretation or application of this Convention shall be submitted to the International Court of Justice.

Article XV

(Language - Date of the Convention)

The present Convention, of which the .....  
....., ..... and ..... texts are equally authentic,  
shall bear the date of .....

Article XVI

(First draft)

(What States may  
become Parties to  
the Convention.  
Ways to become  
Party to it)

1. The present Convention shall be open to accession on behalf of any Member of the United Nations or any non-member State to which an invitation has been addressed by the Economic and Social Council.
2. The instruments of accession shall be transmitted to the Secretary-General of the United Nations.

(Second draft)

1. The present Convention shall be open until .....1948 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified, and the instruments of ratification shall be transmitted to the Secretary-General of the United Nations.

2. After .....1948 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State that has received an invitation as aforesaid.

Instruments of accession shall be transmitted to the Secretary-General of the United Nations.

Article XVII

(No proposition is put forward for the moment.)

(Reservations)

Article XVIII

(Coming into force  
of the convention)

1. The present Convention shall come into force on the ninetieth day following the receipt by the Secretary-General of the United Nations of the accession (or..... ratifications and accessions) of not less than..... Contracting Parties.

2. Each accession (or each ratification or accession) received after the Convention has come into force shall become effective as from the ninetieth day following the date of receipt by the Secretary-General of the United Nations.

Article XIX

(First draft)

(Duration of the  
Convention -  
Termination)

1. The present Convention shall remain in effect for a period of five years dating from its entry into force.

have now denounced it at least six months before the expiration of the current period.

3. Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

(Second draft)

The present Convention may be denounced by a written notification addressed to the Secretary-General of the United Nations. Such notification shall take effect one year after the date of its receipt.

Article XX

(Abrogation of the Convention)

Should the number of Members of the United Nations and non-member States bound by this Convention become less than....as a result of denunciations, the Convention shall cease to have effect as from the date on which the last of these denunciations shall become operative.

Article XXI

(Revision of the Convention)

A request for the revision of the present Convention may be made at any time by any State which is a party to this Convention by means of a written notification addressed to the Secretary-General.

The Economic and Social Council shall decide upon the measures to be taken in respect of such a request.

Article XXII

(Notifications by the Secretary-General)

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-member States referred to in Article XVI of all accessions (or signatures, ratifications and accessions) received in accordance with Articles XVI and XVIII, of denunciations received in accordance with Article XIX, of the abrogation of the Convention effected as provided by Article XX and of requests for revision of the Convention made in accordance with Article XXI.

Article XXIII

(Deposit of the original of the Convention and transmission of copies to Governments)

1. A copy of the Convention signed by the President of the General Assembly and the Secretary-General of the United Nations shall be deposited in the Archives of the Secretariat of the United Nations.

...transmitted to all Members



Article XXIV

(Registration of  
the Convention)

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

ANNEXES CONCERNING ARTICLE X\*

ANNEX I

ESTABLISHMENT OF A PERMANENT INTERNATIONAL CRIMINAL  
COURT FOR THE PUNISHMENT OF ACTS OF GENOCIDE

Convention  
16 November 1937  
(Article 1  
amended)

Article 1

An International Criminal Court for the trial, as hereinafter provided, of persons accused of an offence dealt with in the Convention for the Prevention and Punishment of Genocide is hereby established.

Convention  
16 November 1937  
(Articles 2 and  
Article 25)

Article 2

1. In cases of acts of genocide committed by individuals acting as organs of the State or having been supported or tolerated by the State, each High Contracting Party and any other State having arrested such individuals on its territory may, if unwilling to extradite or punish the said individuals, request .....\* to commit them for trial to the Court.

2. The act whereby a State requests .....\* to commit an accused for trial to the Court shall contain a statement of the main charges and evidence in support thereof.

3. If the .....\*\* is of the opinion that the accused should be committed for trial to the Court, it shall designate the persons instructed to act for the prosecution.

4. The .....\*\* shall transmit to the Court all the dossiers containing the incriminating evidence. Upon such transmission the matter shall be deemed to be before the Court.

\* Some articles of Annexes I and II reproduce textually articles from the Convention of 16 November 1937 for the Creation of an International Criminal Court whilst others reproduce articles from the said Convention with amendments which are mostly purely of form.

