

The Statute of the International Criminal Tribunal for Afghanistan

Adopted on 5 October 2002
Amended on 22 December 2002
Amended on 29 June 2003

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 Afghanistan since 1 October 2001 in accordance with the provisions of the present Statute.

Article 2 Crime of aggression

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed crime of aggression.

Article 3 War crimes

1. 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.

2. The International Tribunal shall have the power to prosecute persons committing or ordering to be committed other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts :

- (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 civilian objects, that is, objects which are not military

objectives ;

- (c) 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 ;
- (d) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated ;
- (e) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives ;
- (f) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion ;
- (g) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury ;
- (h) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory ;
- (i) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives ;
- (j) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons ;
- (k) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (l) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war ;
- (m) Pillaging a town or place, even when taken by assault ;
- (n) Employing poison or poisoned weapons ;
- (o) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices ;
- (p) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition ;
- (q) Committing outrages upon personal dignity, in particular humiliating and degrading treatment ;
- (r) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.

3. The International Tribunal can refer to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977 to clarify the definition of war crimes.

Article 4 Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack directed against any civilian population in armed conflict, whether international or internal in character :

- (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 5 Personal jurisdiction

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

Article 6 Individual criminal responsibility

1. A person who instigated, ordered, committed or otherwise aided and abetted in the execution of a crime referred to in articles 2, 3 and 4 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.
3. The fact that any of the acts referred to in articles 2, 3 and 4 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 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 of criminal responsibility, but may be considered in mitigation of responsibility if the International Tribunal determines that justice so requires.

Article 7 Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of Afghanistan, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 October 2001.

Article 8 Organization of the International Tribunal

The International Tribunal shall consist of the following organs :

- (a) The Judge ;
- (b) The Prosecutor ;
- (c) A Registry, servicing both the Chamber and the Prosecutor.

Article 9 Composition of the Chamber

The Chamber shall be composed of seven independent judges.

Article 10 Qualifications of judges

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 Chamber due account shall be taken of the experience of the judge in criminal law, international law, including international humanitarian law and human rights law.

Article 11 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, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

Article 12 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 Afghanistan since 1 October 2001.
2. The Prosecutor 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.
3. 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.
4. The Office of the Prosecutor shall be composed of Prosecutor and such other qualified staff as may be required.

Article 13 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.

Article 14 Investigation and preparation of indictment

1. The Prosecutors 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 organizations. The Prosecutors shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutors shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations.
3. Upon a determination that a *prima facie* case exists, the Prosecutors 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.

Article 15 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 16 Judgement

1. The Trial Chamber shall pronounce judgements on persons convicted of serious violations of international humanitarian law.
2. The judgement shall be rendered by a consensus, and shall be delivered by the Trial Chamber in public.

Article 17 Recommendations

The Trial Chamber shall pronounce recommendations to persons convicted of serious violations of international humanitarian law, related governments and international community.

Article 18 Cooperation and judicial assistance

1. Non-governmental organisations shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. Non-governmental organisations 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.

Article 19 Seat of the International Tribunal

The International Tribunal shall have its seat at Tokyo.

Article 20 Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by non-governmental organisations.

Article 21 Working languages

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