



Number 40 of 1998

INTERNATIONAL WAR CRIMES TRIBUNALS ACT, 1998

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FIRST SCHEDULE

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FOURTH SCHEDULE

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[No. 40.]

*International War Crimes
Tribunals Act, 1998.*

[1998.]

Acts Referred to

Criminal Justice Act, 1960

1960, No. 27

Criminal Justice Act, 1994

1994, No. 15

Criminal Law Act, 1976

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Proceeds of Crime Act, 1996

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INTERNATIONAL WAR CRIMES TRIBUNALS ACT, 1998

AN ACT TO ENABLE IRELAND TO FULFIL ITS OBLIGATIONS TO CO-OPERATE WITH INTERNATIONAL TRIBUNALS IN THE PERFORMANCE OF THEIR FUNCTIONS RELATING TO THE PROSECUTION AND PUNISHMENT OF INTERNATIONAL WAR CRIMES AND TO PROVIDE FOR RELATED MATTERS. [10th November, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary

1.—This Act may be cited as the International War Crimes Tri- Short title.
bunals Act, 1998.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

“certified”, in relation to a copy of a warrant of arrest issued by an international tribunal, means certified to be a true copy by an officer of that tribunal authorised by it to certify on its behalf;

“an international tribunal” means—

- (a) the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by Resolution 827 (1993) of the Security Council of the United Nations, the text of which is set out, for convenience of reference, in the *First Schedule*,
- (b) the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1 January, 1994 and 31 December, 1994, established by Resolution 955 (1994) of the Security Council of the United Nations, the text of which is set out, for convenience of reference, in the *Second Schedule*, or

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(c) any other tribunal or court that the Minister, by regulation under *section 37*, declares to be an international tribunal for the purposes of this Act,

and includes any organ of a tribunal referred to in *paragraph (a)* or *(b)* or of a tribunal or court referred to in *paragraph (c)* if the organ is mentioned in the statute of that tribunal or court;

“international tribunal crime” means a crime in respect of which an international tribunal has jurisdiction under its statute;

“military tribunal” means a court martial or other military tribunal established under the law of the State, whether held within the State or elsewhere;

“Minister” means the Minister for Justice, Equality and Law Reform;

“property” has the same meaning in this Act as in the Proceeds of Crime Act, 1996, and includes the proceeds of property;

“provisional arrest warrant” means a warrant issued under *section 11 (1)*;

“remand institution” means an institution (other than a prison) within the meaning of the Criminal Justice Act, 1960;

“surrender order” means an order made under *section 18 (1)* for the surrender of a person.

(2) In this Act—

(a) a reference to a section or Part is to a section or Part of this Act unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended,

(c) a reference to a Schedule is to a Schedule to this Act unless it is indicated that a reference to some other enactment is intended,

(d) a reference to an enactment is to that enactment as amended or adapted by or under any other enactment including this Act,

(e) a reference to the statute of an international tribunal is to the statute of the United Nations establishing that tribunal, and

(f) a reference to the rules of an international tribunal is to its rules of procedure and evidence.

(3) For convenience of reference, the texts of the statutes of the international tribunals referred to in *paragraphs (a)* and *(b)* of the definition of “international tribunal” are set out in the *Third* and *Fourth Schedules* respectively.

3.—This Act applies in relation to international tribunal crimes committed, or alleged to have been committed, before or after the commencement of this Act. Pt.I
Application.

PART II

Arrest and Surrender of Persons

4.—(1) Nothing in this Part shall be construed as requiring the High Court to be satisfied that there is sufficient evidence to warrant the trial of a person by an international tribunal. Construction of this
Part.

(2) For the purposes of this Part, no international tribunal crime may be regarded as a political offence or an offence connected with a political offence.

(3) No application for asylum in the State shall have the effect of preventing or postponing the surrender of a person under this Act.

5.—(1) An international tribunal may make a request to the Minister for the surrender of a person— Request for
surrender.

(a) who has been accused or convicted by that tribunal of an international tribunal crime, and

(b) in relation to whom that tribunal has issued a warrant of arrest for the purpose of bringing him or her before the tribunal or to a place where he or she is to undergo imprisonment under a sentence of the tribunal.