In the margin, are given the numbers of the articles of the Convention of 16 November 1937 which were taken as models and the word "amended" has been added, when the article is not reproduced entirely, the new passages being underlined.

\*\* Request to be addressed to the Economic and Social Council or to the Security Council of the United Nations.

Convention  
16 November 1937  
(Article 3)

Article 3

The Court shall be a permanent body, but shall sit only when it is seized of proceedings for an offence within its jurisdiction.

Convention  
16 November 1937  
(Article 4  
amended)

Article 4

1. The seat of the Court shall be established at

.....

2. For any particular case, the President may take the opinion of the Court and the Court may decide to meet elsewhere subject to the consent of the State on the territory of which such meeting is to be held.

Convention  
16 November 1937  
(Article 5  
amended)

Article 5

The Court shall be composed of judges chosen from among jurists who are acknowledged authorities on criminal law.

Convention  
16 November 1937  
(Article 6  
amended)

Article 6

The Court shall consist of seven regular judges and seven deputy judges, each belonging to a different nationality, but so that the regular judges and deputy judges shall be nationals of the High Contracting Parties.

Convention  
16 November 1937  
(Article 7  
amended)

Article 7

1. Any Member of the United Nations and any non-Member State, in respect of which the Convention for the Prevention and Punishment of Genocide is in force, may nominate not more than two candidates for appointment as judges of the Court. A panel of all the candidates so nominated shall be drawn up for this purpose.

2. The International Court of Justice shall be requested to choose the regular and deputy judges from the persons so nominated.

Convention  
16 November 1937  
(Article 8)

Article 8

Every member of the Court shall, before taking up his duties, give a solemn undertaking in open Court that he will exercise his powers impartially and conscientiously.

Convention  
16 November 1937  
(Article 9)

Article 9

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the business of the Court.

Convention  
16 November 1937  
(Article 10)

Article 10

1. Judges shall hold office for seven years.

3. The order of retirement for the first period of seven years shall be determined by lot when the first election takes place.

4. Judges may be re-appointed.

5. Judges shall continue to discharge their duties until their places have been filled.

6. Nevertheless, judges, though replaced, shall finish any cases which they have begun.

Convention  
16 November 1937  
(Article 11  
amended)

Article 11

1. Any vacancy, whether occurring on the expiration of a judge's term of office or for any other reason, shall be filled as provided in Article 7.

2. In the event of the resignation of a member of the Court, the resignation shall take effect on notification being received by the Registrar.

3. If a seat on the Court becomes vacant more than one year before the date at which the new election to that seat would normally take place, the vacancy shall not be filled before that date.

Convention  
16 November 1937  
(Article 12)

Article 12

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfil the required conditions.

Convention  
16 November 1937  
(Article 13)

Article 13

A judge appointed in place of a judge whose period of appointment has not expired shall hold the appointment for the remainder of his predecessor's term.

Convention  
16 November 1937  
(Article 14  
amended)

Article 14

The Court shall elect its President and Vice-President from its members for a term of seven years. In the event the Presidency or Vice-Presidency becoming vacant, the Court shall hold fresh elections which may be conducted by correspondence.

Convention  
16 November 1937  
(Article 15)

Article 15

The Court shall establish regulations to govern its practice and procedure.

Convention  
16 November 1937  
(Article 17)

Article 16

The Court's archives shall be in the charge of the Registrar.

Convention  
16 November 1937  
(Article 18  
amended)

Article 17

The number of members who shall sit to constitute the Court shall be seven.

Convention  
16 November 1937  
(Article 19 (1))

Article 18

Members of the Court may not take part in trying any case in which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

Convention  
16 November 1937  
(Article 19 (2))

Article 19

If, for some special reason, a member of the Court considers that he should not sit to try a particular case, he shall so notify the President as soon as he has been informed that the Court is seized of that case.

Convention  
16 November 1937  
(Article 20  
amended)

Article 20

1. If the presence of seven regular judges is not secured, the necessary number shall be made up by calling upon the deputy judges in their order on the list.

2. The list shall be prepared by the Court and shall have regard, first, to priority of appointment and, secondly, to age.

