

30 November 1999

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**Preparatory Commission for the International
Criminal Court**

**Working Group on Rules of Procedure and Evidence
concerning Part VII of the Statute**

New York

16-26 February 1999

26 July-13 August 1999

29 November-17 December 1999

**Proposal submitted by Brazil and Portugal concerning
Part VII of the Rome Statute of the International Criminal
Court, on penalties**

Determination of the sentence

1. In determining the sentence, the Court shall, within the limits permitted by the Statute, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person, including:

- (a) The extent and severity of the damage or injury caused by the crime;
- (b) The impact of the crime on the victims and/or their families;
- (c) The nature of the unlawful behaviour, the means employed to execute the crime, the motives which induced him or her to commit the crime, as well as his or her capacity and that of the victim;
- (d) The degree of intervention and the intensity of the *dolus* of the convicted person in the perpetration of the crime;
- (e) The circumstances of time, mode and place of conduct;
- (f) The age, education, social and economic condition of the person.

2. The Court shall consider as special aggravating circumstances the following cases:

- (a) The perpetration of the crime under circumstances which are revealing of a particularly condemnable behaviour or of the perversity of the convicted person, including where:

- (i) The victim is particularly defenceless on account of age, impairment, sickness or pregnancy;
 - (ii) The convicted person acts with cruelty, in order to increase the suffering of the victim;
 - (iii) The convicted person acts cold-bloodedly, pondering over the means to be employed;
 - (iv) The convicted person acts under a feeling of avidity or pleasure to cause suffering, or for excitement or satisfaction of sexual impulses;
 - (v) The convicted person is a public servant and acts under serious abuse of authority;
- (b) The perpetration of the crime following pronouncement of the convicted person for a crime under the Statute of the Court, either by an international or by a domestic court.
3. The Court shall consider as special mitigating circumstances the following cases:
- (a) The existence of a mental disease or defect or a state of involuntary intoxication which affects, without destroying, the convicted person's capacity to appreciate the unlawfulness or nature of his or her conduct or capacity to control his or her conduct to conform to the requirements of the law, at the time of that person's conduct;
 - (b) The reasonable belief of the convicted person that there is a threat of death or serious bodily harm or serious damage against him or her or another person and he or she acts reasonably to avoid the threat;
 - (c) A conduct which demonstrates sincere repentance on the part of the convicted person, namely through reparation, as possible, of the damage caused by the crime;
 - (d) The mere attempt of crime, the complicity (accessory contribution to the perpetration of the crime) and the perpetration of the crime by omission by commanders and other superiors;
 - (e) The incitement to commit genocide.
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