(2) The request shall be in writing and shall—

(a) include as accurate a description as possible of the person whose surrender is requested, together with any other information which will help to establish his or her identity,

(b) include a statement of each international tribunal crime in relation to which the request is made specifying, as accurately as possible—

(i) the time and place of commission,

(ii) the legal description of the crime, and

(iii) a reference to the relevant provisions of the statute of that tribunal, and

(c) be supported by the original or a certified copy of a warrant of arrest that has been issued by that tribunal and that indicates the purpose of the arrest.

(3) If the information furnished by the international tribunal is in the Minister's opinion insufficient, the Minister may—

(a) request that tribunal to furnish further information or documents as he or she thinks proper, and

(b) fix a time limit for the receipt of the information or documents.

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(4) A request or supporting document which otherwise complies with this section is sufficient for the purposes of this Part even though the Minister received the request or supporting document before the commencement of this Act.

Conflicting
surrender requests.

6.—If two or more requests for the surrender of the same person are received concurrently from international tribunals, the Minister shall decide which of the requests is to be proceeded with under this Part, having regard to all the circumstances and especially—

- (a) the relative seriousness of the international tribunal crimes, and
- (b) the respective dates of the requests.

Request for
extradition or
rendition of same
person.

7.—A request by an international tribunal for the surrender of a person shall have primacy over—

- (a) a request under Part II of the Extradition Acts, 1965 to 1994 for his or her extradition for an offence, and
- (b) the bringing of any proceedings under Part III of the Extradition Acts, 1965 to 1994, for his or her arrest or delivery up for an offence,

whether or not the conduct constituting the offence constitutes an international tribunal crime.

Certification of
surrender request.

8.—On receiving a request made in accordance with *section 5* for the surrender of a person, the Minister shall, subject to the provisions of this Part, certify that the request has been made.

Issue of arrest
warrant.

9.—On production to the High Court of a certificate under *section 8* stating that a request for the surrender of a person has been made, the Court shall issue a warrant for the person's arrest, unless the certificate is produced in respect of a person arrested under a provisional arrest warrant.

Request for
provisional arrest.

10.—(1) An international tribunal may make a request for the provisional arrest, on grounds of urgency, of a person who—

- (a) is accused by it of having committed an international tribunal crime,
- (b) has been convicted by it of such a crime, or
- (c) is suspected by it of having committed such a crime.

(2) The request shall be in writing and shall include—

- (a) as accurate a description as possible of the person who is the subject of the request, together with any other information which will help to establish his or her identity, and

(b) a statement of each international tribunal crime in relation to which the request is made, specifying, as accurately as possible, the time and place of the commission of the crime. Pt.II S.10

(3) Where the Minister subsequently receives from an international tribunal that has made a request under this section the original or a certified copy of a warrant of arrest indicating—

(a) that the person who is the subject of the request under this section has been accused or convicted by that tribunal of an international tribunal crime, and

(b) the purpose of the arrest,

the request under this section shall be treated for the purposes of this Part as though it were a request for that person's surrender.

(4) *Subsection (3)* shall apply even though the person was accused or convicted of the international tribunal crime after the making of the request under this section.

(5) A request treated by virtue of *subsection (3)* as a request for the surrender of a person shall not be certified under *section 8* until the Minister receives from the international tribunal—

(a) the information referred to in *section 5(2)(b)(ii)* and *(iii)*, and

(b) any information or documents requested under *section 5(3)* in relation to that person.

11.—(1) The High Court may, without a certificate of the Minister under *section 8*, issue a warrant for the provisional arrest of any person on the sworn information of a member of the Garda Síochána, not below the rank of inspector, that he or she has reason to believe that— Provisional arrest warrant.

(a) an international tribunal has made a request for the person's provisional arrest on the grounds of urgency,

(b) the person—

(i) is accused by that tribunal of having committed an international tribunal crime,

(ii) has been convicted by that tribunal of such a crime, or

(iii) is suspected by that tribunal of having committed such a crime,

and

(c) the arrest is for the purpose of detaining the person pending the Minister receiving from that tribunal a warrant for the person's arrest.

(2) On issuing a provisional arrest warrant, the High Court shall forthwith inform the Minister of its issue.

