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Proposal submitted by Spain on the Rules of Procedure and Evidence relating to part 7 of the Rome Statute of the International Criminal Court (Penalties)

Article 78 of the Statute

Rule ____. **Determination of the sentence. Rules for the individualization of the sentence.**

1. In determining the sentence, the Court shall take into account the following rules in order to evaluate the gravity of the crime and the individual circumstances of the convicted person.
2. The following shall be considered as mitigating circumstances:
 - (a) The circumstances mentioned in articles 31 and 33 of the Statute, even if all the necessary requirements for excluding responsibility in the various cases are not met;
 - (b) A mistake of fact or mistake of law as specified in article 32 of the Statute, even if, bearing in mind the circumstances of the crime and the individual circumstances of the perpetrator, they have not entirely negated the mental element required by the crime;
 - (c) The fact that the perpetrator was motivated by such powerful causes or stimuli that they resulted in rage, obsession or an impassioned state of a similar nature;
 - (d) The fact that the perpetrator confessed the crime to the competent organs of the Court before knowing that he or she was under investigation;
 - (e) The fact that the accused person meets any of the criteria established in article 110, paragraph 4 (a) and (b), of the Statute;
 - (f) Any other circumstance of similar significance to those mentioned above.

3. The Court shall impose a reduced sentence compared with the one which would apply in the case of actual occurrence of a crime, full criminal participation or knowledge of the material elements of crime, as specified in article 30, paragraph 3, of the Statute, in the following cases:

(a) Ordering, soliciting, inciting, instigating or attempting the commission of a crime within the jurisdiction of the Court that has not in fact occurred;

(b) Complicity, concealment, collaboration or contribution not necessary to the commission or attempted commission of a crime within the jurisdiction of the Court;

(c) When the perpetrator, owing to the circumstances at the time, should have known that forces were committing or about to commit crimes within the jurisdiction of the Court, in the case of responsibility of commanders envisaged in article 28, paragraph 1 (a), of the Statute.

4. The following shall be considered as aggravating circumstances:

(a) Commission of the crime using in its commission means, methods or ways directly or especially designed to ensure its completion, without any possibility of the victim defending himself or herself against the perpetrator;

(b) Commission of the crime through abuse of power or by taking advantage of the circumstances of location, time or assistance from other persons which weaken the victim's defence or facilitate impunity;

(c) Commission of the crime for money, reward or promise thereof;

(d) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3, of the Statute;

(e) Deliberately and inhumanly increasing the pain of the victim, who suffers unnecessarily in the commission of the crime;

(f) Taking advantage of the public character or official capacity of the perpetrator;

(g) Repetition. There is repetition when the perpetrator of a crime has been previously sentenced by any national or international tribunal for one of the crimes mentioned in article 5 of the Statute.

5. The circumstances mentioned in articles 6, 7 and 8 of the Statute in the description of crimes within the jurisdiction of the Court and circumstances so inherent in the crime that without them there would be no crime shall not be considered as mitigating or aggravating circumstances in determining sentence.

6. Even if there are no mitigating or aggravating circumstances or if there are both, the Court shall individualize the penalty, imposing the duration which it considers appropriate. In evaluating the gravity of the crime and the individual circumstances of the convicted person, the Court shall give special attention to the personality, functions and background of the perpetrator, the nature of his or her motives, the gravity and importance of the criminal conduct itself and of its consequences, the number of victims and nature of the injury caused, balancing mitigating and aggravating circumstances if both types of circumstance exist in the same case.

7. Life imprisonment may be imposed only when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances and the absence of mitigating circumstances.

Article 77, paragraph 2 (a), of the Statute

Rule ____. **Criteria for the imposition of a fine.**

1. The fine which may be imposed by the Court on a person found guilty of one of the crimes referred to in article 5 of the Statute shall consist of a financial penalty calculated according to a system of daily fines.
2. The minimum duration shall be 30 days and the maximum duration five years. The Court shall decide the total amount in proportion to the injury caused, the value of the object of the crime or the benefit derived by the perpetrator.
3. The amount of the daily payment, which may not exceed a maximum of ____, shall also be determined by the Court in the light of the financial situation of the convicted person, as evidenced by his or her assets, income, debts and family responsibilities and other individual circumstances.
4. If the convicted person does not pay the fine imposed, either voluntarily or through the application of article 109 of the Statute, he or she shall incur secondary personal liability consisting of one day of deprivation of liberty for each of the unpaid daily amounts, to be served in the manner established by the Statute for the enforcement of penalties involving deprivation of liberty.
5. Fulfilment of the secondary personal liability shall extinguish the obligation to pay the fine.
