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on the Establishment of an
International Criminal Court**

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COMMITTEE OF THE WHOLE
Working Group on Penalties

REPORT OF THE WORKING GROUP ON PENALTIES

Addendum

I. INTRODUCTION

1. The Working Group on Penalties held one additional meeting, on 9 July 1998, to consider the remaining articles contained in Part 7, Penalties. The Working Group herewith transmits to the Committee of the Whole the following articles of Part 7 for its consideration: article 75, paragraph 1; and article 77, paragraph 3.
2. The remaining articles will be transmitted at a later stage.

GE.98-71799 (E)

ROM.98-2679

II. TEXT OF DRAFT ARTICLES

Part 7. Penalties

Article 75

Applicable penalties

1. ¹ The Court may impose on a person convicted of a crime under article [5] of this Statute one of the following penalties, subject to article 100:

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. ²

¹/ The Working Group notes that the adoption of this paragraph is without prejudice to the structure of this article and without prejudice to the issue of the inclusion or the non-inclusion of the death penalty.

²/ Some delegations expressed concerns about an explicit reference to life imprisonment.

Note

To meet the concerns of a number of delegations regarding the severity of long sentences of imprisonment, it would be necessary to provide for a mandatory mechanism in Part 10, article 100, by which the prisoner's sentence would be re-examined by the Court after a certain period of time. In this way, the Court should also ensure the uniform treatment of prisoners regardless of the State where they served their sentence.

However, a number of other delegations linked their consideration of this proposal to a requirement for lengthy periods of imprisonment before such a review could take place, as well as strict criteria which would govern the Court's determination of the question. Among such criteria several delegations emphasized that the behaviour of the prisoner, including in particular early and continuing willingness to cooperate with the Court in investigations and prosecutions ought to be the principal or only ground upon which the Court would base its determination. Yet other delegations argued that the Court should be able to take other grounds into consideration for such a determination. Such grounds could include voluntarily assisting the Court in the enforcement of its judgements in other cases, and in particular providing information as to the location of assets which may be used to the benefit of victims or their families. Clearly, any grounds for such a determination would have to be strictly defined.

With regard to the periods of imprisonment to be served before a review may take place, it is suggested that they be set at not less than two thirds of the term of imprisonment. In case of life imprisonment, the period to be served before a review may take place would be not less than 25 years.

Article 100 should also provide for subsequent mandatory reviews following the initial one. In view of the technical complexity of such rules, it is suggested that subsequent mandatory reviews take place according to modalities specified in the Rules of Procedure and Evidence.

Article 77

Determination of the sentence

...

3. When a person has been convicted of more than one crime, the Court shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years' imprisonment or a sentence of life imprisonment in conformity with article 75, paragraph 1 (b),³ which may only be applied where justified by the circumstances of the crimes.

^{3/} The Working Group draws the attention of the Drafting Committee to the future need to finalize the paragraph numbers of article 75.