
STATUTORY INSTRUMENTS

1996 No. 716

UNITED NATIONS

**The United Nations (International
Tribunal) (Former Yugoslavia) Order 1996**

<i>Made</i>	- - - -	<i>13th March 1996</i>
<i>Laid before Parliament</i>		<i>14th March 1996</i>
<i>Coming into force</i>	- -	<i>15th March 1996</i>

At the Court at Buckingham Palace, the 13th day of March 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by a resolution adopted on 25th May 1993, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to the former Yugoslavia:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946⁽¹⁾, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement and extent

1.—(1) This Order may be cited as the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 and shall come into force on 15th March 1996.

(2) This Order extends to the United Kingdom.

(3) So far as this Order relates to proceedings in a service court the relevant provisions extend to any place at which those proceedings are held.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“appropriate judicial officer” means—

(1) 1946 c. 45.

- (a) the chief metropolitan stipendiary magistrate,
- (b) a metropolitan stipendiary magistrate designated for the purposes of this Order by the Lord Chancellor, or
- (c) the Sheriff of Lothian and Borders;

“competent court” means a court consisting of an appropriate judicial officer;

“delivery order” means—

- (a) an order for delivery up made under article 6 or under that article as applied by article 5, including one made following an application under article 7 or 8,
- (b) an order for delivery up made under article 9(4) or article 10(5);

“the International Tribunal” means—

- (a) the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by Resolution 827(1993) of the Security Council of the United Nations,
- (b) any of the organs of that Tribunal referred to in Article 11 of the Statute;

“International Tribunal crime” means a crime in respect of which the International Tribunal has jurisdiction under the Statute;

“national court” means a court in the United Kingdom or a service court;

“prisoner” means—

- (a) a person serving a sentence in a prison or other institution to which the Prison Act 1952(2), the Prisons (Scotland) Act 1989(3) or the Prison Act (Northern Ireland) 1953(4) applies, or
- (b) a person serving a sentence of detention or imprisonment imposed by a service court;

“the Prosecutor” means the Prosecutor responsible under the Statute for the investigation and prosecution of persons in accordance with the Statute and the Rules;

“the Registrar” means the Registrar appointed under the Statute by the Secretary-General of the United Nations;

“the Rules” means the rules of procedure and evidence of the International Tribunal;

“service court” means—

- (a) a court martial constituted under the Army Act 1955(5), the Air Force Act 1955(6) or the Naval Discipline Act 1957(7), or
- (b) a disciplinary court constituted under section 50 of the Naval Discipline Act 1957, whether the court is held within the United Kingdom or elsewhere;

“the Statute” means the Statute of the International Tribunal adopted by the Security Council of the United Nations, the text of which is set out in the Schedule to this Order;

“transfer warrant” means a warrant issued under article 10(2).

(2) A reference in this Order to a part of the United Kingdom is a reference to England and Wales, to Scotland or to Northern Ireland.

(2) 1952 c. 52.
(3) 1989 c. 45.
(4) 1953 c. 18 (N.I.).
(5) 1955 c. 18.
(6) 1955 c. 19.
(7) 1957 c. 53.

(3) A reference in this Order to arrangements by the Secretary of State with the Registrar or with another state is a reference to arrangements of a general nature or to arrangements relating to a particular case or group of cases.

(4) In this Order, unless the context otherwise requires, any reference to a numbered article is a reference to the article which bears that number in this Order, and any reference to a numbered paragraph in an article of this Order is a reference to the paragraph bearing that number in that article.

Purpose of this Order

3.—(1) This Order has effect for the purpose of enabling the United Kingdom to co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing International Tribunal crimes and the punishment of persons convicted of such crimes.

(2) In particular, but without prejudice to the generality of paragraph (1), this Order has effect—

- (a) to provide for the arrest and delivery to the International Tribunal of persons accused or convicted of an International Tribunal crime and for the arrest in cases of urgency of persons suspected of having committed an International Tribunal crime,
- (b) to secure the attendance before the International Tribunal of persons as witnesses or to assist in investigations,
- (c) to give effect to requests by the International Tribunal for the discontinuance of certain proceedings in courts constituted under United Kingdom law,
- (d) to provide the International Tribunal with other forms of assistance in the investigation and prosecution of International Tribunal crimes,
- (e) to enforce orders of the International Tribunal for the preservation or restitution of property and to give effect to requests to determine the ownership of property,
- (f) to make provision for the immunities and privileges of the International Tribunal and persons connected therewith.

(3) Nothing in this Order shall be construed as preventing the provision of assistance to the International Tribunal otherwise than under this Order.

PART I

ARREST AND DELIVERY OF PERSONS TO THE INTERNATIONAL TRIBUNAL

Endorsement of warrants of arrest

4.—(1) Where the Secretary of State receives from the International Tribunal a warrant of arrest issued by the International Tribunal (including such a warrant issued or received before the commencement of this Order), the Secretary of State shall transmit the warrant to an appropriate judicial officer who shall, subject to paragraph (2), endorse the warrant for execution in any part of the United Kingdom.

(2) A warrant for the arrest of a person convicted by the International Tribunal shall not be endorsed under this article unless the purpose of the arrest is to enable him—

- (a) to be brought before the International Tribunal, or
- (b) to be taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal.

Provisional warrants of arrest

5.—(1) Where the Secretary of State—

- (a) receives a request from the International Tribunal for the arrest of a person who is suspected or accused of having committed an International Tribunal crime or who has been convicted by the International Tribunal, and
- (b) the request is not accompanied by a warrant but is made on the grounds of urgency,

the Secretary of State shall transmit the request to a constable and direct the constable to apply for a warrant for the arrest of that person.

