

รายการอ้างอิง

ภาษาไทย

กนกวรรณ ภิบาสชนม์. อาชญากรรมสงคราม : ปัญหา และลู่ทางในการดำเนินคดีและการลงโทษอาชญากรรมสงคราม. วิทยานิพนธ์ปริญญามหาบัณฑิต ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2538.

กรมสนธิสัญญาและกฎหมาย, กระทรวงการต่างประเทศ. เอกสารประกอบการประชุมเรื่อง “Thailand’s Position on the Ratification of The Rome Statute of the International Criminal Court”. 2545.

คณะกรรมการกฤษฎีกา. กฎหมายมนุษยธรรมระหว่างประเทศ. กรุงเทพมหานคร : วิทยุชน, ม.ป.ป.

จันทิมา ลิมปานนท์. ปัญหากฎหมายและแนวทางเยียวยาเกี่ยวกับการฆ่าล้างเผ่าพันธุ์. วิทยานิพนธ์ปริญญามหาบัณฑิต ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2540.

จาตุรนต์ ธีระวัฒน์, เอกสารประกอบการอภิปรายของกลุ่มความสัมพันธ์ระหว่างประเทศ สำหรับการประชุมนิติศาสตร์แห่งชาติ ประจำปี 2543 วันที่ 14-15 กันยายน 2543.

จุมพต สายสุนทร. กฎหมายระหว่างประเทศ. กรุงเทพมหานคร : โรงพิมพ์เดือนตุลา, 2540.

ทัศนีย์ จรรยาชุกกุล. เขตอำนาจรัฐทางอาญาของรัฐผู้ให้สัตยาตอภาคยานุวัติ. วิทยานิพนธ์ปริญญามหาบัณฑิต คณะนิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2542.

บวร โทสีแก้ว. ศาลเขมรแดง. ไทยรัฐ (13 สิงหาคม 2544) : 2.

ประสิทธิ์ เอกบุตร. กฎหมายระหว่างประเทศ เล่ม 1 สนธิสัญญา. พิมพ์ครั้งที่ 2.

กรุงเทพมหานคร : นิติธรรม, 2538.

ประสพสุข บุญเดช, การส่งผู้ร้ายข้ามแดน (Extradition). บทบัญญัติ 48 (ธันวาคม 2535) :

127-128.

พงษ์ธร บุญอารีย์. กฎหมายระหว่างประเทศในส่วนที่เกี่ยวกับคดีอาญา. กรุงเทพมหานคร :

วิญญูชน, 2540.

พรชัย ด้านวิวัฒน์. การส่งผู้ร้ายข้ามแดนโดยวิธีการอย่างย่อ บทบัญญัติ 53 (ธันวาคม 2540) :

222-229.

พรชัย ด้านวิวัฒน์. กฎหมายอาญาระหว่างประเทศ. กรุงเทพมหานคร : วิญญูชน, 2544.

มหาวิทยาลัยสุโขทัยธรรมมาธิราช. เอกสารประกอบการสอนชุดวิชากฎหมายระหว่างประเทศ

หน่วย 1-6. พิมพ์ครั้งที่ 8. นนทบุรี : มหาวิทยาลัยสุโขทัยธรรมมาธิราช, 2533.

มหาวิทยาลัยสุโขทัยธรรมมาธิราช. เอกสารประกอบการสอนชุดวิชากฎหมายระหว่างประเทศ

หน่วย 7-12. พิมพ์ครั้งที่ 8. นนทบุรี : มหาวิทยาลัยสุโขทัยธรรมมาธิราช, 2533.

สุเทพ อัดถากร. กฎหมายระหว่างประเทศกับการเมืองระหว่างประเทศ เหตุการณ์ พฤติกรรม

และเอกสาร ภาควิชาสงคราม กรณีพิพาท ความเป็นกลาง. กรุงเทพมหานคร : ไทย

วัฒนาพานิช, 2516.

สุมานิต มั่นสุข. กฎหมายอาญาระหว่างประเทศ. กรุงเทพมหานคร : คณะนิติศาสตร์ จุฬาลง

กรณ์มหาวิทยาลัย. (เอกสารอัดสำเนา)

ภาษาต่างประเทศ

African Legal Aid. Preliminary Draft of the Cairo Guiding Principles on Universal Jurisdiction in Respect of the Gross Human Rights Offenses : An African Perspective. Online Document of African Legal Aid. Available from : <http://www.afla.unimaas.nl/en/act/univjurisd/preliminaryprinciples.htm> (June 2000).

African Rights. Obstruction of Justice : The Nuns of Sovu in Belgium 2000. Online Press Release of African Rights, 2000. Available from : <http://unlnondo.org/AfricanRights/html/homepages.html> (December 2000).

Amnesty International. Amnesty urges Investigation of Ariel Sharon. Online Press Release of Amnesty International, 2001 (AI Index : MDE 15/089/01). Available from : <http://www.amnesty.org> (October 2001).

Amnesty International. Latin America : Crime Without Punishment : Impunity in Latin America. Online Report of Amnesty International, 1996 (AI Index : AMR 01/08/96). Available from : <http://www.amnesty.org> (June 2000).

Amnesty International. The Criminal Court Fact Sheet 1. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/02/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 2. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/03/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 3. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/04/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 4. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/05/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 5. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/06/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 6. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/07/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 7. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/08/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 8. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/17/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 9. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/09/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. The Criminal Court Fact Sheet 10. Online Press Release of Amnesty International, 2000 (AI Index : IOR 40/10/00). Available from : <http://www.amnesty.org> (June 2001).

Amnesty International. Mexico/ Argentina/ Spain : Extradition decision raises hopes in the struggle against impunity. Online Press Release of Amnesty International, 5 February 2001 (AI Index : AMR 41/006/2001). Available from : <http://www.amnesty.org> (October 2001).

Amnesty International. Universal Jurisdiction : Questions and Answers. Online Report of Amnesty International, December 2001 (AI Index : IOR 53/020/2001). Available from : <http://www.amnesty.org> (April 2002)

Amnesty International. The Universal Jurisdiction : 14 Principles on the Effective Exercise of Universal Jurisdiction. Online Report of Amnesty International, 1999 (AI Index : IOR 53/01/99). Available from : <http://www.amnesty.org> (June 1999).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Eleven. Online Report of Amnesty International, 2001 (AI Index : IOR 53/014/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Eight. Online Report of Amnesty International, 2001 (AI Index : IOR 53/011/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Fifteen. Online Report of Amnesty International, 2001 (AI Index : IOR 53/018/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Five. Online Report of Amnesty International, 2001 (AI Index : IOR 53/008/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Four Part A. Online Report of Amnesty International, 2001 (AI Index : IOR 53/006/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Four Part B. Online Report of Amnesty International, 2001 (AI Index : IOR 53/007/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Fourteen. Online Report of Amnesty International, 2001 (AI Index : IOR 53/017/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Introduction. Online Report of Amnesty International, 2001 (AI Index : IOR 53/002/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Nine. Online Report of Amnesty International, 2001 (AI Index : IOR 53/011/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter One. Online Report of Amnesty International, 2001 (AI Index : IOR 53/003/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Seven. Online Report of Amnesty International, 2001 (AI Index : IOR 53/010/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Six. Online Report of Amnesty International, 2001 (AI Index : IOR 53/009/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Ten. Online Report of Amnesty International, 2001 (AI Index : IOR 53/012/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Thirteen. Online Report of Amnesty International, 2001 (AI Index : IOR 53/016/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Three. Online Report of Amnesty International, 2001 (AI Index : 53/005/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Twelve. Online Report of Amnesty International, 2001 (AI Index : IOR 53/015/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Two. Online Report of Amnesty International, 2001 (AI Index : IOR 53/004/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Amnesty International. United Kingdom : The Pinochet Case – Universal Jurisdiction and Absence of Immunity for Crimes Against Humanity. Online Report of Amnesty International, 1999 (AI Index : EUR 45/01/98). Available from: <http://www.amnesty.org> (February 1999).

Arnell, P. International Criminal Law and Universal Jurisdiction. International Legal Perspectives 11 (1999) : 53-63.

Barboza, J. International Criminal Law. Académie de Droit International Recueil Des Cours 278 (1999) : 9-200.

Basic Principle For an Independent and Effective International Criminal Court (ICC) ICC Briefing Series, May 1998. Available from : <http://www.lchr.org/lchr/icc/paplist.htm> (October 1999).

Bassiouni, M. C. A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal. Dordrecht : Martinus Nijhoff, 1987.

Bassiouni, M. C. Crimes Against Humanity in International Criminal Law. Dordrecht : Martinus Nijhoff, 1992.

- Bassiouni, M. C. International Crimes : Digest/ Index of International Instruments 1815-1985 Vol. I. New York : Oceana, 1986.
- Bassiouni, M. C. International Crimes : Jus Cogens and Bligatio Erga Omnes. Law and Contemporary Problems 59 (1996) : 193-220.
- Bassiouni, M. C. Introduction : The Future of International Criminal Justice. Pace International Law Review 11 (1999) : 309-318.
- Bassiouni, M. C. The Penal Charecteristics of Conventional International Criminal Law. Case Western Reserve Journal of International Law 15 (1983) : 27-37.
- Bassiouni, M. C. and Wise, E. M. Aut Dedere Aut Judicare : The Duty to Extradite or Prosecute in International Law. Dordrecht : Martinus Nijhoff, 1995.
- Bedi, S. D. Extradition in International Law and Practice. Rotterdam : Bronder-Offset, 1966, pp.40-48, 53-60, อ้างถึงใน พรชัย ด้านวิวัฒน์, กฎหมายอาญาระหว่างประเทศ กรุงเทพมหานคร : วิญญูชน, 2544, หน้า 65-66.
- Beres, L. R. Justice and Realpolitik : International Law and the Prevention of Genocide. American Journal of Jurisprudence 33 (1988) : 123-159, อ้างถึงใน จันทิมา ลิมปานนท์. ปัญหากฎหมายและแนวทางเยียวยาเกี่ยวกับการฆ่าล้างเผ่าพันธุ์ วิทยานิพนธ์ปริญญาามหาบัณฑิต ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2540.
- Black, R. Analysis : The Lockerbie Diaster. Edinbursh Law Review 3 (1999) : 85-95.
- Boed, R. The Effect of a Domestic Amnesty on the Ability of Foreign States to Prosecute Alleged Perpetrators of Serious Human Rights Violations. Cornell International Law Journal 33 (2000) : 297-329.

- Bolton, J. R. Universal Jurisdiction Too Easily Sweeps Political Difference Into Legal Arena. Legal Time (11 January 1999) : 21.
- Boyle, J. K. The International Obligation to Prosecute Human Rights Violations : Spain's Jurisdiction over Argentine Dirty War Participants. Hastings International and Comparative Law Review 22 (1998) : 188-208.
- Brody, R. The Prosecution of Hissène Habré - An "African Pinochet". New England Law Review 35 (2001) : 321-335.
- Broomhall, B. Towards the Development of an Effective System of Universal Jurisdiction for Crimes Under International Law. New England Law Review 35 (2001) : 399-420.
- Brown, B. S. The Evolving Concept of Universal Jurisdiction. New England Law Review 35 (2001) : 383-397.
- Brownlie, I. Principles of Public International Law. 3rd ed. Oxford : Academic Press, 1979.
- Baxter, R. R. The Municipal and International Law Basis of Jurisdiction over War Crimes M. Cherif Bassiouni and Ved P. Nanda (eds.), A Treatise on International Criminal Law Vol II : Jurisdiction and Punishment, pp. 65-96. Illinois : Charles C. Thomas, 1973.
- Baxter, R. R. Multilateral Treaties as Evidence of Customary International Law. British Yearbook of International Law 66 (1968) : 286, 299, cited in Enache-Brown, C. and Fried, A. Universal crime, Jurisdiction and Duty : The Obligation of Aut Dedere Aut Judicare in International Law. McGill Law Journal 43 (October 1998) : 630.

- Byers, M. Essay : The Law and Politics of the Pinochet Case. Duke Journal of Comparative and International Law 10 (2000) : 415-441
- Byers, M. Custom, Power, and the Power of Rules : Customary International Law from an Interdisciplinary Prospective. Michigan Journal of International Law 17 (1995) : 118, cited in Enache-Brown, C. and Fried, A. Universal crime, Jurisdiction and Duty : The Obligation of Aut Dedere Aut Judicare in International Law. McGill Law Journal 43 (October 1998) : 628.
- Carey, R. The Pinochet Principle. The Nation (21 February 2000)
- Casonguay, G. We Couldn't Stop the Massacre Two Rwandan Nuns Tell Court. Toronto Star (5 May 2001) : A26.
- Cassel, D. Empower US Court to Hear Crimes Within the Jurisdiction of The International Criminal Court. New England Law Review 35 (2001) : 421-445.
- Cassel, D. The Rome Treaty for an International Criminal Court : A Flawed But Essential First Step. Online Journal of Brown Journal of World Affairs, 1999. Available from : <http://www.igc.org/icc/html/cassel199904.html>. (August 2001)
- Cassel, D. Why We Need the International Criminal Court. The Christian Century (12 May 1999) : 532-536.
- Cassese, A. Violence and Law in the Modern Age. Cambridge : Polity Press, 1988.
- Charney, J. I. Editorial Comments : International Criminal Law and the Role of Domestic Court. American Journal of International Law 95 (January 2001) : 120-124.

- Chemiller-Gendreau, M. An International Criminal Court to End Impunity : Human Rights are Universal. Translated by Barbara Wilson. La monde diplomatique, January 1999. Available from : <http://www.monde-diplomatique.fr/en/1999/01/08rights> (May 2001).
- Clark, R. S. The Development of International Criminal Law. "Just Peace? Peace Making and Peace Building for the Millennium Conference". Massey University, Auckland New Zealand, 24-28 April 2000.
- Coalition for the International Criminal Court. Questions and Answers on the International Criminal Court. Online Document of Coalition for the International Criminal Court, February 2002. Available from : www.iccnw.org (April 2002).
- Coalition for the International Criminal Court. What's Next for the International Criminal Court?. Online Document of Coalition for the International Criminal Court, April 2002. Available from : www.iccnw.org (April 2002).
- Cotler, I. International Decision : Regina v. Finta. [1994] 1 S.C.R. 701. Supreme Court of Canada, March 24, 1994. American Journal of International Law 90 (1996) : 460-473.
- Cowles, W. B. Universal Jurisdiction over War Crimes. California Law Review 33 (1945) : 177-218.
- Cryer, R. A "Special Court" For Sierra Leone?. International and Comparative Law Quarterly 50 (April 2001) : 435-466.
- Damrosch, L. F. Enforcing International Law Through Non-Forcible Measure. Académie de Droit International Recueil Des Cours 269 (1997) : 9-250.

- Danilenko, G. M. Law Making in the International Community. Dordrecht : Martinus Nijhoff, 1993, pp.66-67, cited in Enache-Brown, C. and Fried, A. Universal crime, Jurisdiction and Duty : The Obligation of Aut Dedere Aut Judicare in International Law. McGill Law Journal 43 (October 1998) : 629.
- Dautricourt, J. Y. The International Criminal Court : The Concept of International Criminal Jurisdiction-Definition and Limitation of the Subject. In M. Cherif Bassiouni and Ved P. Nanda (eds.), A Treatise on International Criminal Law Vol I : Crimes and Cooperation, pp. 5-64. Illinois : Charles C. Thomas, 1973.
- Department of the Army Pamphlet. International Law Vol. II. Washington D. C. : Headquarters, Department of Army, 1962, อ้างถึงใน กนกวรรณ ภิบาลชนม์. อาชญากรรมสงคราม : ปัญหา และลู่ทางในการดำเนินคดีและการลงโทษอาชญากรรมสงคราม. วิทยานิพนธ์ปริญญาโทบัณฑิต ภาคศึกษานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2538, หน้า 45-46, 66.
- Derechos Human Right. The Criminal Procedure Against Chilean and Argentinean Repressors in Spain. Online Report of Derechos Human Rights, 1998. Available from : <http://www.derechos.net/marga.papers/spain.html> (July 2001).
- Destexhe, A. Rwanda and Genocide in The Twentieth Century n.p., 1995, p. 45, cited in Fabian, K. L. Note and Comment : Proof and Consequences : Analysis of the Tadic & Akayesu Trials. DePaul Law Review 49 (2000) : 989
- Dubner, B. The Law of Sea Piracy, (n.p., 1980), p. 45, cited in Randall, K. C. Universal Jurisdiction Under International Law. Texas Law Review 66 (March 1988) : 794-795.
- Enache-Brown, C. and Fried, A. Universal crime, Jurisdiction and Duty : The Obligation of Aut Dedere Aut Judicare in International Law. McGill Law Journal 43 (October 1998) : 614-633.