(3) Where it appears to the Minister that a warrant of arrest will not be received from the international tribunal in respect of the person named in the provisional arrest warrant or that proceedings will not be commenced against that person by that tribunal, the Minister may, by order—

(a) cancel the provisional arrest warrant, and

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(b) if the warrant has been executed and the person arrested under it is in custody, require that he or she be released.

(4) A provisional arrest warrant may be issued under *subsection (1)* in respect of a person despite the previous issue or refusal of a warrant for his or her arrest.

Execution of
warrants.

12.—(1) Any member of the Garda Síochána may execute in any part of the State a warrant issued under *section 9* or *11(1)* even though the warrant is not in the member's possession at the time.

(2) A member of the Garda Síochána who executes a warrant issued under *section 9* or *11(1)* shall—

(a) at the time of the arrest, or

(b) if the warrant is not then in the member's possession, within 24 hours after the arrest,

show the warrant to the person arrested and give him or her a copy.

(3) A person arrested under a warrant issued under *section 9* or *11(1)* shall be brought as soon as may be before the High Court, unless, in the case of a warrant issued under *section 11(1)*, the warrant is cancelled under *section 11(3)*.

Court proceedings
following
provisional arrest.

13.—(1) Where a person arrested under a provisional arrest warrant is brought before the High Court, it shall—

(a) if a certificate under *section 8* in respect of the person is produced to the Court, proceed under *section 14* as if that person had been arrested under a warrant issued under *section 9*, and

(b) if that certificate is not produced to the Court, remand that person pending the production of the certificate or the release of that person in accordance with *subsection (2)* of this section or with an order under *section 11(3)(b)*.

(2) Where a certificate under *section 8* is not produced to the High Court within the period of 18 days after the date of the arrest, the person arrested under the provisional arrest warrant shall, if in custody, be released.

Committal or
release of arrested
person.

14.—(1) Where a person who has been arrested under a warrant issued under *section 9* or who has been remanded under *section 13(1)(b)* is before the High Court and it is satisfied that—

(a) that person has been accused or convicted of an international tribunal crime,

(b) a request for the surrender of that person has been duly made, and

(c) a warrant that complies with *section 5(2)(c)* or *10(3)* and relates to that person has been produced,

the High Court shall, subject to *subsection (2)*, make an order committing that person to a prison (or, if he or she is not more than

21 years of age, to a remand institution) there to await the order of Pt.II S.14 the Minister for his or her surrender.

(2) If satisfied that the surrender of a person is prohibited under *section 26*, the High Court shall not make a committal order in respect of that person.

(3) On making a committal order under *subsection (1)*, the High Court shall—

(a) inform the person to whom the order relates that he or she will not be surrendered, except with his or her consent, until the expiry of 15 days after the committal date,

(b) inform that person also of the provisions of Article 40.4.2° of the Constitution (which relates to the making of a complaint to the High Court by or on behalf of a person alleging that he or she is unlawfully detained), and

(c) cause a certificate of the committal to be sent forthwith to the Minister.

(4) Where the person referred to in *subsection (1)* is not committed under that subsection, the Court shall order that he or she be released.

(5) No appeal shall lie against an order of the High Court under this section other than an appeal on a point of law to the Supreme Court.

(6) Sections 10 and 11 of the Criminal Justice Act, 1960, shall apply to a person committed to a remand institution under this section.

15.—The High Court may, in relation to a person brought before it under this Act, exercise all of its powers of adjournment and remand, including, but not limited to, the powers the Court has in relation to a person sent forward to it for trial. Powers of adjournment and remand.

16.—(1) In any proceedings under this Act, a document purporting— Evidence and presumptions.

(a) to be a request by an international tribunal for the surrender of a person or for the provisional arrest of a person, or

(b) to have been furnished by an international tribunal in support of either request,

shall, without further proof, be received in evidence if it purports to be signed by an officer of that tribunal authorised by its statute or rules to sign that document.

(2) In any proceedings under this Act, a document purporting—

(a) to be a copy of a warrant of arrest issued by an international tribunal, and

(b) to have been certified to be a true copy by an officer of that tribunal authorised by it to certify on its behalf,

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shall, without further proof, be received in evidence and shall, until the contrary is proved, be deemed to be a true copy of that warrant.