Convention  
16 November 1937  
(Article 21  
amended)

Article 21

1. The substantive criminal law to be applied by the Court shall be that of the territory on which the offence was committed if the country concerned is a party to the Convention and, in other cases, the law of the country which applied to the Court under Article 2.

2. Any dispute as to what substantive criminal law is applicable shall be decided by the Court.

Convention  
16 November 1937  
(Article 22  
amended)

Article 22

If the court has to apply, in accordance with Article 21, the law of a State of which no sitting judge is a national, the Court may invite a jurist who is a national of the said State and an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Convention  
16 November 1937  
(Article 26 (2))

Article 23

Any person directly injured by the offence may, if authorized by the Court, and subject to any conditions which it may impose, constitute himself "partie civile" before the Court; such person shall not take part in the oral

Convention  
16 November 1937  
(Article 27)

Article 24

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

Convention  
16 November 1937  
(Article 28  
amended)

Article 25

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is withdrawn by .....\*

Convention  
16 November 1937  
(Article 29  
amended)

Article 26

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused or group of accused a counsel selected from advocates belonging to a Bar.

Convention  
16 November 1937  
(Article 30)

Article 27

The file of the case and the statement of the "partie civile" shall be communicated to the person who is before the Court for trial.

Convention  
16 November 1937  
(Article 31)

Article 28

1. The Court shall decide whether a person who has been committed to it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.

2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Convention  
16 November 1937  
(Article 32)

Article 29

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even on its own motion, hear other witnesses and experts. The same rules shall apply as regards all evidence.

Convention  
16 November 1937  
(Article 33)

Article 30

Any letters of request which the Court considers it

\* The Economic and Social Council or the Security Council of the United Nations

necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

Article 31

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and the representatives of .....\*

Article 32

The hearings before the Court shall be public.

Article 33

The Court shall sit in private to consider its judgment.

Article 34

The decisions of the Court shall be by a majority of the judges.

Article 35

Every judgment or order of the Court shall state the reasons therefore and be read at a public hearing by the President.

Article 36

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.

2. The Court may sentence the persons committed to it to pay damages.

3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons are situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences of the Court.

4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

Article 37

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with its consent by the Court. Such consent may not be withheld by the State which brought the matter before the

.....\* under Article 2.

2. The Court shall determine the way in which any

Convention  
16 November 1937  
(Article 34  
amended)

Convention  
16 November 1937  
(Article 35 (1))

Convention  
16 November 1937  
(Article 36)

Convention  
16 November 1937  
(Article 37)

Convention  
16 November 1937  
(Article 38)

Convention  
16 November 1937  
(Article 39)

Convention  
16 November 1937  
(Article 40  
amended)

Convention  
16 November 1937  
(Article 41  
amended)

finer shall be dealt with.

Article 38

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall, if its national law does not provide for the death penalty, be entitled to substitute therefor the most severe penalty provided by the said law which involves loss of liberty.

Article 39

The right of pardon shall be exercised by the State which has to enforce the penalty unless within a period of one month from the date on which the State concerned has informed it of its desire to exercise such right the .....\* shall have entered an objection.

Article 40

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.

2. The Court shall determine in its rules the cases in which an application for revision may be made.

3. The States mentioned in article 2, and the persons committed for trial by the court, shall have the right to ask for a revision.

Article 41

1. The judges shall while sitting receive allowances to be borne by the respective State of which each judge is a national, on the basis of a scale established by the High Contracting Parties.

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

\* The Economic and Social Council and the Security Council.



Convention  
 11 November 1937  
 (Article 45  
 amended)

Article 42

1. The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention for the Prevention and Punishment of Genocide and the general principles of law.

2. If a High Contracting Party, not being the Party which sent the case in question for trial to the .....\*, disputes the extent of the Court's jurisdiction in relation to the jurisdiction of its own national courts and does not see its way to appear in the proceedings in order that the question may be decided by the International Criminal Court, the question shall be treated as arising between such High Contracting Party and the High Contracting Party which sent the case for trial to the Court, and shall be settled as provided in article 14 of the Convention for the Prevention and Punishment of Genocide.