- Exercise of ICC Jurisdiction : The Case for Universal Jurisdiction. ICC Briefing Series, May 1998. Available from : <http://www.lchr.org/lchr/icc/paplist.htm> (October 1999).
- Fabian, K. L. Note and Comment : Proof and Consequences : Analysis of the Tadic & Akayesu Trials. DePaul Law Review 49 (2000) : 981-1039.
- Feller, S. Z. Jurisdiction over Offences with A Foreign Element. in M. Cherif Bassiouni and Ved P. Nanda (eds.), A Treatise on International Criminal Law Vol II : Jurisdiction and Punishment, pp. 5-64. Illinois : Charles C. Thomas, 1973.
- Gaubatz, K. T. The Eichmann Case. Online Casebook of Stanford University. Available from : <http://www.stanford.edu/class/ps142k/casebook/eichmann.htm> (25 January 2000).
- Glasgow, K. A. The Extradition of a Head of State. New England International and Comparative Law Annual 6 (2000) : 159-166.
- Gray, C. D. Is There an International Law of Remedies?. British Yearbook of International Law (1985) : 25-47.
- Gray, C. D. Judicial Remedies in International Law. Oxford : Clarendon Press, 1990.
- Green, L. C. International Law Through the Case. 3rd ed. London : Stevens & Son, 1970.
- Greenstock, J. International Human Rights and Standards. Fordham International Law Journal 23 (December 1999) : 398-403.

- Grotius, H. De Jure Belli ac Pactis Book 2 (n.p., 1624), Chapter XX, cited in Bassiouni, M. C. Crimes Against Humanity in International Criminal Law. Dordrecht : Martinus Nijhoff, 1992.
- Harhoff, F. Denmark : The First Sentence. Bosnet Report – Seeking Justice : Update on Several Legal Proceeding (28 January 1996), Available from : www.bosnet.org/archive/bosnet.w3archive/9601/msg00133.htm (January 2001).
- Harris, D. J. Cases and Materials on International Law. 4th ed. London : Sweet & Maxwell, 1991.
- Harvard Research, Jurisdiction in Respect to Crime. American Journal of International Law 29 (1935) : 439, cited in Gerhard O. W. Mueller and Edward M. Wise eds., International Criminal Law, pp. 41-75. London : Sweet & Maxwell, 1965, pp. 41-47.
- Heath, JR., J. W. Note : Journey over “Stranger Ground” : From Demjanjuk to the International Criminal Court Regime . Georgetown Immigration Law Journal 13 (1999) : 383-407.
- Hender, S. and Tittlemore, B. D. Seven Candidates for Prosecution : Accountability for the Crimes of Khmer Rouge. (War Crimes Research Office, Washington College of Law, American University, 2001).
- Henkin, et.al. International Law, Cases and Materials. Minnesota : West Publishing, 1980, อ้างถึงใน จุมพต สายสุนทร. กฎหมายระหว่างประเทศ. กรุงเทพมหานคร : โรงพิมพ์เด็อนตุลา, 2540.
- Hochkammer, K. A. The Yugoslav War Crimes Tribunal : The Compatibility of Peace Politics and International Law. Vanderbilt Journal of Transnational Law 28 (1995) : 120-130.

- Horowitz, J. Comment: Regina v. Bartle and The Commissioner of the Metropolis and Other Ex Parte Pinochet : Universal Jurisdiction and Sovereign Immunity for Jus Cogens Violations. Fordham International Law Journal 23 (December 1999) : 489-527.
- Human Rights Watch. Chile : Why Tyrants Tremble : The Pinochet Case. Online Report of Human Rights Watch. Available from : <http://www.hrw.org/wr2k/issued-10htm> (June 2001).
- Human Rights Watch. The Pinochet Precedent : How Victim Can Pursue Human Rights Criminals Abroad. Online Document of Human Rights Watch, 2000. Available from : <http://www/hrw.org/campaigns/chile-98/brochfln.htm> (8 July 2000).
- Human Rights Watch. UN Asks Senegal to Hold ex – Chad Dictator. Online Press Release of Human Right Watch, April 2001, Available from : <http://www.hrw.org>, August 2001.
- Huyer, G., Spencer, M. and Grave, V. The Danish Criminal Code : English Version. Copenhagen : DJOF Publishing, 1999.
- Ingelse, C. Lesson to be Learned from the Case of Pinichet in Netherlands. National Adjudication of International Crime, 9-11 May 1997 Noordvijkerhout, The Netherlands. Available from : <http://www.xs4all.nl/~inglese/pinoeng.htm> (May 2000).
- International Commission of Red Cross. Implementation of International Humanitarian Law by Denmark. Online Journal of International Law Review of Red Cross 32 (11 September 1997). Available from : <http://www.icrc.org> (January 2000)

- International Commission of Red Cross. National Enforcement of International Humanitarian Law : Universal Jurisdiction over War Crimes. Online Document of ICRC, 23 February 1999. Available from : <http://www.icrc.org> (10 June 2000)
- International Commission of Red Cross. State Consent Regime vs. Universal Jurisdiction. Online Document of ICRC, 10 December 1997. Available from : <http://www.icrc.org/icrceng.nsf48.htm> (January 2000).
- International Law Association. Final Report on the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offences. Report Of the Sixty – Ninth International Association London Conference (2000) : 1-29.
- Joyner, C. C. Arresting Impunity : The Case for Universal Jurisdiction in Bringing War Criminals to Accountability. Law and Contemporary Problems 59 (1996) : 153-172.
- Kastrup, D. From Nuremberg to Rome and Beyond : The Flight Against Genocide, War Crimes, and Crimes Against Humanity. Fordham International Law Journal 23 (1999) :404-414.
- Keller, L. Belgian Jury to Decide Case Concerning Rwandan Genocide. American Society of International Law Insights, May 2001. Available from : <http://www.asilinsights.org> (June 2001)
- Kindred, H. M., et.al. International Law : Chiefly as Interpreted and Applied in Canada. 5th ed. Toronto : Emond Montgomery, 1993, cited in Enache-Brown, C. and Fried, A. Universal crime, Jurisdiction and Duty : The Obligation of Aut Dedere Aut Judicare in International Law. McGill Law Journal 43 (October 1998) : 625.

- Kirgis, F. L. Request for Extradition of Miguel Cavallo from Mexico to Spain for Alleged Torture in Argentina. American Society of International Law Insights, September 2000. Available from : <http://www.asilinsights.org> (July 2001).
- Kissinger, H. The Pitfalls of Universal Jurisdiction : Risking Judicial Tyranny. Foreign Affairs, July/August 2001. Available from : <http://www.globalpolicy.org/intljustice/general/2001/27kiss.html> (November 2001).
- Kittichaiseree, K. International Criminal Law. New York : Oxford University Press, 2001.
- Klimaek, R. F. Comments : International Law – Convention on Offences and Certain other Acts Committed on Board Aircraft - The Tokyo Convention. De Paul Law Review 20 (1971) : 490, อ้างถึงใน ทศนีญ์ จรรยาชุกุล. เขตอำนาจรัฐทางอาญาของรัฐผู้ให้สัตยาบันอากาศยาน. วิทยานิพนธ์ปริญญาโทบัณฑิต คณะนิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2542, หน้า 53.
- Klip, A. The Decrease Of Protection Under Human Rights Treaties in International Criminal Law. Revue Internationale de Droit Pénal 68 (1997) : 291-310.
- Klip, A. and Macarel, M. The Lockerbie Trial : A Scottish Court in the Netherlands. Revue Internationale de Droit Pénal 70 (1999) : 777-819.
- Kornblüh, P. Prison Pinochet : The Dictator and the Quest for Justices. The Nation (21 December 1998). Available from : <http://past.thenation.com/issue/981221/korn.html> (October 2001).
- Lacabe, M. The Criminal Procedure Against Chilean And Argentinean Repressors in Spain. Online Reports of Derecho Human Rights , 7 November 1998. Available from : <http://www.derechos.net/papers/spain.html> (February 1999).

- Lippman, M. Crimes Against Humanity. Boston College Third World Law Journal 17 (1997) : 171-273.
- Lippman, M . The 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Temple International and Comparative Law Journal 8 (1994) : 1-84.
- Macedo, S., ed. The Princeton Principles on Universal Jurisdiction. New Jersey : Princeton University, 2001.
- Mackinnon, C. A. Essay : Rape, Genocide, and Women's Human Rights. Harvard Women's Law Journal 17 (1994) : 5-16.
- Magnarella, P. J. Expanding the Frontiers of Humanitarian Law : The ICRC. Florida Journal of International Law (1994) : 421-422, อ้างถึงใน จันทิมา ลิ้มปานานท์. ปัญหากฎหมายและแนวทางเยียวยาเกี่ยวกับการฆ่าล้างเผ่าพันธุ์. วิทยานิพนธ์ปริญญา มหาบัณฑิต ภาควิชานิติศาสตร์ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย, 2540, หน้า 19.
- Malanczuk, P. Akchurst' s Modern Introduction to International Law. 7th ed. London : Routledge, 1997.
- Makay, F. Universal Jurisdiction in Europe : Criminal Prosecutions in Europe Since 1990 for War Crimes, Crimes Against Humanity, Torture and Genocide. Online Research of Redress. Available from : <http://www.redress.org/unijeur.html> (June 2000)
- Marschik, A. The Politics of Prosecution : European National Approaches to War Crimes. In Timothy L. H. McComack and Gerry J. Simpson (eds.), The Law of War Crimes. n.p., 1997, pp. 65, 79-81.

- Mendez, J. E and Tinajero-Esquivel, S. The Cavallo Case : A New Test for Universal Jurisdiction. Human Rights Brief 8 (2001) : 5-8.
- Meron, T. Human Rights and Humanitarian Norms as Customary Law. Oxford : Clarendon, 1989.
- Morris, M. H. Universal Jurisdiction in a Divide World : Conference Remarks. New England Law Review 35 (2001) : 337-361.
- Murphy, F. T. Strange Times. New York Law Journal 17 (March 1999) : 2.
- O' Connell, D. Jurisdiction over States for Crimes of State (n.p., 1965), p. 599, cited in Richard R. Baxter, "The Munciple and International Law Basis of Jurisdiction over War Crimes," in A Treatise on International Criminal Law Vol. II, eds. M. Cherif Bassiouni and Ved P. Nanda, p. 87.
- Orentlicher, D. F. Setting Accounts : The Duty To Prosecute Human Rights Violations of a Prior Regime. Yale Law Journal 100 (June 1991) : 2539-2615.
- Oxman, B. H., ed. International Decision : In Re Pinochet : Spanish National Court, Criminal Division (Plenary Session). Case 19/97, November 4, 1998; Case 1/98, November 5, 1998. American Journal of International Law 93 (July 1999) 690-696.
- Paust, J. J., Bassiouni, M. C., Williams, S. A., Gurelé, J. and Zagaris, B. International Criminal Law "Cases and Materials". Durham : Carolina Academic Press, 1996.
- Pejic, J. The Tribunal and The ICC : Do Precedents Matter?. Albany Law Review 60 (1997) : 309-310.

- Penrose, M. M. It's Good to Be the King! : Prosecuting Heads of States and Former Heads of State Under International Law. Columbia Journal of Transnational Law 39 (2000) : 193-220.
- Phillipson, C. The International Law and Custom of Ancient Greece (1911), cited in Bassiouni, M. C. Crimes Against Humanity in International Criminal Law. Dordrecht : Martinus Nijhoff, 1992, pp.513-514.
- Rainsy, S. The Khmer Rouge Tribunal in Cambodia (6 March 2001). Available from : http://www.samrainsyparty.org/press_release/khmer_rough_tribunal_in_cambodia.htm (October 2001).
- Randall, K. C. Universal Jurisdiction Under International Law. Texas Law Review 66 (March 1988) : 785-841.
- Reisman, W. M. Institutions and Practices for Restoring and Maintaining Public Order. Duke Journal of Comparative & International Law 6 (1995) : 175-185.
- Reisman, W. M. Legal Responses to Genocide and Other Massive Violations of Human Rights. Law and Contemporary Problems 59 (1996) : 63-74.
- Reiss, R. H. The Extradition of John Demjanjuk : War Crimes, Universality Jurisdiction, and the Political Offenses Doctrine. Cornell Interantional Law Journal 20 (1987) : 281-315.
- Reydams, L. International Decision : Belgian Tribunal of First Instance of Brussel (investigating magistrate), November 8, 1998 n.1. American Journal of International Law 93 (July 1999) : 700-703.

- Reydams, L. International Decision : Niyonteze v. Public Prosecutor. At <<http://www.vbs.admin.ch/internet/OA/d/urteile.htm>>. Tribunal militaire de cassation (Switzerland), April 27, 2001 American Journal of International Law 96 (January 2002) : 231-236.
- Robert, A. and Guelff, R., eds. Documents on the Law of War. Oxford : Clarndon, 1982.
- Robinson, M. Genocide, War Crimes, Crimes Against Humanity. Fordham International Law Journal 23 (December 1999) : 275-285.
- Rodriguez, C. L. Slaying the Monster : Why the United States Should Not Support the Rome Treaty. American University International Law Review 6 (2000) : 805-844.
- Rothman, F. R. Federal Penal Code of the Republic of Germany. n.p., 1987.
- Roth-Arizona, N. State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law. California Law Review 78 (March 1990) : 449-513.
- Röling, B. V. A. The Law of War and National Jurisdiction Since 1945. Académie de Droit International Recueil des Cours 100 (1960) : 329, 362, cited in Bassiouni, M. C. Crimes Against Humanity in International Criminal Law. Dordrecht : Martinus Nijhoff, 1992, p. 517, n.140.
- Safferling, C. J. M. International Decision : Public Prosecutor v. Djajic. No 20/96, excepted in 1998 Neue Juristische Wochenschrift 392. American Journal of International Law 92 (July 1998) : 528-532.

- Sansani, I. The Pinochet Precedent in Africa : Prosecution of Hissène Habrè. Human Right Brief 8 (2001) : 32-35.
- Schachter, O. International Law in Theory and Practice. Dordrecht : Martinus Nijhoff, 1991.
- Scharf, M. P. Application of Treaty Based Universal Jurisdiction to Nationals of Non – Party States. New England Law Review 35 (2001) : 363-382.
- Scharf, M. P. The Special Court for Sierra Leone. American Society of Internal Law Insights , October 2000. Available from : <http://www.asilinsights.org> (January 2001).
- Scheffer, D. Universal Jurisdiction : Myths, Realities, and Prospects : Opening Address. New England Law Review 35 (2001) : 233-240.
- Scheirs, T. L. W. Senegal Supreme Court Bars Prosecution of Ex-Chad Dictator. International Enforcement Law Reporter : International Terrorism and International Human Rights 17 (June 2001) : Section XV.
- Schultz, H. The Classic Law of Extradition and Contemporary Needs. in M. Cherif Bassiouni and Ved P. Nanda (eds.), A Treatise on International Criminal Law Vol. II : Jurisdiction and Cooperation, pp. 309-326. Illinois : Charles C. Thomas, 1973.
- Silving, H. In Re Eichman : A Dilemma of Law and Morality. in Gerhard O. W. Mueller and Edward M. Wise (eds.), International Criminal Law. London : Sweet & Maxwell, 1965.

Simma, B. and Pualus, A. L. The Responsibility of Individuals for Human Rights Abuses in Internal Armed Conflict : A Positivism View. American Journal of International Law 33 (1939) : 302, 315, cited in Amnesty International, Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Fourteen. Online Report of Amnesty International, 2001 (AI Index : IOR 53/017/2001). Available from : <http://www.amnesty.org> (5 November 2001).

Sison, G. A King No More : The Impact of the Pinochet Decision on the Doctrine of Head Of State Immunity. Washington University Law Quarterly 78 (2000) : 1583-1602.

Smis, S. and Borght, K. V. Belgium : Act Concerning the Punishment of Grave Breached of International Humanitarian Law. International Legal Materials. 38 (1999) : 918-925.

Sorensen, M. Manual of Public International Law (n.p., 1968), cited in Randall, K. C. Universal Jurisdiction Under International Law. Texas Law Review 66 (March 1988).

Spitzer, V. G, France. in Albert P. Balaustein and Gilbert H. Flanz (eds.), Constitutions of Countries of the World. New York : Oceana Publications, 1998.

Stanton, G. H. War Crimes, Genocide, and Crimes Against Humanity in East Timor : Options for a Criminal Tribunal. Available from : <http://www.worldfederalist.org/ACTION/wfatimor.html> (October 2001).

Starke, J. G. Introduction to International Law. 8th ed. London : Butterworths, 1977.

- Stern, B. International Decision : In re Javor. 1996 Bull. Crim., No. 132, at 379. French Cour de cassation, Criminal Chamber, March 26, 1996. In re Munyeshyama. 1998 Bull. Crim., No. 2 at 3. French Cour de cassation, Criminal Chamber, January 6, 1998. American Journal of International Law 93 (April 1999) : 525-529.
- Steven, L. A. Note : Genocide and The Duty to Extradite or Prosecute : Why the United States is in Breach of Its International Obligation. Virginia Journal of International Law 39 (1999) : 425-466.
- Sunga, L. S. Individual Responsibility in International Law for Serious Human Rights Violations. International Studies in Human Rights Vol. 21. Dordrecht : Martinus Nijhoff, 1992.
- Taylor, L. T. Jurisdiction in the Pinochet Case : The View from Spain. European Public Law 6 (December 2000) : 613-627.
- White, J. G. Nowhere to Run, Nowhere to Hide : Augusto Pinochet, Universal Jurisdiction, The ICC, and A Wake-Up Call for Former Heads of State. Case Western Reserve Law Review 50 (1999) : 127-176.
- Wilson, R. J. Spanish Criminal Prosecutions Use International Human Rights Law to Battle Impunity in Chile and Argentina. Online Report of ACLU International Civil Liberties, January 1997. Available from <http://www.derechos.org/koaga/iii/5/wilson.html> (October 2001).
- Wise, E. M. The Obligation to Extradition or Prosecute. Israel Law Journal 27 (1993) : 265-287.