(3) In any proceedings under this Act, it shall be presumed, unless the contrary is proved, that a request for the surrender of a person has been duly made and duly received where—

(a) the person has been arrested under a warrant issued under *section 9*, or

(b) the person has been arrested under a provisional arrest warrant and a certificate under *section 8* has been produced to the High Court stating that a request for the surrender of the person has been duly made.

(4) In any proceedings under this Act, it shall be presumed, unless the contrary is proved, that where a member of the Garda Síochána not below the rank of inspector has sworn an information described in *section 11(1)* in respect of a person, a request for the person's provisional arrest has been duly made and duly received.

(5) In any proceedings under this Act, it shall be presumed, unless the contrary is proved, that where a certificate of the Minister has been produced to the High Court stating that an international tribunal has satisfied the Minister as to the matters specified in *subparagraphs (i) and (ii) of section 26(2)(b)* in relation to a person who is named in the certificate and on whom final judgment was passed in another state, that the Minister has been so satisfied.

Removal to hospital or other place.

17.—(1) The Minister may, by order, cause a person committed under *section 14* to be removed to a hospital or other place if the Minister thinks it necessary so to do in the interests of that person's health.

(2) A person removed under this section to a hospital or other place shall be in lawful custody while detained there.

Surrender order.

18.—(1) Subject to *subsection (4)* and *section 19*, the Minister may, by order, direct that a person who has been committed under *section 14* and who has not been released—

(a) by a decision of the High Court under Article 40.4.2° of the Constitution or following an appeal from such a decision,

(b) as a consequence of an appeal on a point of law to the Supreme Court, or

(c) as a consequence of an order under *section 21* or *22*,

be surrendered to the custody of an authorised person.

(2) A person in respect of whom a surrender order is made shall be surrendered in accordance with the terms of the order and any authorised person may receive, hold in custody, and convey out of the State the person so surrendered.

(3) A person who escapes from any custody in which he or she has been placed under a surrender order shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

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(4) The Minister shall not make a surrender order in respect of a person who is subject to a sentence of a court in the State where—

- (a) the international tribunal that requested the surrender has been required by the Minister to give undertakings relating to that person's return to the State for the purpose of serving that sentence, and
- (b) the Minister is not satisfied that adequate undertakings have been given.

(5) In this section "authorised person" means a person who, in the Minister's opinion, has been duly authorised by one of the following to receive the person referred to in *subsection (1)*:

- (a) the international tribunal that requested the surrender of the person referred to in *subsection (1)*;
- (b) a state in which the person referred to in *subsection (1)* is to undergo imprisonment for an international tribunal crime.

19.—(1) A person committed under *section 14* shall not, except with his or her consent given before the High Court, be surrendered to an international tribunal or to the state where the person is to undergo imprisonment until—

Time lapse before surrender.

- (a) the expiry of 15 days from the committal date, or
- (b) the conclusion of any appeal proceedings brought by or on behalf of that person,

whichever is later.

(2) Where the Minister, under *section 20*, postpones making a surrender order in respect of a person committed under *section 14*, that person shall not be surrendered until the expiry of—

- (a) the period provided for in *subsection (1)*, or
- (b) the period of postponement under *section 20*,

whichever is later.

(3) In this section "appeal proceedings" means proceedings relating to—

- (a) a complaint under Article 40.4.2° of the Constitution (including proceedings on appeal from a decision about that complaint), or
- (b) an appeal on a point of law to the Supreme Court.

20.—(1) The Minister may postpone for a period the making of a surrender order in respect of a person so that other criminal proceedings against him or her may proceed in the State in so far as they relate to conduct that would not constitute an international tribunal crime.

Postponement of surrender order.

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(2) In deciding whether to postpone for a period the making of a surrender order, the Minister shall have regard to the seriousness of the offence to which the other criminal proceedings relate.

(3) In this section, “other criminal proceedings” does not include proceedings under Part II or III of the Extradition Acts, 1965 to 1994.

Release if not
conveyed out of
State.

21.—(1) An application may be made to the High Court for the release of a person who is awaiting surrender under this Act and who is not surrendered and conveyed out of the State within one month after—

- (a) the date of that person’s committal under *section 14*, or
- (b) the conclusion of any appeal proceedings (as defined in *section 19(3)*) brought by or on behalf of that person,

whichever is later.