(2) On an application by a constable stating on oath that he has reason to believe—

- (a) that a request has been made on grounds of urgency by the International Tribunal for the arrest of a person who is suspected or accused of having committed an International Tribunal crime or who has been convicted by the International Tribunal,
- (b) that the person concerned is in or on his way to the United Kingdom, and
- (c) that the purpose of the arrest is to enable the person concerned to be brought before the International Tribunal or, as the case may be, to be taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal,

an appropriate judicial officer may issue a warrant (“a provisional warrant”) for the arrest of that person, and shall if he issues such a warrant notify the Secretary of State that he has done so.

(3) In the application of paragraphs (1) and (2) to Scotland, the following modifications shall have effect—

- (a) the request by the International Tribunal shall be transmitted to the Lord Advocate, who shall instruct the procurator fiscal to apply for a warrant;
- (b) an application for a warrant shall be made by the procurator fiscal and shall be supported by a statement on oath made by a constable as respects the matters specified in paragraph (2);
- (c) if an appropriate judicial officer issues a warrant, he shall notify the Lord Advocate that he has done so.

(4) A person arrested under a provisional warrant shall be brought before a competent court so soon as is practicable, and—

- (a) if an endorsed warrant in respect of that person is produced to the court, the court shall proceed as if he had been arrested under that warrant, and article 6 shall apply accordingly,
- (b) if no such warrant is produced, the court may, pending the production of the warrant, remand him for not more than 18 days at a time, so however that the total period of remands does not exceed 40 days in all.

(5) If at any time an endorsed warrant relating to a person remanded under this article is produced to the court which remanded him, the court shall determine the period of remand and the person shall thereafter be treated as if arrested at that time under the endorsed warrant.

(6) If an endorsed warrant relating to a person remanded under this article is not produced within the period of the remand (including any extension of that period) to the court which remanded him, he shall be discharged by the court.

(7) In this article and in article 6 “endorsed warrant” means a warrant of arrest issued by the International Tribunal, endorsed in accordance with article 4.

Proceedings before competent court after arrest

6.—(1) So soon as is practicable after a person is arrested under an endorsed warrant, he shall be brought before a competent court; and the court shall, subject to the following provisions of this article, make the appropriate order and remand him until it is executed.

(2) Where the purpose of the arrest is to enable the person to be brought before the International Tribunal, the appropriate order is that the person be delivered up into the custody of the International Tribunal in accordance with arrangements made by the Secretary of State with the Registrar.

(3) Where the purpose of the arrest is to enable the person to be taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal, the appropriate order is that the person be delivered up into the custody of the state where that place is situated in accordance with arrangements made by the Secretary of State with that state.

(4) If it is shown to the satisfaction of the competent court that other criminal proceedings (not being proceedings under the Extradition Act 1989⁽⁸⁾ or the Backing of Warrants (Republic of Ireland) Act 1965⁽⁹⁾) have been instituted in respect of the arrested person in a national court and that those proceedings—

- (a) have not been finally determined so far as they relate to conduct which would not constitute an International Tribunal crime, or
- (b) have not been discontinued (whether in pursuance of this Order or otherwise) so far as they relate to conduct which would constitute an International Tribunal crime,

the proceedings under this article shall be adjourned and the competent court may remand the arrested person until the other criminal proceedings have been finally determined or have been discontinued, as the case may be.

(5) An order shall not be made under paragraph (1) if it is shown to the satisfaction of the competent court—

- (a) that the document purporting to be a warrant issued by the International Tribunal is not such a warrant or that it has not been endorsed in accordance with article 4, or
- (b) that the person brought before the court is not the person named or described in the warrant, or
- (c) where the person has not been convicted by the International Tribunal of the offence specified in the warrant or any accompanying document, that the offence is not an International Tribunal crime, or
- (d) notwithstanding that the offence is an International Tribunal crime, that the person would if he were charged with it in the United Kingdom be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(6) If the competent court refuses to make an order under paragraph (1), it shall make an order remanding the person arrested until the Secretary of State, or in the case of proceedings in Scotland the procurator fiscal, has been notified of its decision and of the grounds thereof; and—

- (a) if the Secretary of State or the procurator fiscal, as the case may be, on being so notified immediately informs the court that he intends to question the decision on the ground that it is wrong in law, the order remanding the person arrested shall continue to have effect, except as otherwise provided by this Order, so long as the case is pending,
- (b) if the court is not so informed, the person arrested shall be discharged.

(7) Nothing in this Order shall be construed as requiring a competent court to be satisfied that there is evidence sufficient to warrant the trial of an accused person by the International Tribunal.

⁽⁸⁾ 1989 c. 33.
⁽⁹⁾ 1965 c. 45.

- (8) Where a competent court makes an order under paragraph (1) in respect of a person—
- (a) who has been committed under section 9 of or paragraph 7 of Schedule 1 to the Extradition Act 1989, or
 - (b) who has been ordered to be delivered up under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965, or
 - (c) in respect of whom an order, other than a sentence of imprisonment or detention, has been made in criminal proceedings which have been finally determined,

it may make such other order as is necessary to give effect to the endorsed warrant; and such other order may suspend or revoke a warrant, sentence (not being a sentence of imprisonment or detention) or other order made by that or any other court or any magistrate or other judicial officer in respect of the person.

Statement of case by competent court

7.—(1) If a competent court refuses to make a delivery order in relation to a person under article 6, the Secretary of State may question the decision on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court on the question of law involved.

