

8 December 1999

Original: English

Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedures and Evidence
concerning Part VII of the Statute
New York
16-26 February 1999
26 July-13 August 1999
29 November-17 December 1999

**Discussion paper submitted by the Coordinator concerning
Part VII of the Rome Statute of the International Criminal
Court, on penalties**

Addendum

Rules relating to article 78

Article 78

Rule 7.1

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

- (a) As mitigating circumstances:
 - (i) The circumstances falling short from constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;
 - (ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;
 - (iii) Any circumstances of a nature similar to those mentioned above.
 - (b) As aggravating circumstances:
 - (i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;
 - (ii) Abuse of official capacity;
 - (iii) Commission of the crime through abuse of power or where the victim is particularly defenceless;
 - (iv) Where the crime was committed with particular cruelty or there were multiple victims;
 - (v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3 of the Statute;
 - (vi) Any circumstances of a nature similar to those mentioned above.
3. Life imprisonment may be imposed 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.
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