(2) If satisfied that the application has been made by or on behalf of a person referred to in *subsection (1)* and that the Minister has been given reasonable notice of the application, the High Court shall, subject to *subsection (3)* and *section 20*, order that he or she be released from custody under this Act.

(3) If satisfied as to the matters specified in *subsection (2)* and satisfied that—

- (a) the person’s state of health or other circumstances beyond the control of the State or the international tribunal have prevented him or her from being conveyed out of the State, and
- (b) it is likely that within a reasonable time those circumstances will no longer prevent that person’s conveyance out of the State,

the High Court may fix a period within which that person may be surrendered and he or she shall be released from custody under this Act if not conveyed out of the State within that period.

Release by order of
the Minister.

22.—(1) On being satisfied by information received after the committal of a person under *section 14* that his or her surrender is prohibited by this Act, the Minister shall order that the person be released from custody.

(2) The Minister may order that a person committed under *section 14* be released from custody if the Minister is of the opinion that a request for the person’s surrender is not being proceeded with.

Release does not
affect subsequent
request.

23.—The release of a person under *section 11(3)(b)*, *13(2)*, *21* or *22* shall not prejudice the person’s re-arrest and surrender if a request for his or her surrender is afterwards made.

If custodial
sentence imposed
under Irish law is
not completed
before release.

24.—Where under this Act the High Court or the Minister orders the release of a person who is subject to a sentence of a court in the State for an offence against the law of the State—

- (a) that person shall continue to be liable to complete the term of imprisonment to which he or she has been sentenced by the court in the State, and

- (b) if that sentence has not expired, that person shall be transferred in custody to the place where he or she is liable to be imprisoned under that sentence. Pt.II S.24

25.—(1) Where a person who is subject to both a surrender order and a sentence of a court in the State is delivered up into the custody of—

If custodial sentence imposed under Irish law is not completed before surrender.

- (a) an international tribunal, or
(b) a state where he or she is to undergo imprisonment under a sentence of an international tribunal,

that person shall continue to be liable to complete any term of imprisonment to which he or she has been sentenced by the court in the State.

(2) Where a surrender order is made in respect of a person who is subject to a sentence of a court in the State, the surrender order may include—

- (a) a provision authorising the return of that person to the State—
- (i) in accordance with arrangements made by the Minister with the international tribunal that requested the person's surrender, or
- (ii) if the person is being surrendered to undergo imprisonment in a state under a sentence of an international tribunal, in accordance with arrangements made by the Minister with that state,
- and
- (b) a provision for the person's transfer in custody to the place where he or she is liable to be imprisoned or detained under the sentence of the court in the State.

26.—(1) Subject to *subsection (2)*, a person shall not be surrendered under this Act where—

If judgment has already been passed for the same conduct.

- (a) final judgment has been passed in the State or in another state on that person in respect of an offence, and
- (b) the conduct constituting the offence also constitutes the international tribunal crime for which his or her surrender is requested.

(2) The surrender of a person is not prohibited by this section where—

- (a) the final judgment was passed in another state by a court or a tribunal other than a military tribunal established under the law of the State, and
- (b) the international tribunal requesting the surrender satisfies the Minister—
- (i) that the proceedings in the other state were not impartial or independent or were designed to shield the person from international criminal responsibility, or
- (ii) that the case was not diligently prosecuted.

PART III

Proceedings in Irish Courts or Tribunals

International
tribunal's
jurisdiction to be
considered.

27.—The Director of Public Prosecutions shall take into account the jurisdiction of any international tribunal before deciding to commence proceedings under the State's extra-territorial jurisdiction in respect of conduct constituting an international tribunal crime.

Discontinuance of
proceedings at
international
tribunal's request.

28.—(1) The Minister shall transmit to the High Court any request made to him or her by an international tribunal, in accordance with its statute and rules, that any court in the State or any military tribunal defer to the international tribunal's competence by discontinuing proceedings commenced in that court or military tribunal.