(2) The following provisions shall have effect with respect to an application made under paragraph (1)—

- (a) the application must be made within the period of 21 days following the day on which the order was refused unless the court allows a longer period;
- (b) the application must be made in writing and identify the question or questions of law on which the opinion of the High Court is sought;
- (c) within 21 days after the receipt of the application the clerk of the court shall send a draft stated case to the applicant and to the person to whom the warrant relates or his solicitor and shall allow each party 21 days from the date of the sending of the draft stated case within which to make representations on it;
- (d) within 21 days after the latest day on which such representations may be made the court shall, after considering any such representations and making such adjustments, if any, to the draft case as it thinks fit, state and sign the case and the clerk shall send the case to the applicant and send a copy of the case to the person to whom the warrant relates or his solicitor.

(3) If the court fails to state and sign a case within the period required by paragraph (2), the High Court may, on the application of the Secretary of State, make an order requiring it to do so.

(4) The High Court shall have power—

- (a) to remit the case to the competent court to decide it according to the opinion of the High Court on the question of law, or
- (b) to dismiss the application.

(5) If the High Court dismisses the application, the Secretary of State may, with the leave of the High Court or the House of Lords, appeal to the House of Lords; and section 1 of the Administration of Justice Act 1960⁽¹⁰⁾ (appeal to the House of Lords) shall apply in relation to the appeal with the omission of so much of subsection (2) as restricts the grant of leave to appeal.

(6) An order for the remand of an arrested person which continues to have effect by virtue of article 6(6) shall cease to have effect if—

- (a) an application under paragraph (1) is not made by the Secretary of State within the period mentioned in paragraph (2)(a), or

⁽¹⁰⁾ 1960 c. 65; repealed in part by the Criminal Appeal Act 1968 (c. 19), section 54 and Schedule 7.

- (b) the High Court dismisses the application and the Secretary of State does not immediately either apply for leave to appeal to the House of Lords or inform the High Court that he intends to apply for leave, or
- (c) the House of Lords refuses leave to appeal or dismisses the appeal.

Statement of case in Scotland

8.—(1) In the application of this Order to Scotland, article 7 shall be omitted and the provisions of this article shall have effect.

(2) If a competent court refuses to make a delivery order in relation to a person under article 6, the procurator fiscal may question the decision on the ground that it is wrong in law by applying to the court to state a case for the opinion of the High Court of Justiciary on the question of law involved.

(3) The following provisions shall have effect with respect to an application under paragraph (2)

- (a) the application must be made within the period of 21 days following the day on which the order was refused unless the court allows a longer period;
- (b) the application must be made in writing and identify the question or questions of law on which the opinion of the High Court of Justiciary is sought;
- (c) within 21 days after the receipt of the application, the sheriff clerk shall send a draft stated case to the applicant and to the person to whom the warrant relates or his solicitor and the court shall allow each party 21 days from the date of the sending of the draft stated case within which to lodge and intimate proposed adjustments;
- (d) within one week after the latest date on which adjustments may be lodged the court shall, on the motion of either party, or may, of its own accord, hear parties on any such adjustments;
- (e) within two weeks after the latest day on which such hearing on adjustments may take place (or, if there are no such adjustments, within two weeks after the latest date by which such adjustments could have been lodged) the court shall, after considering any such proposed adjustments and representations, state and sign the case and the sheriff clerk shall—
 - (i) forthwith submit the case, along with the application for the case and all other documents in the case, to the Clerk of Justiciary, and
 - (ii) send a copy of the case to the applicant and to the person to whom the warrant relates or his solicitor;
- (f) if any period of time specified in the foregoing provisions of this paragraph expires on a Saturday, Sunday or a court holiday prescribed for the competent court, the period shall be extended to expire on the next day which is not a Saturday, Sunday or such holiday.

(4) If the court fails to state and sign a case within the period required by paragraph (3), the High Court of Justiciary may, on the application of the procurator fiscal, make an order requiring it to do so.

(5) The High Court of Justiciary shall have power—

- (a) to remit the case to the competent court to decide it according to the opinion of the High Court of Justiciary on the question of law, or
- (b) to dismiss the application.

(6) An order for the remand of an arrested person which continues to have effect by virtue of article 6(6) shall cease to have effect if—

- (a) an application under paragraph (2) is not made by the procurator fiscal within the period mentioned in paragraph (3)(a), or

- (b) an application to the High Court of Judiciary is dismissed pursuant to paragraph (5)(b).

Securing attendance of person as witness or to assist in investigations

9.—(1) This article applies where the Secretary of State receives from the International Tribunal an order for the attendance before the International Tribunal of a person in the United Kingdom who—

- (a) has been served with a summons or other process under article 19 requiring him to appear before the International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes, and
- (b) has failed to comply with the process,

and the order is accompanied by a request for assistance in enforcing it.

(2) The Secretary of State or the Lord Advocate shall transmit the order to an appropriate judicial officer, who shall issue a warrant for the arrest of the person named or described in the order.

(3) A person arrested in pursuance of a warrant issued under paragraph (2) shall be brought before a competent court as soon as practicable.

(4) If the competent court is satisfied that—

- (a) the person arrested is the person named or described in the warrant and in the order of the International Tribunal, and
- (b) he has been served with a summons or other process under article 19 requiring him to appear before the International Tribunal, and
- (c) he has failed to comply with the process,

the court shall order him to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal and shall remand him until the order has been executed.

(5) If the competent court does not make an order under paragraph (4) and the person arrested is not remanded, the court shall order his discharge.

Transfer of prisoner to give evidence or to assist in investigations

10.—(1) This article applies where the Secretary of State receives a request from the International Tribunal for the transfer of a prisoner into the custody of the International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes.

(2) If the prisoner consents to the transfer, the Secretary of State shall issue a warrant (“a transfer warrant”) requiring the prisoner to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal.