- Woetzel, R. K. The Eichman Case in International Law. in Gerhard O. W. Mueller and Edward M. Wise (eds.), International Criminal Law, pp. 354-365. London : Sweet & Maxwell, 1965.
- Wygaert, V. Belgium : National Report. Revue Internationale de Droit Pénal 60 (1988) : 153-155, cited in Amnesty International, Universal Jurisdiction : The duty of states to enact and enforce legislation : Chapter Fourteen. Online Document of Amnesty International, 2001 (AI Index : IOR 53/017/2001). Available from : <http://www.amnesty.org> (5 November 2001).
- Vabres, H. D. Les Principes Modernes Du Droit Penal International (n.p., 1928), p.136, cited in Bassiouni, M. C. Crimes Against Humanity in International Criminal Law. Dordrecht : Martinus Nijhoff, 1992.
- Vattel, E. Le Droit des Gens Book II (n.p., 1758), chapter 6, para 76, 77, cited in Bassiouni, M. C. Crimes Against Humanity in International Criminal Law. Dordrecht : Martinus Nijhoff, 1992, p. 501.
- Vyver, J. D. Prosecution and Punishment of The Crime of Genocide. Fordham International Law 23 (December 1999) : 186-356.
- Ziegler, A. R. International Decision : In Re G. Military Tribunal, Division 1, Lausanne, Switzerland, April 18, 1997. American Journal of International Law 92 (January 1998) : 78-81.

ภาคผนวก



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity*

Adopted by General Assembly resolution 3074 (XXVIII) of 3 December 1973

The General Assembly,

Recalling its resolutions 2583 (XXIV) of 15 December 1969, 2712 (XXV) of 15 December 1970, 2840 (XXVI) of 18 December 1971 and 3020 (XXVIII) of 3 December 1972,

Taking into account the special need for international action in order to ensure the prosecution and punishment of person guilty of war crimes and crimes against humanity,

Having considered the draft principle of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,

Declares that the United Nations, in pursuance of the principles and purposes set forth in the Charter concerning the promotion of co-operation between peoples and the maintenance of international peace and security, proclaims the following principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity:

1. War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.
2. Every State has the right to try its own nationals for war crimes and crimes against humanity
3. States shall co-operate with each other on a bilateral and multilateral basis with a view of halting and preventing war crimes and crime against humanity, and shall take the domestic and international measures necessary for that purpose.
4. States shall assist each other in detecting, arrest and bringing to trial persons suspected of having committed such crimes and, if they are found guilty, in punishing them.
5. Persons against whom there is evidence that they have committed war crimes and crimes against humanity shall be subject to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes. In that connection, State shall co-operate on questions of extradition such persons.

* U.N. GAOR, 28th Sess., Supp. No. 30, at 78, U.N. Doc. A/9030 (1973).

6. States shall co-operate with each other in the collection of information and evidence which would help to bring to trial the persons indicated in paragraph 5 above and shall exchange such information.
7. In accordance with article 1 of the Declaration on Territorial Asylum of 14 December 1967, States shall not grant asylum to any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity.
8. States shall not take any legislation or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.
9. In co-operation with a view to the detection, arrest, extradition of persons against whom there is evidence that they have committed war crimes and crimes against humanity and, if found guilty, their punishment, States shall act in conformity with the provisions of the Charter of the United Nations and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ข.

ตารางแสดงการเข้าให้สัตยาบันและการลงนามสนธิสัญญาระหว่างประเทศที่บัญญัติ
เกี่ยวกับเขตอำนาจรัฐสากลและพันธกรณีตามหลัก Aut Dedere Aut Judicare
ของรัฐต่างๆในประชาคมระหว่างประเทศ



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

APPENDIX - RATIFICATIONS AND SIGNATURES OF SELECTED INTERNATIONAL TREATIES WITH UNIVERSAL JURISDICTION AND *AUT DEDERE AUT JUDICARE* OBLIGATIONS

KEY TO TREATIES IN CHRONOLOGICAL ORDER

Dark shaded squares indicate states parties; light shaded squares indicate signatories; white squares indicate non-state parties. Where known, ratification (r), accession (a), succession (d) and signature (s) are indicated. The status of each treaty is as of 1 September 2001, except for the 1979 Convention on the Physical Protection of Nuclear Materials and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, both of which are as of 1 January 2000. Information concerning several states with respect to the 1961 Single Convention on Narcotics Drugs and its 1972 Protocol could not be verified. In any event, only the lists published by the depositaries are definitive.

<p>1. 1929 International Convention for the the Suppression of Counterfeiting Currency (1929 Counterfeiting) (as of 1 April 2001)</p> <p>2. 1949 Geneva Conventions (1949 Geneva Conventions) (as of 19 April 2001)</p> <p>3. 1958 Convention on the High Seas (1958 High Seas)</p> <p>4. 1961 Single Convention on Narcotics Drugs (1961 Narcotics)</p> <p>5. 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970 Hague Convention)</p> <p>6. 1971 Convention on Psychotropic Substances (1971 Psychotropic)</p> <p>7. 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971 Montreal)</p> <p>8. 1972 Protocol to the Single Convention on Narcotics Drugs (1972 Narcotics)</p> <p>9. 1973 Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i> (1973 <i>Apartheid</i>)</p> <p>10. 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents (1973 Diplomats)</p> <p>11. 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977 Protocol I)</p>	<p>12. 1979 International Convention against the Taking of Hostages (1979 Hostages)</p> <p>13. 1979 Convention on the Physical Protection of Nuclear Material(1979 Nuclear)</p> <p>14. 1982 (1982 Law of Sea)</p> <p>15. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984 Torture)</p> <p>16. 1988 Convention for the Suppression of Unlawful Acts against Maritime Navigation (1988 Maritime)</p> <p>17. 1989 Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989 Mercenaries)</p> <p>18. 1994 Convention on the Safety of United Nations and Associated Personnel (1994 Peace-keepers)</p> <p>19. 1999 International Convention for the Suppression of Terrorist Bombings (1999 Terrorist bombing)</p> <p>20. 2000 International Convention for the Suppression of Financing of Terrorist (2000 Terrorist financing)</p> <p>21. 2000 Convention on Transnational Crime (2000 Transnational)</p>
--	---

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																						
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational	
Afghanistan		r	r	r		a			a					s	r							s
Albania	s	r	a								a				a			a				s
Algeria	a	a		a		a			r	a	a	a		r	r					s	s	s
Andorra		a																				
Angola		a									a			r			s					s
Antigua and Barbuda		d		a		a	a	a	a	a	a	a		r	a							
Argentina		r	s	r	r	r	r	r	r	a	a	a		r	r			r	s	s	s	s
Armenia		a				a			a	a	a				a							
Australia	a	r	r	r		r	r	r		r	r	a		r	r			r				s
Austria	r	r	r	a		a	r	a		a	r	r		r	r			a	s			s
Azerbaijan		r		a		a			a	a		a			a		a	a				s
Bahamas	d	d		d		a		a	a	a	a	a		r								s
Bahrain		a				a	a		a		a			r	a							
Bangladesh		d		a		a		a	a		a			s	a			r				
Barbados		d		d		a	r	a	a	a	a	a		r			a					
Belarus		r	r	r		r			r	r	r	a		s	r		r	r	s			s
Belgium	r	r	a	r		a	r	r			r	r		r	r			s	s			s
Belize		a									a			r	a							
Benin	a	d		r		a		a	r		a			r	a							s
Bhutan		a					a			a		a		s								
Bolivia		r	s			a			a		a	s		r	r			s				s
Bosnia and Herzegovina		d	d			d			d	d	d	d		d	d							s

20 UNIVERSAL JURISDICTION: The duty of states to enact and enforce legislation - Chapter Fifteen, Bibliography and Appendix

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																					
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational
Botswana		a		a	a	r	a		a	a	a		d	r			a		r		
Brazil	a	r		r	r	r	r			a	a	a		r	r			r	s		s
Brunei Darussalam		a		a	a	a	a		a	a	a		r								
Bulgaria	r	r	r	r	r	a	r	a	r	r	r	a		r	r			a		s	s
Burkina Faso	a	d	a	a	a			r		r			s	a							s
Burundi		d		a	a			a	a	a			s	a					s		s
Cambodia		a	a	s			s	a		a			s	a							
Cameroon		d		a	a		a	a	a	a	a		r	a		r					s
Canada		r	s	r	r	a	r	a		r	r	r		s	r			s	s	s	s
Cape Verde		a			a			a	a				r	a							s
Central African Republic		d	a					a	a				s								
Chad		a		r	r	a	r	r		a			s	a							
Chile		r		r	r	r	r		a	r	r		r	r				a			s
China	s	r	s	r	a	s		a	a	a	a		r	r							s
Colombia	r	r	s	a	a		a	a	a	a			s	r							s
Comoros		a			a					a			r	s					s	s	
Congo (Brazzaville)		d				r		a		a			s			s					s
Costa Rica		a	r	r	r	r	r	a	a	a			r	r					s	s	s
Côte D'ivoire	a	d		a	a		r			r	a		r	a					s		s
Croatia		d	d	d	d		d	d	d	d			d	d		a					s
Cuba	r	r	s	a	a		a	a	a	a			r	r							s

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																					
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law of Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational
Cyprus	a	a	a	a	a	a	r	r		a	r	a	r	r		a		s	s	s	
Czech Republic	d	d	d	d	r	d	d	d	d	d	d	d	r	d			r	s	s	s	
Democratic Peoples' Republic of Korea		a								a	a		s								
Democratic Republic of Congo		d		r	a		a	a	a	a	a	s	r	a		s					
Denmark	r	r	r	r	r	r	r	r		r	r	a	s	r			r	s		s	
Djibouti		d		a	a		a			a			r								
Dominica		d		a	a		a			a	a		r								
Dominican Republic		a	r	a	a		a		a	a	s		s	s							s
Ecuador	a	r		a	r	a	r	r	r	r	a			r			a		s	s	
Egypt	a	r		r	r	r	r	a	a	r	r		r	a					s	s	s
El Salvador		r		r	a			a	a	r	r		s	a							s
Equatorial Guinea		a								a			r								s
Eritrea		a																			
Estonia	a	a			a	a		a	a	a				a					s	s	s
Ethiopia		r		a	a	a	a	a		a			s	a							s
Fiji	d	d	d	d	r	a	r	a					r				r				
Finland	a	r	r	r	r	r	a	r		r	r	r	r	r			s	s	s	s	
France	r	r	s	a	r	r	a	r		a	a			r			s	r	s	s	
Gabon	a	d		a	r	a	r	s	a	a	a	s	r	r							s

22 UNIVERSAL JURISDICTION: The duty of states to enact and enforce legislation - Chapter Fifteen, Bibliography and Appendix

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																						
Countries	1979 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational	
Gambia		d		a		a			a		a			r	s							s
Georgia	a	a				a					a			a	a		a				s	s
Germany	r	a	r	a	r	r	r	r		r	r	r		a	r		s	r	s	s	s	s
Ghana	a	a	s	r		r		s	a	a	r	a		r	r							
Greece	r	r		a		r		r		a	r	r		r	r			a	s	s	s	s
Grenada		d				a					a	a		r								
Guatemala		r	r	r		a		r		r	r	r		r	a							s
Guinea		a		a		a			r		a			r	r			a				
Guinea-Bissau		a		a		a		a			a			r	s							s
Guyana		d				r			a		a			r	r							
Haiti		a	r	r				r	a	a		r		r				s				s
Holy See	a	r	s	r		r		r			r											
Honduras		a		a				a			r	r		r	a			s				s
Hungary	r	r	r	r	r	r	r	a	r	r	r	a		s	r			a	s			s
Iceland		a	s	a		a	a	a		r	r	a		r	r			a	s			s
India	s	r		r		a	r	a	a	a		a		r	s					r	s	
Indonesia	a	a	r	r		a		r						r	r							s
Iran, Islamic Republic of		r	s	r	r	r	a	s	a	a				s								s
Iraq	a	a		r	r	a		a	r	a		s		r								
Ireland	a	r	s	a		a	a	a			r			r	s					s		s
Israel	a	r	r	a	r	a	r	r		a		s		r						s	s	s
Italy	r	r	a	r		a	r	r		r	r	r		r	r		r	r	s	s	s	s
Jamaica		s	d	a		a	r	a	r	a	a	s		r				a				

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																						
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational	
Japan	s	a	a	r	r	r	a	r		a		r		r	a			a	s		s	
Jordan		a		r	r	a	r	r	r	a	r	a		a	a							
Kazakhstan		d		a		a		a		a	d	a			a						s	
Kenya	a	a	a	a		a		a	s		a	a		r	a							
Kiribati		d																				
Korea, Republic of		a		r		a		r		a	r	a		r	a			a	s		s	
Kuwait	a	a		a		a	a	a	a	a	a	a		r	a						s	
Kyrgyzstan		d		a		a			a		d				a						s	
Lao People's Democratic Republic		a		a		a	r		a		r			r								
Latvia	a	a	a	a		a	a	a	a	a	a				a						s	
Lebanon	a	r	s	r		r		r		a	a	a		r	a			a				
Lesotho		d	d	d		a		a	a		a	r		s						s	s	
Liberia		a	s	r		s		s	a	a	a	s		s								
Libyan Arab Jamahiriya		a		a		a		a	a	a	a	a		s	a		a	a				
Liechtenstein		r		r		a	a	r		a	r	a		s	r		r				s	
Lithuania		a		a		a				a	a			a			a	s			s	
Luxembourg	s	r		r		a	r	r			r	r		r	r			s	s		s	
Macedonia, Former Yugoslav Republic of		d		a		a		a	d	d	d	d		d	d				s	s	s	
Madagascar		d	a	r		a		r	a		r			s					s		s	
Malawi	a	a	a	a		a		a		a	a	a		s	a						s	

24 UNIVERSAL JURISDICTION: The duty of states to enact and enforce legislation - Chapter Fifteen, Bibliography and Appendix

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																						
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational	
Malaysia	a	a	a	a		a	a	a						r								
Maldives		a				a	a		a	a	a			r			r					
Mali	a	a		a	a	a		a	a		a	a		r	a							
Malta		d				a	a				a			r	a			s		s	s	
Marshall Islands				a		a								a								
Mauritania		d				a			a	a	a	a		r			a					
Mauritius	d	d	d	d		a		a			a	r		r	a							s
Mexico	a	r	a	r	r	a	r	a	a	a	a	a		r	r						s	s
Micronesia, Federal States of		a		a		a					a			a								
Moldova, Republic of		a				a		a		a	a				a							s
Monaco	r	r		a		r	a	r			a			r	a			a	s			r
Mongolia		a	a	a	r	a	r	a	r	r	r	a		r								
Morocco	a	a		a		a		s						s	r			s				s
Mozambique		a		a		a			a		a			r	a							s
Myanmar		a		r		a	a							r								
Namibia		d				a			a		a			r	a							s
Nauru														r								
Nepal		a	r				a		a	a		a		r	a			a	s			
Netherlands	r	r	r	r		a	r	a		a	r	r		r	r			s	s	s	s	s
New Zealand		r	s	r		r	r	r		a	r	r		r	r			r			s	s
Nicaragua		r		r		a		s	a	r	r			r	s							s
Niger	a	d		a	r	a		r	a	a	r			s	a							s

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																					
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law of Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational
Nigeria		d	d	r	a	a		r		a			r	r		s			s	r	
Norway	r	r		r	r	a	a	r		r	r	r		r	r			r	r		s
Oman		a		a	a	a		r	a	a	a		r								
Pakistan		r	s	r		a	a	r	a	a		a		r				s			s
Palau		a				a								a							
Panama	s	a	s	r	r	a		r	r	a	r	r		r	r			r	r		s
Papua New Guinea		d		d		a	d	a						r							
Paraguay		r		r	r	r		r		r	a			r	r						s
Peru	a	r		r		a	a	r	a	a	r	a		r						s	s
Philippines	a	r		r		a	r	r	r	a		r		r	a			r	s		s
Poland	r	r	r	r	r	r	r	a	r	r	r	a		r	r		s	r	s		s
Portugal	r	r	r	r	r	a	r	a		a	r	r		r	r			r		s	s
Qatar		a				a			r	a	a			s			a				
Romania	r	r	r	a		a	r	a	r	r	r	a		r	a		s	r	s	s	s
Russian Federation	d	r	r	r	r	r	r	a	r	r	r	a		r	r			r	s	s	s
Rwanda		d				r			r	r	a			s							s
St. Kitts and Nevis		d		a		a		a			a	a		r							
St. Lucia		d		d								a									
St. Vincent and the Grenadines		a						a		a	a	a		r	a						
Samoa			d									a		r				s			
San Marino	a	a		a		a		a			r									s	s

26 UNIVERSAL JURISDICTION: The duty of states to enact and enforce legislation - Chapter Fifteen, Bibliography and Appendix