(2) After receiving the request, the High Court may order the discontinuance of the proceedings if it is satisfied—

- (a) that the request relates to proceedings under the Extradition Acts, 1965 to 1994,
- (b) that the request relates to proceedings commenced in a court in the State under the State's extra-territorial jurisdiction in connection with an indictable offence of which the accused has not yet been convicted and that the conduct constituting the indictable offence also constitutes an international tribunal crime, or
- (c) that the request relates to proceedings commenced in a military tribunal under the State's extra-territorial jurisdiction in connection with an offence of which the accused has not yet been convicted and that the conduct constituting the offence also constitutes an international tribunal crime.

(3) Where it orders that proceedings be discontinued, the High Court may make such other orders as are appropriate to give effect to the request, including the revocation of any warrant of arrest issued in connection with the proceedings.

(4) For the purpose of considering a request received under this section, the High Court may order the adjournment of the proceedings for such period or periods, and on such conditions, as it thinks fit.

(5) The discontinuance of any proceedings under this section shall not of itself prevent—

- (a) the commencement of fresh proceedings in a court in the State, or a military tribunal, for the same offence, or
- (b) the re-commencement of proceedings under the Extradition Acts, 1965 to 1994, for the same offence.

PART IV

Other Forms of Assistance

Orders to make
material available.

29.—For the purpose of assisting an international tribunal in an investigation into whether a person has committed an international tribunal crime or has benefited from such a crime, section 63 of the Criminal Justice Act, 1994, shall have effect as if references in that section to drug trafficking included references to conduct constituting an international tribunal crime.

30.—(1) In response to a request from an international tribunal, Pt.IV
the Minister may direct that an application to the District Court for Search warrants.
a search warrant be made by a member of the Garda Síochána not
below the rank of superintendent in connection with an international
tribunal crime under investigation by that tribunal.

(2) A judge of the District Court who, on application in accordance with a direction under *subsection (1)*, is satisfied that there are reasonable grounds for believing that there is in any place evidence relating to the commission of the international tribunal crime shall have the same power to issue a search warrant authorising entry, search and seizure in relation to that place as the judge would have in the case of an offence committed in the State and in respect of which similar powers are exercisable by the judge.

(3) The restriction in section 9(2) of the Criminal Law Act, 1976, on the seizure or retention of any document that was, or may have been, made for the purposes of obtaining, giving, or communicating legal advice shall apply to a member of the Garda Síochána who conducts a search under this section.

(4) A member of the Garda Síochána who seizes any evidence by virtue of this section shall provide to the Minister, for transmission to the international tribunal concerned—

(a) the seized evidence, and

(b) any certificate, affidavit or other verifying document that is necessary for the purposes of complying with the request and that may be specified in the direction given under *subsection (1)*.

(5) If the seized evidence consists of a document, the original or a copy of the document shall be transmitted to the international tribunal that made the request.

(6) If the seized evidence consists of any article other than a document, the article itself or a description, photograph or other representation of it shall be transmitted to the international tribunal as may be necessary to comply with its request.

(7) In this section “evidence” includes documents and other articles.

31.—(1) The Minister shall transmit to the Commissioner of the Garda Síochána any order received by the Minister from an international tribunal— Orders respecting property.

(a) for provisional measures for the preservation and protection of property, or

(b) for the restitution of property unlawfully taken by a person convicted of an international tribunal crime.

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

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- (a) an international tribunal order referred to in *subsection (1)* (a) has been received by the Minister, and
- (b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to *subsection (5)*, make an interim order containing any terms that, under section 2(1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in *subsection (2)* of this section, sections 2(3) to (6), 3(1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

- (a) a reference in any of those sections to the applicant shall be construed as referring to the member of the Garda Síochána who has applied to the court for an interim order under this section or for an interlocutory order under section 3 of that Act as applied by this section;
- (b) a reference in any of those sections to proceeds of crime shall be construed as referring to property that is the subject of the international tribunal order;
- (c) a reference in any of those sections to a disposal order shall be construed as referring to a restitution order under this section;
- (d) a reference in any of those sections to the Minister shall be construed as referring to the Minister for Justice, Equality and Law Reform;
- (e) a reference in section 2(5) or 3(5) of that Act to subsections (3) and (4) of the section in which the reference occurs shall be construed as including a reference to *subsection (6)* of this section;
- (f) sections 2(3)(b), 3(1)(b) and 3(1)(II) of that Act shall not apply;
- (g) section 8(1) of that Act shall be construed as if it did not contain the words after subparagraph (ii) and before “then”.