(3) The consent of a prisoner for the purposes of paragraph (2) may be given either—

- (a) by the prisoner himself, or
- (b) in circumstances in which it appears to the Secretary of State inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Secretary of State to be an appropriate person to act on his behalf.

but a consent once given shall not be capable of being withdrawn after the issue of the transfer warrant.

(4) If the prisoner, or the person acting on his behalf, refuses consent to the transfer, the prisoner shall, as soon as is practicable, be brought before a competent court.

(5) If the competent court is satisfied that the prisoner is the person named or described in the request of the International Tribunal, the court shall order him to be delivered up, in accordance with

arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal.

(6) If an order is made under paragraph (5) the prisoner shall be remanded until it has been executed; and if no such order is made the prisoner shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

(7) This article applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and a reference in this article to a sentence shall be construed accordingly.

Review of orders of competent court

11.—(1) Where a delivery order is made by a competent court in respect of any person—

- (a) he shall not be delivered up under the order until the expiration of the period of 15 days beginning with the date on which the order is made, unless he gives notice in accordance with paragraph (4) that he consents to his earlier delivery up;
- (b) if within that period an application is made by him or on his behalf for a writ of *habeas corpus ad subjiciendum* or, in the case of an order made in Scotland, an application for review is made by him under paragraph (2), he shall not be so delivered up while proceedings on the application are pending;

and the competent court shall inform him that he will not be delivered up under the order during the said period of 15 days unless he gives notice as aforesaid, and that he has the right to apply for a writ of *habeas corpus ad subjiciendum* or, as the case may be, to make an application for review under paragraph (2).

(2) A delivery order made by the competent court in Scotland may be reviewed by the High Court of Justiciary in the same manner as an appeal against a summary conviction.

(3) For the purposes of this article proceedings on an application for a writ of *habeas corpus ad subjiciendum* shall be treated as pending until any appeal in those proceedings is disposed of; and an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if not brought or made within that time.

(4) Where notice is given by a person consenting to his earlier delivery up—

- (a) the notice shall be signed in the presence of a justice of the peace or in Scotland of a sheriff or justice of the peace;
- (b) a notice given by a person in custody shall be delivered to the governor of the prison;
- (c) a notice given by a person on bail shall be delivered to the police officer in charge of the police station specified in his recognisance or in Scotland to the Crown Agent, Crown Office, Edinburgh;

and the delivery of a notice given by a person on bail shall be effective if the notice is sent by post in a registered letter or by recorded delivery service addressed to the appropriate person specified in sub-paragraph (c) of this paragraph.

(5) It shall be the duty of the person receiving any such notice to ensure that the notice is attached to the order for the delivery up of the person concerned.

Remand and bail

12.—(1) Where by virtue of this Order a court has power to remand a person the proceedings shall for the purposes of section 4 of the Bail Act 1976⁽¹¹⁾ (general right to bail) be treated as proceedings against a fugitive offender as defined in section 2(2) of that Act⁽¹²⁾; and the court may—

- (a) remand him in custody, that is to say, commit him for the period of the remand to prison or the custody of a constable, or
- (b) if it is satisfied that there are no substantial grounds for believing that the person, if released on bail, would fail to surrender to custody, remand him on bail in accordance with the Bail Act 1976, that is to say, direct him to surrender himself into the custody of the officer in charge of a specified police station at the time to be appointed by that officer and notified in writing to the person so remanded,

but nothing in this paragraph shall be taken as authorising the remand on bail of a person who is serving a term of imprisonment or detention to which he has been sentenced by a national court.

(2) Where a person's release on bail is conditional on his providing one or more surety or sureties and, in accordance with section 8(3) of the Bail Act 1976, the court fixes the amount in which the surety is to be bound with a view to his entering into his recognisance subsequently in accordance with subsections (4) and (5) or (6) of that section the court shall in the meantime commit him to the custody of a constable.

(3) The time to be appointed for the purposes of paragraph 1(b) shall not be more than 24 hours before the time at which it appears to the officer in charge of the police station that the period of remand is likely to end.

(4) During the period between the surrender of a person as aforesaid and the end of the period of remand he shall be treated as committed to the custody of the constable; but where it appears to the officer to whom he surrenders that the end of the period of remand will be unexpectedly delayed—

- (a) the officer shall grant him bail in accordance with the Bail Act 1976 subject to a duty to surrender himself into the custody of the officer in charge of the police station specified under paragraph (1)(b) at the time to be appointed by that officer and notified in writing to the person on remand, and
- (b) the time to be appointed for that purpose shall not be more than 24 hours before the time at which it appears to the officer that the period of remand is likely to end.

(5) If a person fails to surrender as aforesaid, the court by which he was remanded may issue a warrant for his arrest; and on his arrest under the warrant paragraph (4) shall apply as if he had surrendered to the officer in charge of the police station specified under paragraph (1)(b), but that officer shall not grant him bail unless he is satisfied that it is proper to do so.

(6) The foregoing provisions of this article shall not apply to Scotland.

Discharge of persons not delivered up

13.—(1) Where the International Tribunal informs the Secretary of State that a person arrested in pursuance of this Order is no longer required to be delivered up into its custody or, as the case may be, into the custody of a state for imprisonment there, the Secretary of State, or if the person arrested is in Scotland the Lord Advocate, shall notify an appropriate judicial officer; and the appropriate judicial officer shall, on receipt of such notification, make an order for the discharge of the person arrested.

(2) If a person in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, a superior court exercising jurisdiction in the part of the

⁽¹¹⁾ 1976 c. 63; section 4 was amended by the Magistrates' Courts Act 1980 (c. 43), section 154(1) and Schedule 7 paragraph 145, and by the Criminal Justice Act 1991 (c. 53), section 100 and Schedule 11 paragraph 21.