Article 43

Whenever the Court is unable to deal with a possible accumulation of actions it may establish additional sections. Such sections shall consist of seven judges. Each section shall be presided over by a regular judge of the Court elected by the regular and deputy judges of the Court in general assembly.

Lots shall be drawn to elect the other judges to the various sections.

If, owing to an accumulation of actions the number of regular or deputy judges is insufficient to produce a full complement of all the sections created, vacancies may be filled by lot by persons appearing on the panel referred to in article 7, paragraph 1.

In all cases however, and irrespective of the number of sections created, such sections may not be presided over except by a regular judge or, in the absence of a regular judge, by a deputy judge of the International Criminal Court.

\* The Economic and Social Council or the Security Council.

ANNEX II

ESTABLISHMENT OF AN AD HOC INTERNATIONAL CRIMINAL  
COURT FOR THE PUNISHMENT OF ACTS OF GENOCIDE

Article 1

1. Each State shall, within a period of one month from the date on which the Convention for the Prevention and Punishment of Genocide comes into force with reference to such State, designate two persons who are acknowledged authorities on criminal law to hold the office of judge in an International Criminal Court for the punishment of genocide if called upon.

2. No person may be designated who is not a national of one of the High Contracting Parties to the said Convention.

3. The names of the persons so designated shall be communicated to the President of the International Court of Justice who shall place them on the panel.

Article 2

1. In the case of acts of genocide committed by individuals acting as organs of the State or with the support or toleration of the State, each High Contracting Party and any other State which arrested such individuals on its territory may, if unwilling to extradite or punish the said individuals, request .....\* to commit them for trial to the Court.

2. The instrument whereby a State requests .....\* to commit an accused for trial to the Court shall contain a statement of the main charges and evidence in support thereof.

3. If the .....\* is of the opinion that such request should be complied with, it shall forthwith approach the International Court of Justice requesting it to select seven regular and seven deputy judges from the panel provided for in article 1.

4. The .....\*\* shall also designate the persons instructed to act for the prosecution.

Article 3

The .....\*\* shall at the same time decide where the Court is to sit. If such place shall be in the

\* Request to be addressed to the Economic and Social Council or to the Security Council of the United Nations.

territory other than that where the permanent headquarters of the United Nations is established or in territory where the seat of the International Court of Justice is established, the consent of the State to which such territory belongs shall be required.

Article 4

For the purposes of constituting the International Criminal Court, the President of the International Court of Justice shall forthwith summon the persons designated under article 1.

Article 5

The first meeting of the International Criminal Court shall be presided over either by the President or Vice-President of the International Court of Justice or by a judge of that Court designated for that purpose.

At such first meeting, which shall be public, the members of the International Criminal Court shall, before taking up their duties, give a solemn undertaking to exercise their powers impartially and conscientiously.

Article 6

The High Contracting Parties shall grant the members of the Court diplomatic privileges and immunities when engaged on the business of the Court.

Article 7

A member of the Court cannot be dismissed unless in the unanimous opinion of all the other members, including both regular and deputy judges, he has ceased to fulfill the required conditions.

Article 8

The Court shall elect its President and Vice-President from its members.

Article 9

The Court shall establish regulations to govern its practice and procedure.

Article 10

The Court's archives shall be in the charge of the Registrar.

Article 11

The number of members who shall sit to constitute the Court shall be seven.

Convention  
16 November 1937  
(Article 8  
amended)

Convention  
16 November 1937  
(Article 9)

Convention  
16 November 1937  
(Article 12)

Convention  
16 November 1937  
(Article 14  
amended)

Convention  
16 November 1937  
(Article 15)

Convention  
16 November 1937  
(Article 17)

Convention  
16 November 1937  
(Article 18  
amended)

Convention  
15 November 1937  
(Article 19 (1))

Article 12

Members of the Court may not take part in trying a case in which they have previously been engaged in any capacity whatsoever. In case of doubt, the Court shall decide.

Convention  
15 November 1937  
(Article 19 (2))

Article 13

If, for some special reason, a member of the Court considers that he should not sit to try a particular case he shall so notify the President as soon as he has been informed that the Court is seized of that case.

Convention  
15 November 1937  
(Article 20 (1) amended)

Article 14

If the presence of seven regular judges is not soon the necessary number shall be made up by calling upon the deputy judges in their order on the list.