(4) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

- (a) an international tribunal order referred to in *subsection (1)(b)* has been received by the Minister,

- (b) at the time of making of the order under this subsection the international tribunal order is in force and is not subject to appeal, Pt.IV S.31
- (c) the international tribunal order has not been complied with in whole or in part, and
- (d) notice of the application for an order under this subsection has been given to the person in respect of whom that application has been made and to any other person the Court may direct,

the Court may, subject to *subsection (5)*, make an order (“a restitution order”) that the property be transferred to the person specified in the international tribunal order.

(5) Where it is shown that on the date on which an international tribunal order referred to in *subsection (1)(a)* or *(b)* was received by the Minister it had been partly complied with, the High Court shall make an order under this section only in so far as the international tribunal order had not been complied with by that date.

(6) Where, after the date on which a court order is made under this section or under the Proceeds of Crime Act, 1996, as applied by this Act, it is shown that the international tribunal order to which the court order relates had been partly or wholly complied with by that date, the High Court may vary or discharge the court order accordingly with effect from that date.

(7) On receiving from the Minister an order of an international tribunal suspending the enforcement of an international tribunal order for the restitution of property, the High Court shall, by order, suspend, for the same period and under the same conditions that are stated in the suspending order of that tribunal, the execution of any court order made under *subsection (4)* in relation to the international tribunal order.

(8) While a suspending order made under *subsection (7)* remains in force, no steps shall be taken to enforce the order suspended by the High Court.

(9) On receiving a request from an international tribunal to determine the ownership of property, the Minister may make an application to the High Court for a decision as to the ownership of the property.

32.—(1) The Government may, by order, make provision for the privileges, immunities, exemptions and facilities to be accorded by the State to— Status, privileges and immunities of international tribunal.

- (a) the judges, prosecutors and registrars of an international tribunal and their staff, and
- (b) any persons, including witnesses, and counsel, who make statements or submit documents or other evidence to or before an international tribunal.

(2) *Section 37(3)* shall apply to orders made under this section as it applies to regulations made under *section 37(1)(c)* to *(g)*.

(3) The Government may, by order, revoke or amend an order made under this section, including an order under this subsection.

Pt.IV
Transit through the
State.

33.—(1) For the purposes of assisting an international tribunal in the performance of its functions, the Minister may—

- (a) grant approval for the transit through the State of a person who is being transported in custody from one state to another for the purposes of that tribunal,
- (b) attach to the approval any conditions he or she considers necessary, and
- (c) arrange for the Garda Síochána to supervise the person's transit through the State.

(2) A person whose transit through the State is approved under *subsection (1)* shall be deemed to be in the custody of any member of the Garda Síochána accompanying him or her pursuant to an arrangement made under *subsection (1)(c)*.

Act not to limit
provision of other
assistance.

34.—Nothing in this Act shall be construed as preventing the provision of assistance to an international tribunal otherwise than under this Act.

PART V

Miscellaneous

Offence.

35.—(1) A person who interferes with or intimidates or attempts to interfere with or intimidate an international tribunal witness shall be guilty of an offence.

(2) A person guilty of an offence under *subsection (1)* shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 5 years or both.

(3) In this section “international tribunal witness” includes a person—

- (a) who is summoned to appear before an international tribunal and who, at the time of the act constituting the offence under this section, is within the State, or
- (b) from whom evidence is to be taken in the State or by whom documents or other articles are to be produced in the State for transmission to an international tribunal.

Expenses.

36.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

37.—(1) The Minister may make regulations for any or all of the following purposes: Pt.V
Power to make regulations.

- (a) declaring any tribunal or court established by the United Nations for the prosecution of persons responsible for serious violations of international humanitarian law committed outside the State to be an international tribunal for the purposes of this Act;
- (b) adapting or modifying any provision of this Act to resolve any difficulty that arises in applying that provision to a tribunal or court declared under this section to be an international tribunal;
- (c) providing for assistance to an international tribunal in response to a request for the taking of evidence or the production of documents or other articles;
- (d) providing, for the purposes of their admission in evidence in any proceedings under *Part IV*, for proof of orders, certificates and other documents of an international tribunal and for proof of translations of those documents;
- (e) providing for the retention, preservation and protection of documents or other articles seized under *section 30* and for their return to the person from whom they were seized or for their disposal;
- (f) declaring that specified provisions of the Criminal Justice Act, 1994, shall apply for the purposes of enabling the State to co-operate with an international tribunal and providing for any modifications to those provisions that the Minister considers necessary for that purpose;
- (g) providing for any other matter considered necessary or expedient for giving full effect to this Act.