⁽¹²⁾ Section 2(2) was amended by the Extradition Act 1989 (c. 33), section 36(3).

United Kingdom within which it was made, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

(3) In paragraph (2) “superior court” means the High Court or the High Court of Justiciary in Scotland.

(4) The Secretary of State shall revoke a transfer warrant if he is informed, before it has been executed, that the International Tribunal no longer requires the attendance of the prisoner to whom the warrant relates.

PART II

DISCONTINUANCE OF PROCEEDINGS IN NATIONAL COURTS

Discontinuance of relevant proceedings

14.—(1) This article applies where the Secretary of State receives from the International Tribunal a request in accordance with the Statute and the Rules that a national court should defer to the competence of the International Tribunal by discontinuing proceedings to which the request relates.

(2) The Secretary of State shall transmit the request to the court in which the proceedings are taking place by a notice addressed to the appropriate person; and for the purposes of this paragraph the appropriate person in the case of a court mentioned below is the person or authority indicated—

Magistrates' court	Clerk of the Court
Court of summary jurisdiction	Clerk of Petty Sessions
Crown Court	Chief Clerk of the Crown Court
High Court	Head Clerk, Crown Office
High Court of Northern Ireland	Master (Queen's Bench and Appeals)
Court of Appeal	Chief Clerk (Criminal Division)
House of Lords	Judicial Office of the House of Lords
Court-martial under the Army Act 1955 or the Air Force Act 1955	Convening Officer
Court-martial or disciplinary court under the Naval Discipline Act 1957	Convening Authority

(3) If the court to which a request is transmitted is satisfied that—

- (a) the request relates to relevant proceedings within the meaning of this article, and
- (b) in the case of proceedings which are relevant proceedings by virtue of paragraph (5)(a) or (d), those proceedings are in respect of conduct which would constitute an International Tribunal crime,

the court shall order the discontinuance of the proceedings and may make such other orders as are appropriate to give effect to the request, including the revocation of a warrant of arrest issued in connection with the proceedings.

(4) For the purpose of considering a request transmitted to it in pursuance of this article, the court may adjourn the proceedings for such period or periods, and on such conditions, as it deems fit; and if the court is not satisfied as to the matters specified in paragraph (3), it shall make no order for the discontinuance of the proceedings.

- (5) Relevant proceedings within the meaning of this article are—
- (a) proceedings in a magistrates' court, a court of summary jurisdiction or the Crown Court in connection with an indictable offence of which the accused has not yet been convicted,
 - (b) proceedings under the Extradition Act 1989⁽¹³⁾ relating to a person in respect of whom an arrest warrant has been issued pursuant to section 8 of or paragraph 5 of Schedule 1 to that Act or proceedings in connection with such proceedings, or
 - (c) proceedings under the Backing of Warrants (Republic of Ireland) Act 1965⁽¹⁴⁾ relating to a person in respect of whom a warrant has been endorsed pursuant to section 1 of that Act or a provisional warrant has been issued pursuant to section 4 of that Act or proceedings in connection with such proceedings, or
 - (d) proceedings in a service court in connection with an offence of which the accused has not yet been convicted.
- (6) The discontinuance of any proceedings in pursuance of a request by the International Tribunal shall not of itself prevent—
- (a) the institution of fresh proceedings in a national court, or
 - (b) the issue under section 7 of the Extradition Act 1989 of a fresh authority to proceed or the making of a fresh order by the Secretary of State under paragraph 4 of Schedule 1 to that Act, or
 - (c) the endorsement of a fresh warrant or the issue of a fresh provisional warrant under the Backing of Warrants (Republic of Ireland) Act 1965,
- in respect of the same offence.
- (7) In the application of this article to Scotland the following modifications shall have effect—
- (a) the Secretary of State shall transmit to the Lord Advocate any request made by the International Tribunal which relates to proceedings in a court in Scotland;
 - (b) paragraphs (2) to (5) shall be omitted.

PART III

OTHER FORMS OF ASSISTANCE TO THE INTERNATIONAL TRIBUNAL

Transmission of information and records

15.—(1) This article applies where the Secretary of State receives from the International Tribunal—

- (a) a request for information relating to any relevant proceedings within the meaning of article 14 or to any investigation of conduct which would constitute an International Tribunal crime, or
- (b) as part of a request mentioned in article 14(1), a request for the forwarding of the results of any investigation of conduct relating to relevant proceedings within the meaning of article 14 and a copy of the court's record.

(2) The Secretary of State or, where the information or record is to be obtained in Scotland, the Lord Advocate shall take such steps as appear to him to be appropriate to secure the production to him of the information or record requested and on its production to him shall transmit it to the International Tribunal.

⁽¹³⁾ 1989 c. 33.

⁽¹⁴⁾ 1965 c. 45.

Search etc. for material relevant to International Tribunal investigation

16.—(1) Part II of the Police and Criminal Evidence Act 1984⁽¹⁵⁾ (powers of entry, search and seizure) shall have effect as if—

- (a) references to serious arrestable offences in section 8 of and Schedule 1 to that Act included any conduct which constitutes an International Tribunal crime and which would constitute a serious arrestable offence if it had occurred in any part of the United Kingdom, and
- (b) references to an enactment or an enactment contained in an Act included references to this Order.