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																						
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational	
Sao Tome and Principe		a		a	a				a	a			r	s								
Saudi Arabia		a		a	a					a	a			r	a		a					s
Senegal	a	d	a	a	a	a	r	a		r	r		r	r		a	r					s
Seychelles		a		a	a	a	a	a	a	a				r	a		a					s
Sierra Leone		d	d		a					a				r	r			s				
Singapore	d	a		a	a	r	a							r				a				s
Slovakia	d	d	d	d	r	d		d	d	d	s	d		r	d			r	s	s	s	s
Slovenia		d	d		d	d		d	d	d	d			d	a				s			s
Solomon Islands	d	d	d	d		d				a				r								
Somalia		a		a	a			r						r	a							
South Africa	a	a	a	a	r	a	r	r		a				r	r				s			s
Spain	r	r	a	r	r	a	r	r		a	r	a		r	r			r	r	s	s	s
Sri Lanka	a	r	s	a		a	a	a	a	a		a		r	a				s	r		s
Sudan		a		a	a	a		a	r	a		a		r	s				s	s		s
Suriname		d		d	a		a	a		a	r		r				r					
Swaziland		a	a			a				a				s								s
Sweden	a	r		r	r	r	a	r		r	r	r		r	r			r	s			s
Switzerland	r	r	r	r	r	a	r	a		a	r	r		s	r							s
Syrian Arab Republic	r	r		a		a		a	r	a	a											s
Tajikistan		d			a						d				a							s
Tanzania, United Republic of		d			a			a		a				r								s

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																					
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law-of-Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational
Thailand	a	a	r	r	a	a	a							s							s
Togo	a	d		a	r		r	a	a	r	r		r	r		a	s	s			s
Tonga		d	d	d	a	a	a							a							
Trinidad and Tobago		a	d	a	r	r		a	r	a		a		r							
Tunisia		a	s	r		a	a	r	a	r	r	a		r	r			r			s
Turkey	a	r		a	r		r		a			a			r				s		s
Turkmenistan		d		a	a	a				a	d	a			a		a	a	r		
Tuvalu		d												s							
Uganda	a	a	a	a	a	a		a	r		a	s		r	a				s		s
Ukraine		r	r	r	r	r	r		r	r	r	a		r	r		r	r		s	s
United Arab Emirates		a			a	a		r		a				s							
United Kingdom	r	r	r	r	r	r	r			r	r	r		a	r			r	s	r	s
United States of America	s	r	r	a	r	r	r			r		r						s	s	s	s
Uruguay		r	s	a		a		a		a	a			r	r		r	r	s		s
Uzbekistan		a			a					a	a	a			a		a	a	r	r	s
Vanuatu		a									a			r							
Venezuela		r	r	r		r	r	r	a		a	a			r				s		s
Viet Nam		a				a			a		r			r							s
Yemen		a				a	r		a	a	r			r	a						s
Yugoslavia, Federal Republic of	r	r	d	d	r	d	d		r	d	r	d		d	d		s				s

Ratifications and signatures of selected international treaties with universal jurisdiction and <i>aut dedere aut judicare</i> obligations																						
Countries	1929 Counterfeit	1949 Geneva	1958 High Seas	1961 Narcotics	1970 Hague	1971 Psychotropic	1971 Montreal	1972 Narcotics	1973 Apartheid	1973 Diplomats	1977 Protocol I	1979 Hostages	1979 Nuclear	1982 Law of Sea	1984 Torture	1988 Maritime	1989 Mercenaries	1994 Peace-keepers	1997 Terrorist bombing	2000 Terrorist financing	2000 Transnational	
Zambia		a		a	a			a		a				r	a							
Zimbabwe	d	a		d	a	a		a		a				r								s

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ค.

The Princeton Principles on Universal Jurisdiction



ศูนย์วิทยุทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

The Princeton Principles on Universal Jurisdiction

The participants in the Princeton Project on Universal Jurisdiction propose the following principles for the purposes of advancing the continued evolution of international law and the application of international law in national legal systems:

Principle 1 — Fundamentals of Universal Jurisdiction

1. For purposes of these Principles, universal jurisdiction is criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction.
2. Universal jurisdiction may be exercised by a competent and ordinary judicial body of any state in order to try a person duly accused of committing serious crimes under international law as specified in Principle 2(1), provided the person is present before such judicial body.
3. A state may rely on universal jurisdiction as a basis for seeking the extradition of a person accused or convicted of committing a serious crime under international law as specified in Principle 2(1), provided that it has established a prima facie case of the person's guilt and that the person sought to be extradited will be tried or the punishment carried out in

accordance with international norms and standards on the protection of human rights in the context of criminal proceedings.

4. In exercising universal jurisdiction or in relying upon universal jurisdiction as a basis for seeking extradition, a state and its judicial organs shall observe international due process norms including but not limited to those involving the rights of the accused and victims, the fairness of the proceedings, and the independence and impartiality of the judiciary (hereinafter referred to as “international due process norms”).
5. A state shall exercise universal jurisdiction in good faith and in accordance with its rights and obligations under international law.

Principle 2 — Serious Crimes Under International Law

1. For purposes of these Principles, serious crimes under international law include: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide; and (7) torture.
2. The application of universal jurisdiction to the crimes listed in paragraph 1 is without prejudice to the application of universal jurisdiction to other crimes under international law.

Principle 3 — Reliance on Universal Jurisdiction in the Absence of National Legislation

With respect to serious crimes under international law as specified in Principle 2(1), national judicial organs may rely on universal jurisdiction even if their national legislation does not specifically provide for it.

Principle 4 — Obligation to Support Accountability

1. A state shall comply with all international obligations that are applicable to: prosecuting or extraditing persons accused or convicted of crimes under international law in accordance with a legal process that complies with international due process norms, providing other states investigating or prosecuting such crimes with all available means of administrative and judicial assistance, and undertaking such other necessary and appropriate measures as are consistent with international norms and standards.
2. A state, in the exercise of universal jurisdiction, may, for purposes of prosecution, seek judicial assistance to obtain evidence from another state, provided that the requesting state has a good faith basis and that the evidence sought will be used in accordance with international due process norms.

Principle 5 — Immunities

With respect to serious crimes under international law as specified in Principle 2(1), the official position of any accused person, whether as head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

Principle 6 — Statutes of Limitations

Statutes of limitations or other forms of prescription shall not apply to serious crimes under international law as specified in Principle 2(1).

Principle 7 — Amnesties

1. Amnesties are generally inconsistent with the obligation of states to provide accountability for serious crimes under international law as specified in Principle 2(1).
2. The exercise of universal jurisdiction with respect to serious crimes under international law as specified in Principle 2(1) shall not be precluded by amnesties which are incompatible with the international legal obligations of the granting state.

Principle 8 — Resolution of Competing National Jurisdictions

Where more than one state has or may assert jurisdiction over a person and where the state that has custody of the person has no basis for jurisdiction other than the principle of universality, that state or its judicial organs shall, in deciding whether to prosecute or extradite, base their decision on an aggregate balance of the following criteria:

- (a) multilateral or bilateral treaty obligations;
- (b) the place of commission of the crime;
- (c) the nationality connection of the alleged perpetrator to the requesting state;
- (d) the nationality connection of the victim to the requesting state;
- (e) any other connection between the requesting state and the alleged perpetrator, the crime, or the victim;
- (f) the likelihood, good faith, and effectiveness of the prosecution in the requesting state;
- (g) the fairness and impartiality of the proceedings in the requesting state;
- (h) convenience to the parties and witnesses, as well as the availability of evidence in the requesting state; and
- (i) the interests of justice.

Principle 9 — *Non Bis In Idem*/ Double Jeopardy

1. In the exercise of universal jurisdiction, a state or its judicial organs shall ensure that a person who is subject to criminal proceedings shall not be exposed to multiple prosecutions or punishment for the same criminal conduct where the prior criminal proceedings or other accountability proceedings have been conducted in good faith and in accordance with international norms and standards. Sham prosecutions or derisory punishment resulting from a conviction or other accountability proceedings shall not be recognized as falling within the scope of this Principle.
2. A state shall recognize the validity of a proper exercise of universal jurisdiction by another state and shall recognize the final judgment of a competent and ordinary national judicial body or a competent international judicial body exercising such jurisdiction in accordance with international due process norms.
3. Any person tried or convicted by a state exercising universal jurisdiction for serious crimes under international law as specified in Principle 2(1) shall have the right and legal standing to raise before any national or international judicial body the claim of *non bis in idem* in opposition to any further criminal proceedings.

Principle 10 — Grounds for Refusal of Extradition

1. A state or its judicial organs shall refuse to entertain a request for extradition based on universal jurisdiction if the person sought is likely to face a death penalty sentence or to be subjected to torture or any other cruel, degrading, or inhuman punishment or treatment, or if it is likely that the person sought will be subjected to sham proceedings in which

international due process norms will be violated and no satisfactory assurances to the contrary are provided.

2. A state which refuses to extradite on the basis of this Principle shall, when permitted by international law, prosecute the individual accused of a serious crime under international law as specified in Principle 2(1) or extradite such person to another state where this can be done without exposing him or her to the risks referred to in paragraph 1.

Principle 11 — Adoption of National Legislation

A state shall, where necessary, enact national legislation to enable the exercise of universal jurisdiction and the enforcement of these Principles.

Principle 12 — Inclusion of Universal Jurisdiction in Future Treaties

In all future treaties, and in protocols to existing treaties, concerned with serious crimes under international law as specified in Principle 2(1), states shall include provisions for universal jurisdiction.

Principle 13 — Strengthening Accountability and Universal Jurisdiction

1. National judicial organs shall construe national law in a manner that is consistent with these Principles.
2. Nothing in these Principles shall be construed to limit the rights and obligations of a state to prevent or punish, by lawful means recognized under international law, the commission of crimes under international law.
3. These Principles shall not be construed as limiting the continued development of universal jurisdiction in international law.

Principle 14 — Settlement of Disputes

1. Consistent with international law and the Charter of the United Nations states should settle their disputes arising out of the exercise of universal jurisdiction by all available means of peaceful settlement of disputes and in particular by submitting the dispute to the International Court of Justice.
2. Pending the determination of the issue in dispute, a state seeking to exercise universal jurisdiction shall not detain the accused person nor seek to have that person detained by another state unless there is a reasonable risk of flight and no other reasonable means can be found to ensure that person's eventual appearance before the judicial organs of the state seeking to exercise its jurisdiction.



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ง.

Agreement Between the Government of the United Kingdom of the Netherlands and the
Government of the United Kingdom of Great Britain and Northern Ireland Concerning
A Scottish Trial in the Netherlands



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING A SCOTTISH TRIAL IN THE NETHERLANDS

[September 18, 1999]

The Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland;

Recalling that on 21 December 1988 Pan American World Airways flight 103 was bombed over Lockerbie in Scotland and 270 persons died;

Recalling that on 13 November 1991, following the presentation of a petition by the Procurator Fiscal for Dumfries, the Sheriff of South Strathclyde, Dumfries and Galloway in Scotland granted a warrant for the arrest of Abdelbaset Ali Niolirned Al Megrahi and Al Amiri Khalia Fhimah ("the accused") on charges of conspiracy to murder, murder and contravention of the Aviation Security Act 1982 of the United Kingdom of Great Britain and Northern Ireland;

Recalling that the Security Council of the United Nations, acting under Chapter VII of the United Nations Charter, in its Resolutions 748 (1992) and 883 (1993), demanded *inter alia* that Libya ensure the appearance of the accused for trial before a Scottish court;

Noting the letter of 24 August 1998 from the Permanent Representatives of the United Kingdom of Great Britain and Northern Ireland and of the United States of America to the Secretary-General of the United Nations proposing in it the accused be tried before a Scottish Court sitting in the Kingdom of the Netherlands in accordance with the arrangements set out in that letter (Annex 1);

Having *due* regard to the decisions of the Security Council, acting under Chapter VII of the Charter of the United Nations, in its Resolution (1998) (Annex 2);

Whereas the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland wish to conclude an Agreement regulating the sitting of the Scottish Court in the Netherlands and all matters necessary for the proper functioning in the Netherlands of that Scottish Court for the purpose of the trial of the accused;

Have agreed as follows:

Article 1

Definitions

For the purposes of the present Agreement, the following definitions shall apply:

- (a) "the host country" means the Kingdom of the Netherlands;
- (b) "the Government" means the Government of the Kingdom of the Netherlands;

- (c) "the competent authorities" means national, provincial, municipal and other competent authorities under the law of the host country;
- (d) "Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961;
- (e) "Procurator Fiscal" means the Procurator Fiscal for Dumfries and any person holding a commission from the Lord Advocate to act as Procurator Fiscal or Procurator Fiscal Depute for the purposes of the trial;
- (f) " Sheriff" means a Sheriff of South Strathclyde, Dumfries and Galloway in Scotland and any officials of that Sheriffdom;
- (g) "the accused" means Abdelbaset All Mohamed Al Megrahi and Al Amin Khalifa Fhimah, charged with the offences of conspiracy to murder, murder and contravention of the Aviation Security Act 1982 of the United Kingdom of Great Britain and Northern Ireland ("the offences") specified in the Procurator Fiscal's Petition upon which warrant for arrest was issued by the Sheriff of South Strathclyde, Dumfries and Galloway in Scotland on 3 November 1991;
- (h) "Lord Advocate" means the Lord Advocate of Scotland and any officials, Advocate Deputes, Scottish police officers or other persons acting under his directions, or any person directly assisting him;
- (i) "the trial" means the public trial of the accused in respect of the offences and any preliminary proceedings, investigative steps, preparations for the trial, preliminary hearings and appeals following service of the indictment, any determination of law or fact and the imposition of penal sanctions, and any appeal by the accused following conviction, all in accordance with Scots law and practice;
- (j) "solicitors and advocates" means persons, being legally qualified in Scotland, instructed on behalf of the Lord Advocate or on behalf of the accused;
- (k) "witnesses" means persons, including experts, cited to give evidence in the trial of the accused;
- (l) "the Scottish Court" means the High Court of Justiciary (including that Scottish Court sitting in an appellate capacity) and the Sheriff Court, sitting in the Netherlands in accordance with the provisions of this Agreement;
- (m) "Registrar" means the person designated as such by the Director of Scottish Courts Administration to act on his behalf;
- (n) "international observers" means persons nominated, by the Secretary-General of the United Nations to attend the public hearings, pursuant to arrangements between the Secretary-General and the Government of the United Kingdom;
- (o) "the premises of the Scottish Court" means the complex of buildings and land, including installations and facilities, made available by the host country and

maintained, occupied and used for the purpose of the trial, including detention of the accused;

- (p) "the Parties" means the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland.

Article 2

Purpose and Scope of the Agreement

This Agreement regulates the sitting of the Scottish Court in the Netherlands and the matters arising out of the trial and the proper functioning of the Scottish Court.

Article 3

The Scottish Court

(1) The Government undertakes to host the Scottish Court for the sole purpose, and for the duration, of the trial in the Netherlands. For this purpose the Government shall make available adequate premises for the trial. Within these premises the Scottish Court shall provide reasonable accommodation for persons with a legitimate interest in attending the public trial, including members of the families of the victims or their representatives.

(2) The jurisdiction of the Scottish Court is limited to the trial.

(3) The Government permits the detention of the accused for the purposes of the trial, and, in the event of conviction, pending their transfer to the United Kingdom, within the premises of the Scottish Court in accordance with Scots law and practice. The enforcement of all other sanctions involving the deprivation of liberty of persons within those premises is not permitted, except in so far as the Scottish Court orders:

- (a) the temporary detention of witnesses transferred in custody to the premises of the Scottish Court;
- (b) the temporary detention of witnesses in the course of their evidence;
- (c) the temporary detention of persons who may have committed offences within the premises of the Scottish Court, including contempt of court; and
- (d) the imprisonment of persons found guilty summarily of contempt of court.

(4) The trial will be deemed to be ended when any of the following events, but not necessarily the same event, has occurred in relation to both accused:

- (a) the accused is acquitted;
- (b) the trial is discontinued by process of law preventing any further trial under Scots Law; or

- (c) any judgements of the Scottish Court following conviction have become final and conclusive.

Article 4

Juridical Personality of the Scottish Court

(1) The Scottish Court shall possess in the host country full juridical personality. This shall, in particular, include the capacity:

- (a) to contract and to enter into exchanges of letters of understanding with the host country as envisaged in Article 27;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute legal proceedings.

(2) For the purpose of this article the Scottish Court shall be represented by the Registrar.

Article 5

Inviolability of the premises of the Scottish Court

(1) The premises of the Scottish Court shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Scottish Court shall not be dispossessed of all or any part of the premises of the Scottish Court without the express consent of the Scottish Court. The property, funds and assets of the Scottish Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

(2) The competent authorities shall not enter the premises of the Scottish Court to perform any official duty, except with the express consent of, or at the request of, the Registrar or an official designated by him. Judicial actions and the service or execution of legal process, including the seizure of private property, shall not be enforced on the premises of the Scottish Court except with the consent of, and in accordance with conditions approved by, the Registrar.

(3) In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur, on the premises of the Scottish Court, the consent of the Registrar, or an official designated by him, to any necessary entry into the premises of the Scottish Court shall be presumed if neither of them can be reached in time.

(4) Subject to paragraphs (1), (2) and (3), the competent authorities shall take the necessary action to protect the premises of the Scottish Court against fire or other emergency.

(5) The Scottish Court may expel or exclude from the premises of the Scottish Court persons whose presence is not considered conducive to the maintenance of order or the conduct of the trial.

