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of an International Criminal Court**

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COMMITTEE OF THE WHOLE
Working Group on Penalties

REPORT OF THE WORKING GROUP ON PENALTIES

I. INTRODUCTION

1. The Working Group on Penalties held four meetings to consider the articles contained in Part 7, Penalties, from 30 June to 3 July 1998. The Working Group herewith transmits to the Committee of the Whole the following articles of Part 7 for its consideration: article 75, paragraph 2; article 77, paragraphs 1 and 2; and article 79. The Working Group also notes the deletion of article 75, last two subparagraphs of paragraph 1 (a), subparagraph [(c)(i)], subparagraph [(d)]; and article 78.
2. The remaining articles will be transmitted at a later stage.

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II. TEXT OF DRAFT ARTICLES

Article 21 bis

Nulla poena sine lege

pending

Part 7. Penalties ¹

Article 75

Applicable penalties

Paragraph 1:

chapeau: pending

[subparagraph (a)]: pending

Last two subparagraphs of paragraph 1 (a): deleted

[subparagraph (b)]: deleted

[subparagraph (c)]:

[subparagraph (i)]: deleted

[subparagraph (ii)]: deleted

[subparagraph (d)]: deleted

[subparagraph (e)]: pending

New paragraph:

2. ² In addition to imprisonment, the Court may order:

(a) A fine under the criteria provided for by 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.

¹The Working Group informs the Drafting Committee that the term "forfeiture" is to be translated as follows throughout Part 7:

French: confiscation; Spanish: decomiso; and Arabic:

²The Working Group draws the attention of the Drafting Committee to the need to consider this article in conjunction with article 99, Enforcement of fines and forfeiture measures.

[Article 76

Penalties applicable to legal persons]

pending

Article 77

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.³

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.

Paragraph 3. pending

³It may be possible to foresee all of the relevant aggravating and mitigating circumstances at this stage. Many delegations felt that factors should be elaborated and developed in the Rules of Procedure and Evidence, while several other delegations expressed the view that a final decision on this approach would depend upon the mechanism agreed for adopting the Rules. Among the factors suggested by various delegations as having relevance were: the impact of the crime on the victims and their families; the extent of damage caused or the danger posed by the convicted person's conduct; the degree of participation of the convicted person in the commission of the crime; the circumstances falling short of exclusion of criminal responsibility such as substantially diminished mental capacity or, as appropriate, duress; the age of the convicted person; the social and economic condition of the convicted person; the motive for the commission of the crime; the subsequent conduct of the person who committed the crime; superior orders; the use of minors in the commission of the crime.

[Article 78
Applicable national legal standards]
deleted
Article 79 ⁴

Fines and assets collected

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 their families.
2. Money and other property collected through fines or forfeiture may 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.

⁴The Working Group draws the attention of the Drafting Committee to the need to ensure consistency in the use of terms in this article and article 73, Reparations to victims.