(2) If, on an application made by a constable, a justice of the peace is satisfied—

- (a) that proceedings have been instituted for the indictment of a person by the International Tribunal or that a person has been arrested in the course of an investigation by the International Tribunal, and
- (b) that the conduct constituting the International Tribunal crime which is the subject of the proceedings or investigation would constitute an arrestable offence within the meaning of the said Act of 1984 if it had occurred in any part of the United Kingdom, and
- (c) that there are reasonable grounds for suspecting that there is on premises in the United Kingdom occupied or controlled by that person evidence relating to the International Tribunal crime other than items subject to legal privilege within the meaning of that Act,

he may issue a warrant authorising a constable to enter and search those premises and to seize any such evidence found there.

(3) The power to search conferred by paragraph (2) is only a power to search to the extent that it is reasonably required for the purpose of discovering such evidence as is there mentioned.

(4) No application for a warrant or order shall be made by virtue of paragraph (1) or (2) except in pursuance of a direction given by the Secretary of State in response to a request received from the International Tribunal, and any evidence seized by a constable by virtue of this article shall be furnished by him to the Secretary of State for transmission to the International Tribunal.

(5) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable shall also furnish for transmission such document of that nature as may be specified in the direction given by the Secretary of State.

(6) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted as may be necessary in order to comply with the request.

(7) In the application of this article to Northern Ireland—

- (a) for any reference to the Police and Criminal Evidence Act 1984 there shall be substituted a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹⁶⁾ and
- (b) for any reference to Part II and section 8 of and Schedule 1 to that Act there shall be substituted a reference to Part III and article 10 of and Schedule 1 to that Order.

Search, etc for material relevant to International Tribunal investigation: Scotland

17.—(1) In the application of this Order to Scotland, article 16 shall be omitted and the provisions of this article shall have effect.

(2) If, on an application made by the procurator fiscal, it appears to a sheriff—

⁽¹⁵⁾ 1984 c. 60.

⁽¹⁶⁾ S.I. 1989/1341 (N.I. 12).

- (a) that proceedings have been instituted for the indictment of a person by the International Tribunal or that a person has been arrested in the course of an investigation by the International Tribunal, and
- (b) that the conduct constituting the International Tribunal crime which is the subject of the proceedings or investigation would constitute an offence punishable by imprisonment if it had occurred in Scotland,

the sheriff shall have the like power to grant a warrant authorising entry, search and seizure by any constable as he would have at common law in respect of any offence punishable at common law in Scotland.

(3) No application for a warrant shall be made by virtue of paragraph (2) except in pursuance of a direction given by the Lord Advocate in response to a request received by the Secretary of State from the International Tribunal and any evidence seized by a constable by virtue of this article shall be furnished by him to the Lord Advocate for transmission to the International Tribunal.

(4) If in order to comply with a request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the constable shall also furnish for transmission such document of that nature as may be specified in the direction given by the Lord Advocate.

(5) Where the evidence consists of a document the original or a copy shall be transmitted and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

United Kingdom evidence for International Tribunal use

18.—(1) This article applies where the Secretary of State receives from the International Tribunal a request for assistance in obtaining evidence in the United Kingdom in connection with proceedings that have been instituted before the International Tribunal or an investigation that is being carried on by it.

(2) If the Secretary of State or, if the evidence is to be obtained in Scotland, the Lord Advocate is satisfied—

- (a) that an International Tribunal crime has been committed or that there are reasonable grounds for suspecting that such a crime has been committed, and
- (b) that proceedings in respect of that crime have been instituted before the International Tribunal or that an investigation is being carried on by it,

he may, if he thinks fit, by notice in writing nominate a court in England, Wales or Northern Ireland or, as the case may be, Scotland to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) In this article “evidence” includes documents and other articles.

(4) For the purpose of proceedings before a nominated court—

- (a) paragraphs 1 to 3, 6 and 7 of Schedule 1 to the Criminal Justice (International Co-operation) Act 1990⁽¹⁷⁾ shall have effect, and
- (b) paragraph 4 of that Schedule shall have effect as if—
 - (i) sub-paragraph (3) of that paragraph and any reference to it were omitted, and
 - (ii) for any reference to criminal proceedings in the country from which the request for the evidence has come there were substituted a reference to proceedings before the International Tribunal.

(5) In proceedings before a nominated court the court may, if it thinks it necessary in the interests of justice, direct that the public be excluded from the court.

(17) 1990 c. 5.

(6) A nominated court shall ensure that a register is kept of the proceedings which indicates in particular—

- (a) which persons with an interest in the proceedings were present,
- (b) which of those persons were represented and by whom, and
- (c) whether any of those persons were denied the opportunity of cross-examining a witness as to any part of his testimony,

but save as authorised by the Secretary of State, or in Scotland the Lord Advocate, or with the leave of the court, the register shall not be open to inspection.

(7) The evidence received by the nominated court, together with a copy of the register of the proceedings, shall be furnished to the Secretary of State or, in Scotland, the Lord Advocate for transmission to the International Tribunal.

(8) If in order to comply with the request it is necessary for the evidence or deposition to be accompanied by any certificate, affidavit or other verifying document, the court shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(9) Where evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

Service of process

19.—(1) This article applies where the Secretary of State receives from the International Tribunal—

- (a) a summons or other process requiring a person (not being a prisoner) to appear before the International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes, or
- (b) a document notifying interested parties of a special hearing to determine the matter of restitution of specified property or the proceeds thereof and affording them the opportunity to justify a claim to the property or its proceeds,

together with a request for it to be served on a person in the United Kingdom.

(2) The Secretary of State or, where the person to be served is in Scotland, the Lord Advocate may cause the process or document to be served by post or, if the request is for personal service, direct the chief officer of police for the area in which that person appears to be to cause it to be personally served on him.

(3) Service by virtue of this article of any process mentioned in paragraph (1)(a) imposes an obligation to comply with it; and any such process shall be accompanied by a notice stating the effect of this paragraph and of article 9 (securing attendance of person as witness or to assist in investigations).