Article 6

Law and Authority on the Premises of the Scottish Court

(1) The premises of the Scottish Court shall be under the control and authority of the Scottish Court, as provided in this Agreement.

(2) Except as otherwise provided in this Agreement, the laws and regulations of the host country shall apply within the premises of the Scottish Court.

(3) The Scottish Court shall have the power to make regulations operative on the premises of the Scottish Court for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Scottish Court shall promptly inform the competent authorities of regulations thus made in accordance with this paragraph. No law or regulation of the host country' which is inconsistent with a regulation of the Scottish Court, shall, to the extent of such inconsistency; be applicable within the premises of the Scottish Court.

(4) Any dispute between the Scottish Court and the host country as to whether a regulation of the Scottish Court is authorised by this article, or as to whether a law or regulation of the host country' is inconsistent with any regulation of the Scottish Court authorised by this article, shall be promptly settled by the procedure set out in Article 28. Pending such settlement, the regulation of the Scottish Court shall apply and the law or regulation of the host country shall be inapplicable within the premises of the Scottish Court to the extent that the Scottish Court claims it to be inconsistent with its regulation.

Article 7

Protection of the Premises of the Scottish Court

(1) The competent authorities shall have *full* responsibility for the external security of the premises of the Scottish Court. They shall exercise due diligence to ensure the security and protection of the Scottish Court and to ensure that the tranquillity of the Scottish Court is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Scottish Court or by disturbance in their immediate vicinity, and shall provide to the premises of the Scottish Court the appropriate protection as may be required.

(2) If so requested by the Registrar, the competent authorities shall provide adequate police force necessary for the preservation of law and order within the premises of the Scottish Court or in the immediate vicinity thereof, and for the removal of persons therefrom.

Article 8

Immunity of the Scottish Court

The Scottish Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Scottish Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

Article 9

Inviolability of Archives and all Documents the Scottish Court

The archives of the Scottish Court, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

Article 10

Exemption from Taxes and Duties

(1) *Within* the scope of its official functions, the Scottish Court, its assets, income and other property, shall be exempt from all direct taxes, which include *inter alia* income tax, capital tax, corporation tax, as well as direct taxes levied by local and provincial authorities.

(2) The Scottish Court shall:

- (a) on application be granted exemption from motor vehicle tax in respect of vehicles used for its official activities;
- (b) be exempt from all import duties and taxes in respect of goods, including publications and motor vehicles, whose import or export by the Scottish Court is necessary for the exercise of its official activities;
- (c) be exempt from value-added tax paid on any goods, including motor vehicles, or services of substantial value, which are necessary for its official activities. Such claims for exemption shall be made only in respect of goods or services supplied on a recurring basis or involving considerable expenditure;
- (d) be exempt from excise duty included in the price of alcoholic beverages, tobacco products and hydrocarbons, such as fuel oils and motor fuels, purchased by the Scottish Court and necessary for its official activities;

(e) (e) be exempt from the tax on private passenger vehicles and motor cycles (Belasting van personenauto's en motomjwielen, BPM) with respect to motor vehicles for its official activities.

(f) (3) The exemptions provided for in paragraph 2(c) and (d) may be granted by way of a refund. The exemptions referred to in paragraph (2) shall be applied in accordance with the formal requirements of the host country. These requirements, however, shall not affect the general principles laid down in this article.

(4) The provisions of this article shall not apply to taxes and duties which are considered to be charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemised.

(5) Goods acquired or imported under paragraph (2) shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

Article 11

Communications Facilities

(1) The Scottish Court shall enjoy, *with* respect to *its* official communications, treatment not less favourable than that accorded *by* the Government to any diplomatic mission in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

(2) No official correspondence or other communication of the Scottish Court shall be subject to censorship by the Government. *Such* immunity from censorship shall extend to printed matter, photographic and electronic data communications, and other forms of communications as may be used by the Scottish Court. The Scottish Court shall be entitled to use codes and to dispatch and receive correspondence and other material or communications either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic couriers and bags.

(3) The Scottish Court shall have the right to operate radio and other telecommunications equipment, on frequencies allocated to it by the Government, between the premises of the Scottish Court and means of transport, within and outside the host country.

(4) For the fulfilment of its purposes, the Scottish Court shall have the right to publish freely and without restrictions within the host country in conformity with this Agreement.

(5) The provisions of this article shall apply also to the Lord Advocate.

Article 12

Public Services for the Premises of the Scottish Court

(1) The competent authorities shall secure, on fair conditions and upon the request of the Registrar or made on his behalf, the public services needed for the premises of the Scottish Court such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets.

(2) In cases where electricity, water, gas or other services referred to in paragraph (1) are made available for the premises of the Scottish Court by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the Government.

(3) In case of *force majeure* resulting in a complete or partial disruption of the aforementioned services, the Scottish Court shall, for the performance of its functions, be accorded the priority given to essential agencies and organs of the Government.

(4) Upon request of the competent authorities, the Registrar, or an official designated by him, shall make suitable arrangements to enable duly authorised representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises of the Scottish Court under conditions which shall not unreasonably disturb the carrying out of the functions of the Scottish Court. Underground constructions may be undertaken by the competent authorities on the premises of the Scottish Court only after consultation with the Registrar, or an official designated by him, and under conditions which shall not disturb the carrying out of the functions of the Scottish Court.

Article 13

Emblem, Markings and Flag

The Scottish Court shall be entitled to display its emblem and markings, as well as the appropriate flag, on its premises.

Article 14

Privileges and Immunities of Judges and Officials

(1) The judges and officials of the Scottish Court, the Registrar, the Lord Advocate, the Sheriff and the Procurator Fiscal, shall enjoy the privileges, immunities and facilities accorded to diplomatic agents in accordance with the *Vienna* Convention.

(2) The privileges and immunities are accorded to the judges and officials of the Scottish Court, the Registrar, the Lord Advocate, the Sheriff and the Procurator Fiscal in the

interest of the Scottish Court and not for the personal benefit of the persons themselves. The right and duty to waive the immunity in any case where it can be waived without prejudice to the purposes for which it is accorded shall vest in the British Ambassador at The Hague.

Article 15

Solicitors and Advocates

- (1) The solicitors *and* advocates of the accused shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions under Scots law.
- (2) In particular, they shall be accorded:
 - (a) exemption from immigration restrictions;
 - (b) inviolability in respect of all documents relating to the exercise of their functions as solicitor or advocate of the accused;
 - (c) immunity from criminal and civil jurisdiction in respect of words spoken or written and acts performed by them in their capacity as solicitor or advocate of the accused. Such immunity shall continue to be accorded to them after termination of their functions as a solicitor or advocate of the accused
- (3) The provisions of paragraph (2)(a) and (b) shall apply also to persons directly assisting solicitors or advocates of the accused.
- (4) This article shall be without prejudice to such disciplinary rules as may be applicable to solicitors and advocates.

Article 16

The Accused

- (1) At the time of the arrival of the accused in the host country, the Government of the United Kingdom shall, in accordance with the relevant treaties, request the Government to transfer the accused to the premises of the Scottish Court for the purpose of the trial and to detain them pending their transfer, having regard to the requirements of United Nations Security Council Resolution (1998).
- (2) After their transfer to the premises of the Scottish Court the accused shall not be transferred to the territory of the United Kingdom. However, the Government of the United Kingdom may, after due notification to the Government, transfer the accused from the premises of the Scottish Court directly to the territory of the United Kingdom, but only:

- (a) for the purpose of trial by jury in Scotland, provided that the accused have given their written agreement, and have confirmed that agreement in person to the High Court of Justiciary in the presence of any counsel instructed by them, or
 - (b) for the purpose of serving a custodial sentence imposed by the Scottish Court following the conviction of the accused.
- (3) The host country shall not exercise its criminal jurisdiction over the accused in respect of acts, omissions or convictions prior to their arrival in the host country. The immunity shall cease when the accused, being obliged to leave the territory of the host country, have not done so or, having left it, have returned.
- (4) The accused shall be obliged to leave the host country on:
- (a) the trial being discontinued by process of law preventing any further trial under Scots Law; or
 - (b) their acquittal.

Article 17

Witnesses

- (1) The host country shall permit the entry into the Netherlands of witnesses for the sole purpose of attending the trial.
- (2) Where appropriate, the host country shall permit the transfer of a witness from the border of the host country to the premises of the Scottish Court in accordance with the relevant treaties and its national law.
- (3) For the purpose of paragraph (2), the Scottish Court may make requests for such transfer directly to the Ministry of Justice of the Kingdom of the Netherlands.
- (4) Upon request by the Lord Advocate or the Scottish Court, the host country shall provide for protection of a witness, in accordance with its law and practice.
- (5) Subject to paragraph (2), a witness shall not be prosecuted, detained or subjected to any other restriction of his or her personal liberty, by the authorities of the host country in respect of acts or convictions prior to his or her entry into the territory of the host country.
- (6) The immunity provided for in paragraph (5) shall cease on departure of the witness from the territory of the Netherlands, or following the elapse of 15 days from the date when his or her presence at the trial is no longer required and during which he or she has had an opportunity to leave the Netherlands and has not done so or, having left it, has returned, unless such return is required for the purposes of the trial.

(7) Without prejudice to paragraph (4), a witness shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions.

Article 18

International Observers

The host country shall permit the entry into the territory of the Netherlands of international observers for the sole purpose of attending the trial. They shall not be subjected by the host country to any measure which may affect the free and independent exercise of their functions.

Article 19

Co-operation with the Competent Authorities

(1) Without prejudice to their privileges and immunities, it is the duty of *all* persons enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have the duty not to interfere in the internal affairs of the host country.

(2) The Scottish Court shall co-operate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse of the privileges, immunities and facilities accorded under this Agreement.

(3) The Scottish Court shall observe security directives issued by the host country, as well as directives of the competent authorities responsible for fire prevention regulations.

Article 20

Notification

(1) The Registrar shall notify the Government of the names and status of persons referred to in this Agreement, other than members of the public, and of any change in their status. The provisions of this Agreement shall apply only to those persons who have been so notified.

(2) The Registrar shall also notify the Government of the name and identity of any personnel entitled to carry firearms within the premises of the Scottish Court, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition. The Registrar shall issue permits to be carried at all times by any personnel entitled to carry firearms within the premises of the Scottish Court.

Article 21

Entry, Exit and Movement within the Host Country

All persons notified by the Registrar to the Government in accordance with Article 20(1) shall have the right of unimpeded entry into, exit from and movement within the host country, as necessary for the purposes of the trial. They shall be granted facilities for speedy travel. Visas, entry permits or licences, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses, provided that each such person has been notified by the Registrar to the Government.

Article 22

Identification Cards

At the request of the Registrar, the Government shall issue identification cards to persons notified by the Registrar in accordance with Article 2(1)

Article 23

Security, Safety and Protection of Persons referred to in this Agreement

Without prejudice to Article 17(4), the competent authorities shall, in accordance with the law and practice of the Netherlands, take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Scottish Court, free from interference of any kind.

Article 24

Costs

(1) All costs:

- (a) relating to the establishment and sitting of the Scottish Court in the Netherlands, and
- (b) incurred by the host country relating to the sitting of the Scottish Court in the Netherlands,

shall be borne by the Government of the United Kingdom.

(2) The Government of the United Kingdom shall, in accordance with further arrangements made in an exchange of letters of understanding with the Government of the Netherlands, deposit in a designated account, prior to each quarter, the amount which the Ministry of Justice of the Netherlands estimates will be incurred by it in that quarter

(3) An accounting shall be supplied by the Government of all sums expended by it every quarter.

(4) On the termination of this Agreement, the Government of the United Kingdom and the Government of the Netherlands shall agree a final accounting with regard to the costs incurred by the latter, and shall make any balancing payment which may be require.

Article 25

Legal Cooperation

Nothing in this Agreement shall prejudice the application of treaties on legal co-operation in criminal matters, except in so far as otherwise provided in this Agreement.

Article 26

Internal Security of the Host Country

Nothing in this Agreement shall affect the right of the host country to take such measures as it may consider necessary for the purpose of protecting its national security.

Article 27

Additional Arrangements

With a view to the practical application of this Agreement, letters of understanding may be exchanged between the Registrar and the designated representative of the Ministry of Justice of the Netherlands.

Article 28

Settlement of Disputes

Any dispute relating to the interpretation or application of this Agreement shall be resolved by consultation and negotiation between the Parties.

Article 29

Final Provisions

(1) This Agreement shall enter into force on a date to be agreed by the Parties, provided that they may agree in the meantime to apply provisionally any of its provisions.

(2) Subject to paragraph (3), this Agreement shall remain in force for one year from its entry into force, with the possibility of extending it by mutual agreement.

(3) This Agreement shall terminate

- (a) on the day after the date of the end of the trial (as defined in Article 3(4)), and any person then detained or imprisoned in accordance with Article 3(3)(c) or (d) shall be released on that day, or
- (b) seven days after the date on which the Parties, after consultations with the Secretary-General of the United Nations, agree in an exchange of notes that there is no reasonable prospect of the trial taking place before the Scottish Court in the Netherlands as envisaged in this Agreement.

(4) Termination following completion of the trial shall not affect:

- (a) those provisions of this Agreement which are required for the orderly termination of the operation of the Scottish Court, including the transfer of the accused in accordance with Article 16(2)(b); and
- (b) the continuation of the immunity from legal process in respect of words spoken or written or acts done in the capacity *as* solicitor or advocate of the accused.

(5) This Agreement may be amended by mutual consent at any time at the request of either Party.

With respect to the Kingdom of the Netherlands this Agreement shall apply to the part of the Kingdom in Europe only.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at The Hague on the 18th day of September 1998, in the English language.

For the Government of the Kingdom of Netherlands:

/s/

For the Government of the United Kingdom of Great Britain and Northern Ireland:

/s/

ภาคผนวก จ.

Agreement Between the United Nations and the Government of Sierra Leone on the
Establishment of A Special Court for Sierra Leone



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone

Whereas the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity;

Whereas by the said resolution, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law;

Whereas the Secretary-General of the United Nations (hereinafter “the Secretary-General”) and the Government of Sierra Leone (hereinafter “the Government”) have held such negotiations for the establishment of a Special Court for Sierra Leone (hereinafter “the Special Court”);

Now therefore the United Nations and the Government of Sierra Leone have agreed as follows:

Article 1

Establishment of the Special Court

1. There is hereby established a Special Court for Sierra Leone to prosecute persons most responsible for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.
2. The Special Court shall function in accordance with the Statute of the Special Court for Sierra Leone. The Statute is annexed to this Agreement and forms an integral part thereof.

Article 2

Composition of the Special Court and appointment of judges

1. The Special Court shall be composed of two Trial Chambers and an Appeals Chamber.
2. The Chambers shall be composed of eleven independent judges who shall serve as follows:
 - (a) Three judges shall serve in each of the Trial Chambers, of whom one shall be appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General;
 - (b) Five judges shall serve in the Appeals Chamber, of whom two shall be appointed by the Government of Sierra Leone and three judges shall be appointed by the Secretary-General upon nominations forwarded by States, and in particular the member States of the Economic Community of West African States and the Commonwealth, at the invitation of the Secretary-General.
3. The Government of Sierra Leone and the Secretary-General shall consult on the appointment of judges.
4. Judges shall be appointed for a four-year term and shall be eligible for reappointment.
5. In addition to the judges sitting in the Chambers and present at every stage of the proceedings, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate an alternate judge appointed by either the Government of Sierra Leone or the Secretary-General to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting.

Article 3

Appointment of a Prosecutor and a Deputy Prosecutor

1. The Secretary-General, after consultation with the Government of Sierra Leone, shall appoint a Prosecutor for a four-year term. The Prosecutor shall be eligible for reappointment.
2. The Government of Sierra Leone, in consultation with the Secretary-General and the Prosecutor, shall appoint a Sierra Leonean Deputy Prosecutor to assist the Prosecutor in the conduct of the investigations and prosecutions.

3. The Prosecutor and the Deputy Prosecutor shall be of high moral character and possess the highest level of professional competence and extensive experience in the conduct of investigations and prosecution of criminal cases. The Prosecutor and the Deputy Prosecutor shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. The Prosecutor shall be assisted by such Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently.

Article 4

Appointment of a Registrar

1. The Secretary-General, in consultation with the President of the Special Court, shall appoint a Registrar who shall be responsible for the servicing of the Chambers and the Office of the Prosecutor, and for the recruitment and administration of all support staff. He or she shall also administer the financial and staff resources of the Special Court.

2. The Registrar shall be a staff member of the United Nations. He or she shall serve a four-year term and shall be eligible for reappointment.

Article 5

Premises

The Government shall provide the premises for the Special Court and such utilities, facilities and other services as may be necessary for its operation.

Article 6

Expenses of the Special Court¹

The expenses of the Special Court shall ...

¹ The formulation of this article is dependent on a decision on the financial mechanism of the Special Court.

Article 7

Inviolability of premises, archives and all other documents

1. The premises of the Special Court shall be inviolable. The competent authorities shall take whatever action may be necessary to ensure that the Special Court shall not be dispossessed of all or any part of the premises of the Court without its express consent.
2. The property, funds and assets of the Special Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
3. The archives of the Court, and in general all documents and materials made available, belonging to or used by it, wherever located and by whomsoever held, shall be inviolable.

