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WORKING PAPER ON ARTICLE 73

Reparations to victims

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

Where appropriate the Court may order that the award for reparations be made through the trust fund provided for in article 79.

1/ Such a provision refers to the possibility for appropriate reparations to be granted not only to victims but also to others such as the victims' families and successors (in French ayant-droit). For the purposes of interpretation of the terms "victims" and "reparations", definitions are contained in the text of article 44, paragraph 4 of the Statute, article 68, paragraph 1, and its accompanying footnote, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34 of 29 November 1985, annex) and the examples in paragraphs 12 to 15 of the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law (E/CN.4/Sub.2/1996/17).

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3. Before making an order under the present article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under the present article, the Court may, after a person is convicted of a crime under this Statute, determine whether, in order to give effect to an order it may make under this article, it is necessary to seek measures under article 90, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 99 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

* * *

In article 81, add the following new paragraph:

"81.3 A legal representative of the victims, the convicted person or a bona fide owner of property adversely affected by an order under article 73 may appeal against the order for reparations. To that end, specific provision shall be made in the Rules of Procedure and Evidence.