(4) Any document mentioned in paragraph (1)(b) shall indicate that the person on whom it is served may wish to seek advice as to the possible consequences of failing to justify a claim.

(5) Where a chief officer of police is directed under this article to cause any process or document to be served he shall after it has been served forthwith inform the Secretary of State or, as the case may be, the Lord Advocate when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the chief officer has been unable to cause the process or document to be served he shall forthwith inform the Secretary of State or, as the case may be, the Lord Advocate of that fact and of the reason.

(6) In the application of this article to Northern Ireland, for references to the chief officer of police there shall be substituted references to the Chief Constable of the Royal Ulster Constabulary.

Enforcement of orders for the preservation or restitution of property

- 20.—(1) Where the Secretary of State receives from the International Tribunal—
- (a) an order for provisional measures for the preservation and protection of property or the proceeds of property, or
 - (b) an order for the restitution of property or the proceeds of property,
- the Secretary of State shall append to it a direction that it be registered for enforcement in the United Kingdom.
- (2) The court shall register the order on the application of the person entitled to enforce it; but—
- (a) where it is shown that an order has been partly complied with at the date of application for its registration, the court shall register the order only so far as it has not been complied with at that date, and
 - (b) where, after the date of registration of an order, it is shown that the order had been partly or wholly complied with at that date, the court shall vary or cancel the registration of the order accordingly with effect from that date.
- (3) For the purposes of enforcement of an order registered under this article—
- (a) the order shall have the same force and effect,
 - (b) the court shall have in relation to its enforcement the same powers, and
 - (c) proceedings for or with respect to its enforcement may be taken,
- as if the court had originally made the order.
- (4) Where the International Tribunal makes an order (a “suspending order”) that enforcement of a registered order be suspended, the suspending order shall, on its production to the court, be registered immediately; and—
- (a) the suspending order shall have effect as if it had been an order made by the court which stayed or sisted the execution of the original registered order for the same period and on the same conditions as are stated in the suspending order, and
 - (b) while the suspending order remains in force, no steps shall be taken to enforce the original registered order.
- (5) The reasonable costs and expenses of and incidental to the registration of an order under this article (including any variation or cancellation of the registration) shall be recoverable as if they were sums recoverable under the order.
- (6) In this article and article 21 “the court” means—
- (a) in England and Wales, the High Court;
 - (b) in Scotland, the Court of Session; and
 - (c) in Northern Ireland, the High Court.

Proceedings to determine the ownership of property

21. Where the Secretary of State receives a request from the International Tribunal to determine the ownership of property or the proceeds of property, he, or in relation to Scotland the Lord Advocate, may make an application to the court for a decision as to the ownership of the property or proceeds.

Immunities and privileges

22.—(1) The International Tribunal, the judges, the Prosecutor and his staff and the Registrar and his staff shall enjoy the immunities and privileges set out in the United Nations and International Court of Justice (Immunities and Privileges) Order 1974(18) (“the 1974 Order”) as follows—

- (a) the International Tribunal shall enjoy the immunities and privileges set out in articles 5 to 13 of the 1974 Order as they apply to the United Nations;
- (b) the judges, the Prosecutor and the Registrar shall enjoy the immunities and privileges set out in article 15(1) and (2) of the 1974 Order as they apply to high officers of the United Nations;
- (c) staff of the Prosecutor and of the Registrar shall enjoy the immunities and privileges set out in article 16 of the 1974 Order as they apply to officers of the United Nations.

(2) Except in so far as in any particular case any immunity is waived by the International Tribunal, counsel, advocates, solicitors and witnesses shall enjoy immunity from suit and legal process in respect of words spoken or written and documents or other evidence submitted by them before or to the International Tribunal.

PART IV

SUPPLEMENTARY PROVISIONS

Warrants of arrest

23.—(1) For the purposes of any enactment or rule of law relating to warrants of arrest but subject to any other provisions of this Order—

- (a) a warrant endorsed in accordance with article 4,
- (b) a provisional warrant issued under article 5, and
- (c) a warrant issued under article 9 or 12,

in any part of the United Kingdom shall be treated as if it were a warrant for the arrest of a person charged with an offence committed in that part.

(2) A warrant mentioned in paragraph (1) may be executed in any part of the United Kingdom and may be so executed by any constable.

(3) A person arrested under a warrant mentioned in paragraph (1) shall be deemed to continue in legal custody until, in accordance with this Order, he is brought before a competent court or, in the case of a warrant issued under article 12, an officer in charge of a police station; and article 25 shall accordingly apply in relation to that person as it applies in relation to a person in respect of whom a delivery order or transfer warrant is in force.

Proceedings before a competent court under article 6, 9 or 10

24.—(1) For the purposes of proceedings under article 6, 9 or 10, a competent court in England and Wales shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested, as if the proceedings were the summary trial of an information against that person; and—

- (a) section 16(1)(c) of the Prosecution of Offences Act 1985(19) (defence costs on dismissal) shall apply, reading the reference to the dismissal of the information as a reference to the discharge of the person arrested, and
- (b) Part V of the Legal Aid Act 1988(20) (criminal legal aid) shall apply as if the proceedings were proceedings for dealing with an offender as a fugitive offender.

(2) For the purposes of proceedings under article 6, 9 or 10, a competent court in Scotland shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested either in custody or on bail, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person; and the provisions of the Legal Aid (Scotland) Act 1986(21) relating to such proceedings or any appellate proceedings following thereon shall apply to that person.