(2) Where it is proposed to make regulations under *paragraph (a)* or *(b)* of *subsection (1)*, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by both Houses.

(3) Where regulations are made under any of *paragraphs (c)* to *(g)* of *subsection (1)*—

- (a) they shall be laid before each House of the Oireachtas as soon as may be after they are made, and
- (b) if a resolution annulling them is passed by either House within the next 21 days on which that House has sat after the regulations are laid before it, they shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

38.—Section 56 of the Criminal Justice Act, 1994, is hereby repealed. Repeal.

FIRST SCHEDULE

Resolution 827 (1993)

Adopted by the Security Council at its 3217th meeting, on 25 May 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add. 1) pursuant to paragraph 2 of the resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Reaffirming in this regard its decision in resolution 808 (1993) that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274),

Acting under Chapter VII of the Charter of the United Nations, Sch.1

1. Approves the report of the Secretary-General;
2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;
3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;
4. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;
5. Urges States and intergovernmental and non-governmental organisations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;
6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;
7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;
8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;
9. Decides to remain actively seized of the matter.

[1998.]

*International War Crimes
Tribunals Act, 1998.*

[No. 40.]

Acting under Chapter VII of the Charter of the United Nations, Sch.2

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. Considers that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions; and decides that an office will be established and proceedings will be conducted in Rwanda, where feasible and appropriate, subject to the conclusion of similar appropriate arrangements;

7. Decides to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary;

8. Decides to remain actively seized of the matter.

THIRD SCHEDULE

Statute of the Former Yugoslavia Tribunal

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2

Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; Sch.3
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. 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;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

Article 5

Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;

Sch.3

- (f) torture;
- (g) rape;
- (h) persecution on political, racial and religious grounds;
- (i) other inhumane acts.

Article 6

Personal jurisdiction

The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 7

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Article 8

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

Article 9

Concurrent jurisdiction

1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal. Sch.3

Article 10

Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:

- (a) the act for which he or she was tried was characterized as an ordinary crime; or
- (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 11

Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor, and
- (c) A Registry, servicing both the Chambers and the Prosecutor.

Article 12

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

Article 13

Qualifications and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eleven judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

3. In the event of a vacancy in the Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 14

Officers and member of the Chambers

1. The judges of the International Tribunal shall elect a President.

2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.

3. After consultation with the judges of the International Tribunal, Sch.3 the President shall assign the judges to the Appeals Chamber and to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

4. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of the Trial Chamber as a whole.

Article 15

Rules of procedure and evidence

The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

Article 16

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 17

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 18

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 19

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal, be taken into custody, immediately informed of the charges against him and transferred to the International Tribunal.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides Sch.3
to close the proceedings in accordance with its rules of procedure
and evidence.

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.
2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 24

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 25

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:
 - (a) an error on a question of law invalidating the decision; or
 - (b) an error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 26

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

Article 27

Enforcement of sentences

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such

imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal. Sch.3

Article 28

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

Article 29

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the International Tribunal.

Article 30

The status, privileges and immunities of the International Tribunal

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under Articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

[No. 40.]

*International War Crimes
Tribunals Act, 1998.*

[1998.]

Sch.3

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

Article 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

Article 33

Working languages

The working languages of the International Tribunal shall be English and French.

Article 34

Annual report

The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly.

FOURTH SCHEDULE

Statute of the Rwanda Tribunal

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. 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;
- (e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

Article 4

*Violations of Article 3 common to the Geneva Conventions and of
Additional Protocol II*

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

- (a) The act for which he or she was tried was characterized as an ordinary crime; or
- (b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor; and
- (c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda. Sch.4

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

Sch.4

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four- year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary- Sch.4
General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) An error on a question of law invalidating the decision; or
- (b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

Sch.4

The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31

Working languages

The working languages of the International Tribunal shall be English and French.

Article 32

Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.