Article 8

Funds, assets and other property

1. The Special Court, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.
2. Without being restricted by financial controls, regulations or moratoriums of any kind, the Special Court:
 - (a) May hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;
 - (b) Shall be free to transfer its funds, gold or currency from one country to another, or within Sierra Leone, to the United Nations or any other agency.

Article 9

Seat of the Special Court

The Special Court shall have its seat in Sierra Leone. The Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and may be relocated outside Sierra Leone, if circumstances so require, and subject to the conclusion of

a Headquarters Agreement between the Secretary-General of the United Nations and the Government of Sierra Leone, on the one hand, and the Government of the alternative seat, on the other.

Article 10

Juridical capacity

The Special Court shall possess the juridical capacity necessary to:

- (a) Contract;
- (b) Acquire and dispose of movable and immovable property;
- (c) Institute legal proceedings;
- (d) Enter into agreements with States as may be necessary for the exercise of its functions and for the operation of the Court.

Article 11

Privileges and immunities of the judges, the Prosecutor and the Registrar

1. The judges, the Prosecutor and the Registrar, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

- (a) Personal inviolability, including immunity from arrest or detention;
- (b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
- (c) Inviolability for all papers and documents;
- (d) Exemption, as appropriate, from immigration restrictions and other alien registrations;
- (e) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents by the Vienna Convention;
- (f) Exemption from taxation in Sierra Leone on their salaries, emoluments and allowances.

2. Privileges and immunities are accorded to the judges, the Prosecutor and the Registrar in the interest of the Special Court and not for the personal benefit of the individuals themselves. The right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President.

Article 12

Privileges and immunities of international and Sierra Leonean personnel

1. Sierra Leonean and international personnel of the Special Court shall be accorded:
 - (a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the Special Court;
 - (b) Immunity from taxation on salaries, allowances and emoluments paid to them.
2. International personnel shall, in addition thereto, be accorded:
 - (a) Immunity from immigration restriction;
 - (b) The right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Sierra Leone.
3. The privileges and immunities are granted to the officials of the Special Court in the interest of the Court and not for their personal benefit. The right and the duty to waive the immunity in any particular case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Registrar of the Court.

Article 13

Counsel

1. The Government shall ensure that the counsel of a suspect or an accused who has been admitted as such by the Special Court shall not be subjected to any measure which may affect the free and independent exercise of his or her functions.
2. In particular, the counsel shall be accorded:
 - (a) Immunity from personal arrest or detention and from seizure of personal baggage;
 - (b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;
 - (c) Immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunity shall continue to be accorded after termination of his or her functions as a counsel of a suspect or accused.

Article 14

Witnesses and experts

Witnesses and experts appearing from outside Sierra Leone on a summons or a request of the judges or the Prosecutor shall not be prosecuted, detained or subjected to any restriction on their liberty by the Sierra Leonean authorities. They shall not be subjected to any measure which may affect the free and independent exercise of their functions.

Article 15

Security, safety and protection of persons referred to in this Agreement

Recognizing the responsibility of the Government under international law to ensure the security, safety and protection of persons referred to in this Agreement and its present incapacity to do so pending the restructuring and rebuilding of its security forces, it is agreed that the United Nations Mission in Sierra Leone shall provide the necessary security to premises and personnel of the Special Court, subject to an appropriate mandate by the Security Council and within its capabilities.

Article 16

Cooperation with the Special Court

1. The Government shall cooperate with all organs of the Special Court at all stages of the proceedings. It shall, in particular, facilitate access to the Prosecutor to sites, persons and relevant documents required for the investigation.
2. The Government shall comply without undue delay with any request for assistance by the Special Court or an order issued by the Chambers, including, but not limited to:
 - (a) Identification and location of persons;
 - (b) Service of documents;
 - (c) Arrest or detention of persons;
 - (d) Transfer of an indictee to the Court.

Article 17***Working language***

The official working language of the Special Court shall be English.

Article 18***Practical arrangements***

1. With a view to achieving efficiency and cost-effectiveness in the operation of the Special Court, a phased-in approach shall be adopted for its establishment in accordance with the chronological order of the legal process.
2. In the first phase of the operation of the Special Court, judges, the Prosecutor and the Registrar will be appointed along with investigative and prosecutorial staff. The process of investigations and prosecutions and the trial process of those already in custody shall then be initiated. While the judges of the Appeals Chamber shall serve whenever the Appeals Chamber is seized of a matter, they shall take office shortly before the trial process has been completed.

Article 19***Settlement of disputes***

Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiation, or by any other mutually agreed upon mode of settlement.

Article 20***Entry into force***

The present Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal instruments for entry into force have been complied with.

DONE at [place] on [day, month] 2000 in two copies in the English language.

For the United Nations

For the Government of Sierra Leone

ภาคผนวก จ.

Statute of the Special Court for Sierra Leone



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Statute of the Special Court for Sierra Leone

Having been established by an Agreement between the United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone (hereinafter “the Special Court”) shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the Special Court

The Special Court shall have the power to prosecute persons most responsible for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

Article 2

Crimes against humanity

The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
- (h) Persecution on political, racial, ethnic or religious grounds;
- (i) Other inhumane acts.

Article 3

Violations of article 3 common to the Geneva Conventions and of Additional Protocol II

The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 4

Other serious violations of international humanitarian law

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

- (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (b) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(c) Abduction and forced recruitment of children under the age of 15 years into armed forces or groups for the purpose of using them to participate actively in hostilities.

Article 5

Crimes under Sierra Leonean law

The Special Court shall have the power to prosecute persons who have committed the following crimes under Sierra Leonean law:

(a) Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap. 31):

- (i) Abusing a girl under 13 years of age, contrary to section 6;
- (ii) Abusing a girl between 13 and 14 years of age, contrary to section 7;
- (iii) Abduction of a girl for immoral purposes, contrary to section 12.

(b) Offences relating to the wanton destruction of property under the Malicious Damage Act, 1861:

- (i) Setting fire to dwelling-houses, any person being therein to section 2;
- (ii) Setting fire to public buildings, contrary to sections 5 and 6;
- (iii) Setting fire to other buildings, contrary to section 6.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

2. The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.

5. Individual criminal responsibility for the crimes referred to in article 5 shall be determined in accordance with the respective laws of Sierra Leone.

Article 7

Jurisdiction over persons of 15 years of age

1. The Special Court shall have jurisdiction over persons who were 15 years of age at the time of the alleged commission of the crime.

2. At all stages of the proceedings, including investigation, prosecution and adjudication, an accused below the age of 18 (hereinafter “a juvenile offender”) shall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society.

3. In a trial of a juvenile offender, the Special Court shall:

(a) Consider, as a priority, the release of the juvenile, unless his or her safety and security requires that the juvenile offender be placed under close supervision or in a remand home; detention pending trial shall be used as a measure of last resort;

(b) Constitute a “Juvenile Chamber” composed of at least one sitting judge and one alternate judge possessing the required qualifications and experience in juvenile justice;

(c) Order the separation of his or her trial, if jointly accused with adults;

(d) Provide the juvenile with the legal, social and any other assistance in the preparation and presentation of his or her defence, including the participation in legal proceedings of the juvenile offender’s parent or legal guardian;

(e) Provide protective measures to ensure the privacy of the juvenile; such measures shall include, but not be limited to, the protection of the juvenile’s identity, or the conduct of in camera proceedings;

(f) In the disposition of his or her case, order any of the following: care guidance and supervision orders, community service orders, counselling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies.

Article 8

Concurrent jurisdiction

1. The Special Court and the national courts of Sierra Leone shall have concurrent jurisdiction.
 2. The Special Court shall have primacy over the national courts of Sierra Leone.
- At any stage of the procedure, the Special Court may formally request a national court to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence.

Article 9

Non bis in idem

1. No person shall be tried before a national court of Sierra Leone for acts for which he or she has already been tried by the Special Court.
2. A person who has been tried by a national court for the acts referred to in articles 2 and 4 of the present Statute may be subsequently tried by the Special Court if:
 - (a) The act for which he or she was tried was characterized as an ordinary crime; or
 - (b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.
3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Special Court shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Amnesty

An amnesty granted to any person falling within the jurisdiction of the Special Court in respect of the crimes referred to in articles 2 to 4 of the present Statute shall not be a bar to prosecution.

Article 11

Organization of the Special Court

The Special Court shall consist of the following organs:

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor; and
- (c) The Registry.

Article 12

Composition of the Chambers

1. The Chambers shall be composed of eleven independent judges, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers, of whom one shall be a judge appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General of the United Nations (hereinafter “the Secretary-General”);

(b) Five judges shall serve in the Appeals Chamber, of whom two shall be judges appointed by the Government of Sierra Leone, and three judges appointed by the Secretary-General.

2. Each judge shall serve only in the Chamber to which he or she has been appointed.

3. The judges of the Appeals Chamber and the judges of the Trial Chambers, respectively, shall elect a presiding judge who shall conduct the proceedings in the Chamber to which he or she was elected. The presiding judge of the Appeals Chamber shall be the President of the Special Court.

4. In addition to the judges sitting in the Chambers and present at every stage of the proceedings, the presiding judge of a Trial Chamber or the Appeals Chamber shall designate an alternate judge appointed by either the Government of Sierra Leone or the Secretary-General, to be present at each stage of the trial, and to replace a judge, if that judge is unable to continue sitting.

Article 13

Qualification and appointment of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the

highest judicial offices. They shall be independent in the performance of their functions, and shall not accept or seek instructions from any Government or any other source.

2. In the overall composition of the Chambers, due account shall be taken of the experience of the judges in international law, including international humanitarian law and human rights law, criminal law and juvenile justice.

3. The judges shall be appointed for a four-year period and shall be eligible for reappointment.

Article 14

Rules of Procedure and Evidence

1. The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court.

2. The judges of the Special Court as a whole may amend the Rules of Procedure and Evidence or adopt additional rules where the applicable Rules do not, or do not adequately, provide for a specific situation. In so doing, they may be guided, as appropriate, by the Criminal Procedure Act, 1965, of Sierra Leone.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons most responsible for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source.

2. The Office of the Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor shall, as appropriate, be assisted by the Sierra Leonean authorities concerned.

3. The Prosecutor shall be appointed by the Secretary-General for a four-year term and shall be eligible for reappointment. He or she shall be of high moral character and possess

the highest level of professional competence and have extensive experience in the conduct of investigations and prosecution of criminal cases.

4. The Prosecutor shall be assisted by a Sierra Leonean Deputy Prosecutor, and by such other Sierra Leonean and international staff as may be required to perform the functions assigned to him or her effectively and efficiently. Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice.

5. In the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation programme is not placed at risk and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the Special Court.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the Special Court and shall be a staff member of the United Nations. He or she shall serve for a four-year term and be eligible for reappointment.

4. The Registrar shall set up a Victims and Witnesses Unit within the Registry.

This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

Article 17

Rights of the accused

1. All accused shall be equal before the Special Court.
2. The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
 - (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
 - (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Special Court;
 - (g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 18

Judgement

The judgement shall be rendered by a majority of the judges of the Trial Chamber or of the Appeals Chamber, and shall be delivered in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 19

Penalties

1. The Trial Chamber shall impose upon a convicted person, other than a juvenile offender, imprisonment for a specified number of years. In determining the terms of imprisonment, the Trial Chamber shall, as appropriate, have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone.
2. In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chamber may order the forfeiture of the property, proceeds and any assets acquired unlawfully or by criminal conduct, and their return to their rightful owner or to the State of Sierra Leone.

Article 20

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by a Trial Chamber or from the Prosecutor on the following grounds:
 - (a) A procedural error;
 - (b) An error on a question of law invalidating the decision;
 - (c) An error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chamber.
3. The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the Former Yugoslavia and for Rwanda. In the interpretation and application of the laws of Sierra Leone, they shall be guided by the decisions of the Supreme Court of Sierra Leone.

Article 21

Review proceedings

1. Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been

a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit an application for review of the judgement.

2. An application for review shall be submitted to the Appeals Chamber. The Appeals Chamber may reject the application if it considers it to be unfounded. If it determines that the application is meritorious, it may, as appropriate:

- (a) Reconvene the Trial Chamber;
- (b) Retain jurisdiction over the matter.

Article 22

Enforcement of sentences

1. Imprisonment shall be served in Sierra Leone. If circumstances so require, imprisonment may also be served in any of the States which have concluded with the International Criminal Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia an agreement for the enforcement of sentences, and which have indicated to the Registrar of the Special Court their willingness to accept convicted, persons. The Special Court may conclude similar agreements for the enforcement of sentences with other States.

2. Conditions of imprisonment, whether in Sierra Leone or in a third State, shall be governed by the law of the State of enforcement subject to the supervision of the Special Court. The State of enforcement shall be bound by the duration of the sentence, subject to article 23 of the present Statute.

Article 23

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Special Court accordingly. There shall only be pardon or commutation of sentence if the President of the Special Court, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 24***Working language***

The working language of the Special Court shall be English.

Article 25***Annual report***

The President of the Special Court shall submit an annual report on the operation and activities of the Court to the Secretary-General and to the Government of Sierra Leone.



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ช.

Articles of Cooperation Between the United Nations and the Royal Government of
Cambodia [in/Concerning] the Prosecution under Cambodia Law of Crimes Committed
During the Period of Democratic Kampuchea



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Articles of Cooperation Between the United Nations and the Royal Government of Cambodia [in/Concerning] the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea

Whereas the Secretary-General of the United Nations and the Prime Minister of Cambodia have agreed to cooperate in the establishment of a Cambodian court to prosecute senior leaders of Democratic Kampuchea responsible for serious violations of Cambodian and international law committed between 17 April 1975 to 6 January 1979;

Now therefore the United Nations and the Royal Government of Cambodia have agreed as follows:

Article 1

The Law on the Establishment of Extraordinary Chambers

The "Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea" (hereinafter: "the Law on the Establishment of Extraordinary Chambers"), which has been adopted by the Cambodian Legislature under the Constitution of Cambodia is subject to parliamentary approval, shall determine the jurisdiction of the court, its organizational structure and composition and the rights of the accused. This law and subsequent amendments to it shall at all times be in full conformity with these articles. The modalities of cooperation between the United Nations and the Royal Government of Cambodia (hereinafter: "the Government") are set out in Articles 2-28 below.

Article 2

Judges

1. Cambodian judges, on the one hand and judges appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations (hereinafter: "international judges"), on the other, shall serve in each chamber.
2. The composition of the chambers shall be as follows:
 1. The Trial Chamber: 3 Cambodian judges and 2 international judges.
 2. The Appeals Chamber: 4 Cambodian judges and 3 international judges.
 3. The Supreme Court: 5 Cambodian judges and 4 international judges.
3. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to judicial offices. They shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source.

4. In the overall composition of the chambers, due account should be taken of the experience of the judges in criminal law, international law, including international humanitarian and human rights law.
5. The Secretary-General of the United Nations undertakes to forward a list of not more than 12 international judges from which the Supreme Council of the Magistracy shall appoint nine to serve as judges in the three chambers. Appointment of international judges by the Supreme Council of the Magistracy shall be made only from the list submitted by the Secretary-General.
6. In the event of a vacancy of an international judge, the Supreme Council of the Magistracy shall appoint another international judge from the same list.
7. The judges shall be appointed for the duration of the proceedings.
8. In addition to the international judges sitting in the chamber and present at every state of the proceedings, the President of the Chamber may, on a case-by-case basis, designate from the list of nominees submitted by the Secretary-General, one or more alternate judges to be present at each stage of the trial, and to replace an international judge if that judge is unable to continue sitting.

Article 3 ***Decision-making***

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:
 1. A decision by the Trial Chamber shall require the affirmative vote of at least four judges;
 2. A decision by the Appeals Chamber shall require the affirmative vote of at least five judges;
 3. A decision by the Supreme Court shall require the affirmative vote of at least six judges.
2. Where there is no unanimity, the chamber's decision shall contain the views of the majority and the minority.

Article 4 ***Investigating judges***

1. There shall be one Cambodian and one international judge serving as co-investigating judges. They shall be responsible for the conduct of investigations.
2. The investigating judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to such a judicial office.

3. The investigating judges shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is to be understood, however, that the scope of the investigation is limited to senior leaders of Democratic Kampuchea [additional text from Article 1 of the draft law to be inserted] of Cambodian penal law, international law and custom, and international conventions recognized by Cambodia, and which were committed during the period 17 April 1975 to 6 January 1979.
4. The investigating judges shall cooperate with a view to arriving at a common approach to the investigation. In case the investigating judges are unable to agree whether to proceed with an investigation, the investigation shall proceed unless the judges or one of them requests within 30 days that the difference shall be settled in accordance with Article 6.
5. In addition to the list of 12 international judges, the Secretary-General shall submit a list of two international judges from which the Supreme Council of the Magistracy shall appoint one to serve as an international investigating judge.
6. The investigating judges shall be appointed for the duration of the proceedings.

Article 5 ***Prosecutors***

Option 1:

1. There shall be one Cambodian and one international prosecutor serving as co-prosecutors. They shall be responsible for the conduct of prosecutions.