Legal custody

25.—(1) A person in respect of whom a delivery order or transfer warrant is in force shall be deemed to be in legal custody at any time when, being in the United Kingdom or on board—

- (a) any British ship (within the meaning of the Merchant Shipping Act 1995(22)),
- (b) any British-controlled aircraft or hovercraft (within the meaning of section 92 of the Civil Aviation Act 1982(23) or, as the case may be, that section as applied to hovercraft by virtue of provision made under the Hovercraft Act 1968(24)), or
- (c) any ship, aircraft or hovercraft belonging to, or exclusively employed in the service of, Her Majesty in right of the Government of the United Kingdom,

he is being taken under the order or warrant to or from any place or is being kept in custody under the order or warrant or, pending the execution of the order or warrant, on remand.

(2) A person authorised by or for the purposes of a delivery order or transfer warrant to take another person to or from any place or to keep that person in custody shall have all the powers, authority, protection and privileges—

- (a) of a constable in the part of the United Kingdom in which that person is for the time being, or
- (b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the other person is to be taken.

(3) If a prisoner or any person who is in custody by virtue of this Order escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place where or to which, by virtue of this Order, he is required to be or to be taken.

(4) In paragraph (3) “constable”, in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place in question has, under any enactment or under paragraph (2), the powers of a constable in that or any other part of the United Kingdom.

Custodial sentences under United Kingdom law

26.—(1) Where in pursuance of this Order a person who is a prisoner is delivered up into the custody of—

(19) 1985 c. 23.
 (20) 1988 c. 34.
 (21) 1986 c. 47.
 (22) 1995 c. 21.
 (23) 1982 c. 16.
 (24) 1968 c. 59.

(a) the International Tribunal, or
(b) a state where he is to undergo imprisonment under a sentence of the International Tribunal, the prisoner shall continue to be liable to complete any term of imprisonment or detention to which he has been sentenced by a national court; but there shall be counted towards the completion of that term any time during which he is in the custody of the International Tribunal or another state.

(2) Where in pursuance of this Order a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of the prisoner to complete any term of imprisonment or detention to which he has been sentenced by a national court; and accordingly a prisoner to whom such an order relates and whose sentence has not expired shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

(3) Where in pursuance of this Order a delivery order is made or transfer warrant is issued in respect of a person who is a prisoner, the order or warrant may include provision authorising the return of the prisoner into the custody of the Secretary of State—

- (a) in accordance with arrangements made by the Secretary of State with the Registrar, or
- (b) in the case of a prisoner taken to a place where he is to undergo imprisonment under a sentence of the International Tribunal, in accordance with arrangements made by the Secretary of State with the state where that place is situated,

and for his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

Evidence

27.—(1) For the purposes of this Order and any connected proceedings, an International Tribunal document may be taken to be such a document and to have been duly issued or made (and it shall accordingly be received in evidence without further proof) if—

- (a) it purports to have been issued or made in accordance with the Statute or the Rules or, in the case of a request to the Secretary of State, for the purposes of this Order, or
- (b) it is verified by a certificate purporting to be signed by the President of the International Tribunal, the Registrar or the Prosecutor certifying that the document is an International Tribunal document or, as the case may be, a true copy of such a document.

(2) In this article “International Tribunal document” means—

- (a) a warrant, order, summons or other process of the International Tribunal,
- (b) a copy of such warrant, order, summons or other process, or
- (c) a request to the Secretary of State by the International Tribunal,

and the reference to the President of the International Tribunal, the Registrar or the Prosecutor includes a reference to any person lawfully exercising the functions of the President, the Registrar or the Prosecutor, as the case may be.

(3) Judicial notice shall be taken of the Statute, the Rules and the seal of the International Tribunal.

N. H. Nicholls
Clerk of the Privy Council

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SCHEDULE

STATUTE OF THE INTERNATIONAL TRIBUNAL

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter referred to as “the International Tribunal”) shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2

Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

Article 5

Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

Article 6

Personal jurisdiction

The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 7

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 5 of the present Statute, shall be individually responsible for the crime.

2. 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.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he 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 measure 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 of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Article 8

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

Article 9

Concurrent jurisdiction

1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.

Article 10

Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only 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.

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3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal 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 11

Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

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

Article 12

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

Article 13

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

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eleven judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

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3. In the event of a vacancy in the Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 14

Officers and members of the Chambers

1. The judges of the International Tribunal shall elect a President.

2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.

3. After consultation with the judges of the International Tribunal, the President shall assign the judges to the Appeals Chamber and to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

4. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of the Trial Chamber as a whole.

Article 15

Rules of procedure and evidence

The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

Article 16

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 17

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal.
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 International Tribunal. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.
4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 18

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organisations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. 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 may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.
4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 19

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal, be taken into custody, immediately informed of the charges against him and transferred to the International Tribunal.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
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, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Court;
 - (g) not to be compelled to testify against himself or to confess guilt.

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence 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 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

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

Article 24

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers shall 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 Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 25

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) an error on a question of law invalidating the decision; or
- (b) 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 Chambers.

Article 26

Review of proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

Article 27

Enforcement of sentences

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Article 28

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 International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

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Article 29

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the International Tribunal.

Article 30

The status, privileges and immunities of the International Tribunal

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.
2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with the international law.
3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.
4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

Article 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

Article 33

Working languages

The working languages of the International Tribunal shall be English and French.

Article 34

Annual report

The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision as respects the United Kingdom to implement a resolution of the Security Council of the United Nations relating to the former Yugoslavia.

The Order has effect for the purpose of enabling the United Kingdom to co-operate with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by Resolution 827 (1993) of the Security Council of the United Nations (“International Tribunal”) in the investigation and prosecution of persons accused of committing International Tribunal crimes and the punishment of persons convicted of such crimes.