Convention  
15 November 1937  
(Article 21 amended)

Article 15

1. The substantive criminal law to be applied by the Court shall be that of the territory on which the offence was committed if the country concerned is a party to the Convention and, in other cases, the law of the country which applied to the Court under article 2.

2. Any dispute as to what substantive criminal law applicable shall be decided by the Court.

Convention  
15 November 1937  
(Article 22 amended)

Article 16

If the Court has to apply, in accordance with article 15, the criminal law of a State of which no sitting judge is a national, the Court may invite a jurist who is a national of the said State and an acknowledged authority on such law to sit with it in a consultative capacity as a legal assessor.

Convention  
15 November 1937  
(Article 23 (2))

Article 17

Any person directly injured by the offence may, if authorized by the Court, and subject to any conditions which it may impose, constitute himself "partie civile" before the Court; such person shall not take part in the oral proceedings except when the Court is dealing with damages.

Convention  
15 November 1937  
(Article 27)

Article 18

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

Convention  
16 November 1937  
(Article 28  
amended)

Article 19

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is withdrawn by .....\*.

Convention  
16 November 1937  
(Article 29  
amended)

Article 20

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused or group of accused a counsel selected from advocates belonging to a Bar.

Convention  
16 November 1937  
(Article 30)

Article 21

The dossier of the case and the statement of the "partie civile" shall be communicated to the person who is before the Court for trial.

Convention  
16 November 1937  
(Article 31)

Article 22

1. The Court shall decide whether a person who has been committed to it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.

2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Convention  
16 November 1937  
(Article 32)

Article 23

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards all evidence.

Convention  
16 November 1937  
(Article 33)

Article 24

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

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\* The Economic and Social Council or the Security Council of the United

Convention  
16 November 1937  
(Article 34  
amended)

Article 25

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and the representatives of .....\*.

Convention  
16 November 1937  
(Article 35 (1))

Article 26

The hearings before the Court shall be public.

Convention  
16 November 1937  
(Article 36)

Article 27

The Court shall sit in private to consider its judgment.

Convention  
16 November 1937  
(Article 37)

Article 28

The decisions of the Court shall be by a majority of the judges.

Convention  
16 November 1937  
(Article 38)

Article 29

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Convention  
16 November 1937  
(Article 39)

Article 30

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.

2. The Court may sentence the persons committed to it to pay damages.

3. High Contracting Parties in whose territory objects to be restored, or property belonging to convicted persons are situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences of the Court.

4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

Convention  
16 November 1937  
(Article 40  
amended)

Article 31

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with its consent by the Court. Such consent may not be withheld by the State which brought the matter before the .....\* under article 2.

2. The Court shall determine the way in which any fines shall be dealt with.

Convention  
16 November 1937  
(Article 41  
amended)

Article 32

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall, if its national law does not provide for the death penalty, be entitled to substitute therefor the most severe penalty provided by the said law which involves loss of liberty.

Convention  
16 November 1937  
(Article 42  
amended)

Article 33

The right of pardon shall be exercised by the State which has to enforce the penalty unless within a period of one month from the date on which the State concerned has informed it of its desire to exercise such right the .....\* shall have entered an objection.

Convention  
16 November 1937  
(Article 43  
amended)

Article 34

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.

2. The Court shall determine in its rules the cases in which an application for revision may be made.

3. The States mentioned in article 2, and the persons committed for trial by the Court, shall have the right to ask for a revision.

Convention  
16 November 1937  
(Article 44  
amended)

Article 35

1. The judges shall, while sitting, receive allowances to be borne by the respective State of which each judge is a national, on the basis of a scale established by the High Contracting Parties.

2. There shall be created by contributions from the High Contracting Parties a common fund from which the costs of the proceedings and other expenses involved in the trial of cases, including any fees and expenses of counsel assigned to the accused by the Court, shall be defrayed, subject to recovery from the accused if he is convicted. The special allowance to the Registrar and the expenses of the Registry shall be met out of this fund.

Convention  
16 November 1937  
(Article 45  
amended)

Article 36

The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention for the Prevention and Punishment of Genocide and the general principles of law.