Option 2:

1. There shall be three Cambodian prosecutors (one for the Trial Chamber, one for the Appeals Chamber and one for the Supreme Court), and one international prosecutor competent to appear in all three chambers, serving as co-prosecutors. They shall be responsible for the conduct of the prosecutions.
2. The prosecutors shall be of high moral character, and possess a high level of professional competence and extensive experience in the conduct of investigations and prosecutions of criminal cases.
3. The prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any Government or any other source. It is understood, however, that the scope of the prosecution is limited to senior leaders of Democratic Kampuchea [additional text from Article 1 of the draft law to be inserted] of Cambodian penal law, international law and custom, and international conventions recognized by Cambodia, and which were committed during the period 17 April 1975 to 6 January 1979.
4. The prosecutors shall cooperate with a view to arriving at a common approach to the prosecution. In case the prosecutors are unable to agree whether to proceed with a prosecution, the prosecution shall proceed unless the prosecutors or one of them requests within 30 days that the difference shall be settled in accordance with Article 6.
5. The Secretary-General undertakes to forward a list of two international prosecutors from which the Supreme Council of the Magistracy shall select one.

6. The prosecutors shall be appointed for the duration of the proceedings.
7. Each prosecutor shall have one or more deputy prosecutors to assist him or her with prosecutions before the chambers. Deputy international prosecutors shall be appointed by the international prosecutor from a list provided by the Secretary-General.

Article 6

Settlement of differences Between the Co-Investigating Judges or the Co-Prosecutors

1. In case the Co-Investigating Judges or the Co-Prosecutors have made a request in accordance with Article 4, paragraph 4, or Article 5, paragraph 4, as the case may be, they shall submit written statements of facts and the reasons for their different positions to the Director of Administration.
2. The difference shall be settled forthwith by a Pre-Trial Chamber of five judges, three appointed by the Supreme Council of the Magistracy, with one as President, and two appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General. Article 2, paragraph 3, shall apply to the judges.
3. Upon receipt of the statements referred to in paragraph 1, the Director of Administration shall immediately convene the Pre-Trial Chamber and communicate the statements to its members.
4. A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of Administration, who shall publish it and communicate it to the Co-Investigating Judges or the Co-Prosecutors. They shall immediately proceed in accordance with the decision of the Chamber. If there is no majority, as required for a decision, the investigation or prosecution shall proceed.

Article 7

Office of the Administration

1. There shall be an Office of the Administration to service the chambers, the investigating judges and the Prosecutors' Office.
2. There shall be a Cambodian Director of this Office and an international Deputy Director. The international Deputy Director shall be appointed by the Secretary-General of the United Nations under the 200 series Staff Rules and shall be responsible for the recruitment and administration of all international staff, as required by the international components of the chambers, the investigating judges, the Prosecutor's Office and the Office of the Administration. He or she shall also administer at the local level the financial and staff resources allotted against the United Nations Trust Fund. (of Article 15).

Article 8
Crimes falling within the jurisdiction of the chambers

The subject-matter jurisdiction of the chambers shall include the crime of genocide, crimes against humanity and war crimes as defined in international instruments, and such other crimes as defined in the Law on the Establishment of Extraordinary Chambers.

Article 9
Amnesty

The Parties agree that there shall be no amnesty for the crime of genocide, war crimes and crimes against humanity. An amnesty granted to any person falling within the jurisdiction of the chambers shall not be a bar to prosecution.

Note: On 20 March 2000 the Head of the United Nations delegation was informed in writing by the Head of the Cambodian delegation as follows with respect to decisions already taken regarding amnesty for the Khmer Rouge.

The Cambodian Constitution gives the rights to His Majesty the King to grant amnesties (Article 27), and also to the National Assembly to make laws concerning amnesty (Article 90). So far His Majesty King Norodom Sihanouk has only exercised this right with regard to the Khmer Rouge when requested by the Royal Government of Cambodia, with a clear endorsement also by two-thirds of the members of the National Assembly.

Our Draft Law (Article 40) makes a clear statement of the government's intent not to request an amnesty for any person who committed crimes relating to applicable law described in Articles 3-8 of the Draft Law. This indicates our intention to make a clear break in the cycle.

As to the past, I can inform you that, with regard to matters covered in this Draft Law, there has been only one case, dated 14 September 1996, when an amnesty was granted to only one person with regard to a 1979 conviction on the charge of genocide.

Article 10
Procedure

The procedures shall be in accordance with Cambodian law. If necessary, guidance may also be sought in procedural rules established at the international level.

Article 11
Rights of the accused

The rights of the accused enshrined in Article 14 of the 1966 Covenant on Civil and Political Rights shall be respected throughout the trial process. Such rights shall, in particular, include the right to a fair and public hearing, the right to be presumed innocent until proved guilty, the right to choose a counsel of his or her choice, to have adequate time and facilities for the preparation of his defense, to have counsel provided if he or she does

not have sufficient means to pay for it and to examine or have examined the witnesses against him or her.

Article 12
Premises

The Government shall provide the premises for the court and such utilities, facilities and other services necessary for its operation that may be mutually agreed upon by separate agreement between the United Nations and the Government.

Article 13
Cambodian personnel

Salaries and emoluments of Cambodian judges, prosecutors and other personnel shall be defrayed by the Government

Article 14
International personnel

Salaries and emoluments of international judges, prosecutors and other international personnel shall be defrayed by contributing States or the United Nations Trust Fund.

Article 15
Financial assistance of the United Nations

1. The Secretary-General of the United Nations undertakes to establish a trust fund to assist in the operational costs of the court. The Secretary-General will appeal to States, inter-governmental and non-governmental organizations to contribute funds, equipment and services, including judges, prosecutors and other personnel.
2. The United Nations Trust Fund shall be administered by the Secretary-General in accordance with the Financial Regulations and Rules of the United Nations.
3. The following shall be met from voluntary contributions received in the United Nations Trust Fund:
 1. daily subsistence allowance and travel expenses for the international judges, international investigating judges, prosecutors and other international personnel;
 2. utilities and services as agreed separately between the United Nations and the Government;
 3. salary for the Deputy Director of the Office of Administration;
 4. salary for any additional international staff, if none is contributed and the court would not be able to function without this assistance;

5. defense counsel;
6. witnesses travel from within Cambodia and from abroad;
7. safety and security arrangements as agreed separately between the United Nations and the Government;
8. such other limited assistance as may be necessary to ensure the smooth functioning of the court.

Article 16

Inviolability of archives and all documents of the court

The archives of the court, and in general all documents and materials made available, belonging to or used by it, wherever located in Cambodia and by whomsoever held, shall be inviolable for the duration of the proceedings.

Article 17

Privileges and immunities of international judges and international prosecutors

1. The international judges, including the international investigating judge, the international prosecutor, and the Deputy Director of the Office of Administration, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. They shall, in particular, enjoy:

1. personal inviolability, including immunity from arrest or detention;
2. immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
3. inviolability for all papers and documents;
4. exemption from immigration restrictions and alien registration;
5. the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

2. The international judges, including the international investigating judge, the international prosecutor and the Deputy Director of the Office of Administration shall enjoy exemption from taxation in Cambodia on their salaries, emoluments and allowances.

Article 18
Privileges and immunities of international and Cambodian personnel

1. International and Cambodian personnel shall be accorded:
 1. immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with the chambers.
 2. immunity from taxation on salaries, allowances and emoluments paid to them by contributing States or the United Nations Trust Fund.
2. International personnel shall, in addition:
 1. enjoy immunity from immigration restriction;
 2. the right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Cambodia.

Article 19
Counsel

1. The Counsel of a suspect or an accused who has been admitted as such by the chambers shall not be subjected by the Government to any measure which may affect the free and independent exercise of his or her functions under the Law on the Establishment of Extraordinary Chambers.
2. In particular, the counsel shall be accorded:
 1. immunity from personal arrest or detention and from seizure of personal baggage;
 2. inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;
 3. immunity from criminal or civil jurisdiction in respect of words spoken or written and acts performed by them in their official capacity as counsel. Such immunity shall continue to be accorded to them after termination of their functions as a counsel of a suspect or accused.

Article 20
Witnesses and experts

Witnesses and experts appearing on a summons or a request of the judges, including the investigating judges, or the prosecutor shall not be prosecuted, detained or subjected to any other restriction of their liberty by the Cambodian authorities. They shall not be subjected by the authorities to any measures which may affect the free and independent exercise of their functions.

Article 21
Protection of victims and witnesses

The court shall provide for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22
Security, safety and protection of persons referred to in these Articles

The Government shall take all effective and adequate actions which may be required to ensure the security, safety and protection of persons referred to in these Articles.

Article 23
Obligation to assist the court

The Government shall comply without undue delay with any request for assistance by the court or an order issued by the chambers, including, but not limited to:

1. identification and location of persons;
2. service of documents;
3. arrest or detention of persons;
4. transfer of an indictee to the chambers;

Article 24
Working language

The official working language of the court shall be Khmer with official translation into English and French. Any translation into Russian will be the responsibility of the Government.

Article 25
Practical arrangements

1. With a view to achieving efficiency and cost-effectiveness in the operation of the court, a phased-in approach shall be adopted for the court's establishment in accordance with the chronological order of the legal process.
2. In the first phase of the operation of the court, judges, investigating judges and prosecutors will be appointed along with investigative and prosecutorial staff, and the process of investigations and prosecutions shall be initiated.

3. The trial process of those already in custody shall proceed simultaneously with the investigation of other persons responsible for crimes falling within the jurisdiction of the court.
4. With the completion of the investigation of persons suspected of having committed the crimes falling within the jurisdiction of the court, arrest warrants shall be issued and submitted to the Government to effectuate the arrest.
5. With the arrest by the Government of indicted persons situated in its territory, chambers shall be fully operational, provided that the judges of the Appeal Chamber and the Supreme Court shall serve when their respective chamber is seized with a matter.

Article 26

The financial authority of the Secretary-General

1. The Government recognizes that the Secretary-General of the United Nations cannot make undertakings on behalf of the Organization that require funds appropriated through assessed contributions. Therefore, the obligations of the United Nations will be determined solely by the terms of these articles, and shall be dependent on the availability of personnel offered by contributing States and funds in the United Nations Trust Fund.
2. The appointment of international judges and prosecutors nominated by the Secretary-General shall not take effect until such time as the Secretary-General is satisfied of the availability of funds for an initial period of two years.
3. If no personnel or insufficient personnel is offered by States or if no funds or insufficient funds are available in the United Nations Trust Fund, the United Nations shall be free from its obligations under these articles.

Article 27

Settlement of Disputes

Any dispute between the Parties concerning the interpretation or application of these Articles shall be settled by negotiation, or by any other mutually agreed upon mode of settlement.

Article 28

Entry into force

The present Memorandum of Understanding shall enter into force on the day after both parties have notified each other in writing that the legal requirements for entry into force have been complied with.

Done at [place] on [day, month] 2000 in two copies in the English language

For the United Nations For the Royal Government of Cambodia

Hans Corell Sok An

Under-Secretary-General Senior Minister and Minister in Charge for Legal Affairs of the Council of Ministers



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ซ.

Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the
Prosecution of Crimes Committed During the Period of Democratic Kampuchea



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

- rape;
- persecutions on political, racial, and religious grounds;
- other inhuman acts.

Article 6

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed or ordered the commission of grave breaches of the Geneva Convention of 12 August 1949, such as the following acts against persons or property protected under provisions of this Convention, and which were committed during the period 17 April 1975 to 6 January 1979:

- willful killing;
- torture or inhumane treatment;
- willfully causing great suffering or serious injury to body or health;
- destruction and serious damage to property, not justified by military necessity and carried out unlawfully and wantonly;
- compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- wilfully depriving a prisoner of war or civilian the rights of fair and regular trial;
- unlawful deportation or transfer or unlawful confinement of a civilian;
- taking civilians as hostages.

Article 7

The Extraordinary Chambers shall have the power to bring to trial all Suspects responsible for the destruction of cultural property during armed conflict pursuant to the 1954 Hague Convention for Protection of Cultural Property in the Event of Armed Conflict, and which were committed during the period from 17 April 1975 to 6 January 1979.

Article 8

The Extraordinary Chambers shall have the power to bring to trial all Suspects responsible for crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations, and which were committed during the period from 17 April 1975 to 6 January 1979.

**LAW ON THE ESTABLISHMENT OF EXTRAORDINARY CHAMBERS
IN THE COURTS OF CAMBODIA FOR THE PROSECUTION OF
CRIMES COMMITTED DURING THE PERIOD OF
DEMOCRATIC KAMPUCHEA.**

**CHAPTER I
GENERAL PROVISIONS**

Article 1

The purpose of this law is to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

**CHAPTER II
COMPETENCE**

Article 2

Extraordinary Chambers shall be established in the existing court structure, namely the trial court, the appeals court and the supreme court to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979

Senior leaders of Democratic Kampuchea and those who were most responsible for the above acts are hereinafter designated as "Suspects".

Article 3

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed any of these crimes set forth in the 1956 Penal Code of Cambodia, and which were committed during the period from 17 April 1975 to 6 January 1979:

- Homicide (Article 501, 503, 504, 505, 506, 507 and 508)
- Torture (Article 500)
- Religious Persecution (Articles 209 and 210)

The statute of limitations set forth in the 1956 Penal Code shall be extended for an additional 20 years for the crimes enumerated above, which are within the jurisdiction of the Extraordinary Chambers.

Article 4

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed the crimes of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and which were committed during the period from 17 April 1975 to 6 January 1979.

The acts of genocide, which have no statute of limitations, mean any acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children from one group to another group.

The following acts shall be punishable under this Article:

- attempts to commit acts of genocide;
- conspiracy to commit acts of genocide;
- participation in acts of acts of genocide.

Article 5

The Extraordinary Chambers shall have the power to bring to trial all Suspects who committed crimes against humanity during the period 17 April 1975 to 6 January 1979.

Crimes against humanity, which have no statute of limitations, are any acts committed as part of a widespread or systematic attack against any civilian population, on national, political, ethnical, racial or religious grounds, such as:

- murder;
- extermination;
- enslavement;
- deportation;
- imprisonment;
- torture;

CHAPTER III COMPOSITION OF THE EXTRAORDINARY CHAMBERS

Article 9

The trial court shall be an Extraordinary Chamber composed of five professional judges, of whom three are Cambodian judges, with one as president, and two are foreign judges; and before which the Co-Prosecutors shall present their cases. The president shall appoint one or more clerks of the court to participate.

The appeals court shall be an Extraordinary Chamber shall be composed of seven judges, of whom four are Cambodian judges, with one as president, and three are foreign judges; and before which the Co-Prosecutors shall present their cases. The president shall appoint one or more clerks of the court to participate.

The supreme court shall be an Extraordinary Chamber composed of nine judges, of whom five are Cambodian judges, with one as president, and four are foreign judges; and before which the Co-Prosecutors shall present their cases. The president shall appoint one or more clerks of the court to participate.

CHAPTER IV APPOINTMENT OF JUDGES

Article 10

The judges of the Extraordinary Chambers shall be appointed from among the existing judges or from judges who are additionally appointed, in accordance with the existing procedures for appointment of judges, who have high moral character, a spirit of impartiality and integrity, and who are experienced, particularly in criminal law or international law.

Judges shall be independent in the performance of their functions, and shall not accept or seek any instructions from any government or any other source.

Article 11

The Supreme Council of the Magistracy shall appoint at least twelve Cambodian judges to act as judges of the Extraordinary Chambers, and shall appoint reserve judges as needed, and shall also appoint the President of each of the Extraordinary Chambers from the above Cambodian judges so appointed, in accordance with the existing procedures for appointment of judges.

The reserve Cambodian judges shall replace the regularly appointed Cambodian judges in case of their absence or withdrawal. These reserve judges may continue to perform their regular duties in their respective courts.

The Supreme Council of the Magistracy shall appoint at least nine individuals of foreign nationality to act as foreign judges of the Extraordinary Chambers upon nomination by the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall submit a list of not less than twelve candidates for foreign judges to the Royal Government of Cambodia, from which the Supreme Council of the Magistracy shall appoint nine sitting judges and three reserve judges. In addition to the foreign judges sitting in the Extraordinary Chambers and present at every stage of the proceedings, the President of the Chamber may, on a case-by-case basis, designate , one or more reserve judges already appointed by the Supreme Council of the Magistracy to be present at each stage of the trial, and to replace a foreign judge if that judge is unable to continue sitting.

Article 12

All judges under this law shall enjoy equal status and rank according to each level of the Extraordinary Chambers .

Each judge under this law shall be appointed for the period of these proceedings.

Article 13

Judges shall be assisted by Cambodian and international staff as needed.

In choosing staff to serve as assistants and law clerks, the Director of the Office of Administration shall interview if necessary, and with the approval of the Cambodian judges by majority vote, hire staff who shall be appointed by the Royal Government of Cambodia . The Deputy Director of the Office of Administration shall be responsible for the recruitment and administration of all international staff. The number of assistants and law clerks shall be chosen in proportion to the Cambodian judges and foreign judges.

Cambodian staff shall be selected from Cambodian civil servants or other qualified nationals of Cambodia, if necessary.

CHAPTER V

DECISIONS OF THE EXTRAORDINARY CHAMBERS

Article 14

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:

a) a decision by the Extraordinary Chamber of the trial court shall require the affirmative vote of at least four judges.

b) a decision by the Extraordinary Chamber of the appeals court shall require the affirmative vote of at least five judges.

c) a decision by the Extraordinary Chamber of the supreme court shall require the affirmative vote of at least six judges.

2. When there is no unanimity, the decision of the Extraordinary Chambers shall contain the views of the majority and the minority.

Article 15

The Presidents shall convene the appointed judges at the appropriate time to proceed with the work of the Extraordinary Chambers.

CHAPTER VI CO-PROSECUTORS

Article 16

All indictments in the Extraordinary Chambers shall be made by two prosecutors, one Cambodian and another foreign, who shall work together as Co-Prosecutors to prepare indictments against the Suspects in the Extraordinary Chambers.

Article 17

The Co-Prosecutors in the trial court shall have the right to appeal the verdict of the Extraordinary Chamber of the trial court.

The Co-Prosecutors in the appeals court shall have the right to appeal the decision of the Extraordinary Chamber of the appeals court.

Article 18

The Supreme Council of the Magistracy shall appoint Cambodian prosecutors and Cambodian reserve prosecutors as necessary from among the Cambodian professional judges.

The reserve prosecutors shall replace the regularly appointed prosecutors in case of their absence or withdrawal. These reserve prosecutors may continue to perform their regular duties in their respective courts. One foreign prosecutor with the competence to appear in all three Extraordinary Chambers shall be appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall submit a list of at least two candidates for foreign Co-Prosecutor to the Royal Government of Cambodia, from which the Supreme Council of the Magistracy shall appoint one prosecutor and one reserve prosecutor.

Article 19

The Co-Prosecutors shall be appointed from among those individuals who are appointed in accordance with the existing procedures for selection of prosecutors who have high moral character and integrity and who are experienced in the conduct of investigations and prosecutions of criminal cases.

The Co-Prosecutors shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source.

Article 20

The Co-Prosecutors shall prosecute in accordance with existing procedures in force. If necessary, and if there are lacunae in these existing procedures, the Co-Prosecutors may seek guidance in procedural rules established at the international level.

In the event of disagreement between the Co-Prosecutors the following shall apply:
The prosecution shall proceed unless the Co-Prosecutors or one of them requests within thirty days that the difference shall be settled in accordance with the following provisions.

The Co-Prosecutors shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

The difference shall be settled forthwith by a Pre-Trial Chamber of five judges, three appointed by the Supreme Council of the Magistracy, with one as President, and two appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General of the United Nations. Article 10 shall apply to the judges.

Upon receipt of the statements referred to in the third paragraph, the Director of the Office of Administration shall immediately convene the Pre-Trial Chamber and communicate the statements to its members.

A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Prosecutors. They shall immediately proceed in accordance with the decision of the Chamber. If there is no majority, as required for a decision, the prosecution shall proceed.

In carrying out the prosecution, the Co-Prosecutors may seek the assistance of the Royal Government of Cambodia if such assistance would be useful to the prosecution, and such assistance shall be provided.

Article 21

The Co-Prosecutors under this law shall enjoy equal status and rank according to each level of the Extraordinary Chambers .

Each Co-Prosecutor shall be appointed for the period of these proceedings.

In the event of the absence or withdrawal of the foreign Co-Prosecutor, he or she shall be replaced by the reserve Prosecutor.

Article 22

Each Co-Prosecutor shall have the right to choose one or more deputy prosecutors to assist him or her with prosecution before the chambers. Deputy foreign prosecutors shall be appointed by the Supreme Council of the Magistracy from a list provided by the Secretary-General.

The Co-prosecutors shall be assisted by Cambodian and international staff as needed. In choosing staff to serve as assistants, the Director of the Office of Administration shall interview, if necessary, and with the approval of the Cambodian Co-Prosecutor, hire staff who shall be appointed by the Royal Government of Cambodia . The Deputy Director of the Office of Administration shall be responsible for the recruitment and administration of all foreign staff. The number of assistants shall be chosen in proportion to the Cambodian judges and foreign judges.

Cambodian staff shall be selected from Cambodian civil servants and other qualified nationals of Cambodia, if necessary .

CHAPTER VII INVESTIGATIONS

Article 23

All investigations shall be the joint responsibility of two investigating judges, one Cambodian and another foreign, hereinafter referred to as Co-Investigating Judges in accordance with existing procedures in force. If necessary, and if there are lacunae in these existing procedures, the Co-Investigating Judges may seek guidance in procedural rules established at the international level.

In the event of disagreement between the Co-Investigating Judges the following shall apply:

The investigation shall proceed unless the Co-Investigating Judges or one of them requests within thirty days that the difference shall be settled in accordance with the following provisions.

The Co-Investigating Judges shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

The difference shall be settled forthwith by the Pre-Trial Chamber referred to in Article 20.

Upon receipt of the statements referred to in the third paragraph, the Director of the Office of Administration shall immediately convene the Pre-Trial Chamber and communicate the statements to its members.

A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Investigating Judges. They shall immediately proceed in accordance with the decision of the Pre-Trial Chamber. If there is no majority as required for a decision, the investigation shall proceed.

The Co-Investigating Judges shall conduct investigations on the basis of information obtained from any source, including the Government, United Nations organs, or non-governmental organisations.

The Co-Investigating Judges shall have the power to question suspects, victims and witnesses, and to collect evidence in accordance with existing procedures in force. In the event the Co-Investigating Judges consider it necessary to do so, they may issue an order requesting the Co-Prosecutors to interrogate the witnesses.

In carrying out the investigations, the Co-Investigating Judges may seek the assistance of the Royal Government of Cambodia, if such assistance would be useful to the investigation, and such assistance shall be provided.

Article 24

During the investigation, Suspects shall be unconditionally entitled to assistance of counsel free of charge if they cannot afford it, including the right to interpretation of the proceedings into and from a language they speak and understand.

Article 25

The Co-Investigating Judges shall be appointed from among the existing judges or from judges who are additionally appointed in accordance with the existing procedures for appointment of judges, who have high moral character, a spirit of impartiality and integrity, and who are experienced in criminal investigations. They shall be independent in the performance of their functions and shall not accept or seek instructions from any government or any other source.

Article 26

The Cambodian Co-Investigating Judge and the reserve Investigating Judges shall be appointed by the Supreme Council of the Magistracy from among the Cambodian professional judges.

The reserve Investigating Judges shall replace the regularly appointed Investigating Judges in case of their absence or withdrawal. The reserve Investigating Judges may continue to perform their regular duties in their respective courts.

The Supreme Council of the Magistracy shall appoint the foreign Co-Investigating Judge for the period of investigations, upon nomination by the Secretary-General of the United Nations.

The Secretary-General of the United Nations shall submit a list of at least two candidates for foreign Co-Investigating Judge to the Royal Government of Cambodia, from which the Supreme Council of the Magistracy shall appoint one sitting Investigating Judge and one reserve Investigating Judge.

Article 27

All Investigating Judges under this law shall enjoy equal status and rank and the same terms and conditions of service.

Each Investigating Judge shall be appointed for the period of the investigation.

In the event of the absence or withdrawal of the foreign Co-Investigating Judge, he or she shall be replaced by the reserve Investigating Judge.

Article 28

The Co-Investigating Judges shall be assisted by Cambodian and international staff as needed.

In choosing staff to serve as assistants, the Director of the Office of Administration shall comply with the provisions set forth in Article 13 of this law.

CHAPTER VIII INDIVIDUAL RESPONSIBILITY

Article 29

Any Suspect who planned, instigated, ordered, aided and abetted, or committed the crimes referred to in article 3, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime.

The position or rank of any Suspect shall not relieve such person of criminal responsibility or mitigate punishment.

The fact that any of the acts referred to in Articles 3, 4, 5, 6, 7 and 8 of this law were committed by a subordinate does not relieve the superior of personal criminal responsibility if the superior had effective command and control or authority and control over the subordinate, and the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The fact that a Suspect acted pursuant to an order of the Government of Democratic Kampuchea or of a superior shall not relieve the Suspect of individual criminal responsibility.

CHAPTER IX OFFICE OF ADMINISTRATION

Article 30

The staff of the judges, the investigating judges and prosecutors of the Extraordinary Chambers shall be supervised by an Office of Administration.

The Office of Administration shall have a Cambodian Director, a foreign Deputy Director and such other staff as necessary.

Article 31

The Director of the Office of Administration shall be appointed by the Royal Government of Cambodia for a two year term and shall be eligible for reappointment.

The Director of the Office of Administration shall be responsible for the overall management of the Office of Administration.

The Director of the Office of Administration shall be appointed from those with significant experience in court administration, be fluent in one of the foreign languages used in the Extraordinary Chambers, and be a person of high moral character and integrity. The foreign Deputy Director shall be nominated by the Secretary-General of the United Nations and appointed by the Royal Government of Cambodia, and shall be responsible for the recruitment and administration of all foreign staff, as required by the international components of the Extraordinary Chambers, the Co-Investigating Judges, the Co-Prosecutors' Office, and the Office of Administration. The Deputy Director shall administer the resources allotted against the United Nations Trust Fund.

The Office of Administration shall be assisted by Cambodian and foreign staff as necessary. All Cambodian staff of the Office of Administration shall be appointed by the Royal Government of Cambodia at the request of the Director. Foreign staff shall be appointed by the Deputy Director.

Cambodian staff shall be selected from the Cambodian civil service system and, if necessary, other qualified nationals of Cambodia.

Article 32

All staff assigned to the judges, Co-Investigating Judges, Co-Prosecutors, and Office of Administration shall enjoy the same working conditions according to each level of the Extraordinary Chambers.

CHAPTER X TRIAL PROCEEDINGS OF THE EXTRAORDINARY CHAMBERS

Article 33

The Extraordinary Chambers of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedures in force, with full respect for the rights of the accused and for the protection of victims and witnesses. If necessary, and if there are lacunae in these existing procedures, guidance may be sought in procedural rules established at the international level.

Suspects who have been indicted and arrested shall be brought to the trial court according to existing procedures in force. The Royal Government of Cambodia shall guarantee the security of the Suspects who appear voluntarily before the court and is responsible in taking measures for the arrest of the Suspects prosecuted under this law. Justice police shall be assisted by other law enforcement elements of the Royal Government of Cambodia, including its armed forces, in order to ensure that accused persons are brought into custody immediately.

Conditions for the arrest and the custody of the accused shall conform to existing law in force.

The Court shall provide for the protection of victims and witnesses. Such protection measures shall include, but shall be not limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 34

Trials shall be public unless in exceptional circumstances the Extraordinary Chambers decide to close the proceedings for good cause in accordance with existing procedures in force.

Article 35

The accused shall be presumed innocent until proven guilty.

In determining charges against the accused, the accused shall be entitled to the following minimum guarantees, in equal fashion:

- a) To be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them;
- b) To have adequate time to be prepared and contact their counsel;
- c) To be tried without delay;
- d) To defend themselves or with the assistance of their counsel;
- e) To examine evidence against them and obtain the attendance and examination of evidence on their behalf under the same conditions as evidence against them;
- f) To have the free assistance of an interpreter if the accused cannot understand or does not speak the language used in the court;
- g) Not to be compelled to testify against themselves or to confess guilt.

Article 36

The Extraordinary Chamber of the appeals court shall decide the appeals from the accused persons, the victims, or by the Co-Prosecutors on the following grounds:

- an error of fact
- an error of law

The Extraordinary Chamber of the appeals court shall review the decision of the Extraordinary Chamber of the trial court and may affirm, reverse or modify the decision. In this case, the Extraordinary Chamber of the appeals court may apply existing procedures in force. If necessary, and if there are lacunae in these existing procedures, guidance may be sought in procedural rules established at the international level.

Article 37

The Extraordinary Chamber of the supreme court shall decide appeals made by the accused, the victims, or the Co-Prosecutors against the decision of the Extraordinary Chamber of the appeals court. In this case, the supreme court shall make final decisions on both issues of law and fact, and shall not return the case to the Extraordinary Chamber of the appeals court.

**CHAPTER XI
PENALTIES****Article 38**

All penalties shall be limited to imprisonment.

Article 39

Those who have committed crimes as provided in Articles 3, 4, 5, 6, 7 and 8 shall be sentenced to a prison term from five years to life imprisonment.

In addition to imprisonment, the Extraordinary Chamber of the trial court may order the confiscation of personal property, money, and real property acquired unlawfully or by criminal conduct.

The confiscated property shall be returned to the State.

**CHAPTER XII
AMNESTY AND PARDONS****Article 40**

The Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in Articles 3, 4, 5, 6, 7 and 8 of this law.

**CHAPTER XIII
STATUS, RIGHTS, PRIVILEGES AND IMMUNITIES****Article 41**

The foreign judges, the foreign Co-Investigating Judge, the foreign Co-Prosecutor and the Deputy Director of the Office of Administration, together with their families forming part of their household, shall enjoy all of the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations. Such officials shall enjoy exemption from taxation in Cambodia on their salaries, emoluments and allowances.

Article 42

1. Cambodian personnel shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.
2. Foreign personnel shall be accorded, in addition:
 - a. immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - b. immunity from taxation on salaries, allowances and emoluments paid to them by contributing States of the United Nations Trust Fund;
 - c. immunity from immigration restriction;
 - d. the right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Cambodia.
3. The counsel of a suspect or an accused who has been admitted as such by the Extraordinary Chambers shall not be subjected by the Government to any measure that may affect the free and independent exercise of his or her functions under the Law on the Establishment of the Extraordinary Chambers.

In particular, the counsel shall be accorded:

- a. immunity from personal arrest or detention and from seizure of personal baggage while fulfilling his or her functions in the proceedings;
 - b. inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;
 - c. immunity from criminal or civil jurisdiction in in respect of words spoken or written and acts performed by them in their official capacity.
4. The archives of the court, and in general all documents and materials made available, belonging to, or used by it, wherever located in the Kingdom of Cambodia and by whomsoever held, shall be inviolable for the duration of the proceedings.

CHAPTER XIV

LOCATION OF THE Extraordinary Chambers

Article 43

The Extraordinary Chambers established in the trial court, the appeals court and the supreme court shall be located in Phnom Penh.

CHAPTER XV EXPENSES AND SALARIES

Article 44

The expenses and salaries of the Extraordinary Chambers shall be as follows:

1. The expenses and salaries of the Cambodian administrative officials and staff, the Cambodian judges and reserve judges, the Cambodian investigating judges and reserve investigating judges, and the Cambodian prosecutors and reserve prosecutors shall be borne by the Cambodian national budget.
2. The expenses of the foreign administrative officials and staff, the foreign judges, the foreign Co-investigating judge and the foreign Co-prosecutor sent by the Secretary-General of the United Nations shall be borne by the United Nations Trust Fund.
3. The salaries of the foreign administrative officials and staff, the foreign judges, the foreign Co-Investigating Judge and the foreign Co-Prosecutor shall be borne by the countries that contribute them at the request of the Secretary-General of the United Nations.
4. The defence counsel may receive fees for mounting the defence.
5. The Extraordinary Chambers may receive additional assistance for their expenses from other voluntary funds contributed by foreign governments, international institutions, non-governmental organisations, and other persons wishing to assist the proceedings.

CHAPTER XVI WORKING LANGUAGE

Article 45

The official working language of the Extraordinary Chambers shall be Khmer, with translations into English, French and Russian.

CHAPTER XVII ABSENCE OF FOREIGN JUDGES OR CO-PROSECUTORS

Article 46

In order to ensure timely and smooth implementation of this law, in the event any foreign judges or foreign investigating judges or foreign prosecutors fail or refuse to participate in the Extraordinary Chambers, the Supreme Council of the Magistracy shall appoint other judges or investigating judges or prosecutors to fill any vacancies from the lists of foreign candidates provided for in Article 11, Article 18, and Article 26. In the event those lists are exhausted, any such vacancies shall be filled by the Supreme Council of the Magistracy from candidates recommended by the Governments of Member States of the United Nations or from among other foreign legal personalities.

If, following such procedures, there are still no foreign judges or foreign investigating judges or foreign prosecutors participating in the work of the Extraordinary Chambers and no foreign candidates have been identified to occupy the vacant positions, then the Supreme Council of the Magistracy may choose replacement Cambodian judges, investigating judges or prosecutors.

CHAPTER XVIII EXISTENCE OF THE COURT

Article 47

The Extraordinary Chambers in the courts of Cambodia shall be dissolved following the conclusion of these proceedings.

FINAL PROVISION

Article 48

This law shall be proclaimed as urgent.

This law was adopted by the National Assembly of the Kingdom of Cambodia on the _____th day of _____ in the year _____ in the _____th Session of the Second Legislature.

Phnom Penh Municipality, _____th day of _____ in the year _____.

President of the National Assembly

Norodom Ranariddh

HJ 5-Jan-:1

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

ประวัติผู้เขียนวิทยานิพนธ์

นายกิตติ โสสถเจริญผล เกิดเมื่อวันที่ 7 มิถุนายน พ.ศ. 2519 สำเร็จการศึกษาในระดับมัธยมศึกษาตอนต้นและตอนปลายจากโรงเรียนเทพศิรินทร์ สำเร็จการศึกษาในระดับปริญญาบัณฑิตจาก คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ เมื่อปีการศึกษา 2540 และเข้าศึกษาต่อในระดับปริญญาโท สาขาวิชานิติศาสตร์ ภาควิชานิติศาสตร์ คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2541



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย