

Nru. 163

17. 9. 2002

MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli Michael Refalo, M.P., Ministru għat-Turiżmu, f'isem il-Ministru tal-Gustizzja u Gvern Lokali, u moqri għall-Ewwel darba fis-Seduta tas-16 ta' Settembru, 2002.

ATT biex jipprovdi dwar assistenza lill-Qorti Kriminali Internazzjonali.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Michael Refalo, M.P., Minister for Tourism, on behalf of the Minister for Justice and Local Government, and read the First time at the Sitting of the 16th September, 2002.

AN ACT to provide for assistance to the International Criminal Court.

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIGI
msejjah .

ATT biex jipprovdi dwar assistenza lill-Qorti Kriminali Internazzjonali

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'ligi dan li ġej:-

TAQSIMA 1
PRELIMINARI

1. (1) It-titolu fil-qosor ta' dan l-Att hu Att ta' l-2002 dwar il-Qorti Kriminali Internazzjonali. Titolu fil-qosor u bidu fis-schh.

(2) Id-disposizzjonijiet ta' dan l-Att jibdew isehhu f' dik id-data li l-Ministru responsabbli għall-Gustizzja jista' b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx Tifsiriet. teħtieġ xort'ohra:

“delitt ICC” tfisser delitt (minbarra d-delitt ta' aggressjoni) li fuqu l-ICC għandha ġurisdizzjoni skond it-Trattat ICC li għandu d-disposizzjonijiet rilevanti tiegħu riprodotti fl-Iskeda I li tinsab ma' dan l-Att;

“it-Trattat ICC” tfisser l-Istatut tal-Qorti Kriminali Internazzjonali magħmul f'Ruma fis-17 ta' Lulju, 1988;

“l-ICC” tfisser il-Qorti Kriminali Internazzjonali mwaqqfa fit-Trattat ICC;

“genocidju” tfisser att ta’ genocidju kif imfisser fl-artikolu 54B;

“delitt kontra l-umanità” tfisser delitt kontra l-umanità kif imfisser fl-artikolu 54C;

“delitt tal-gwerra” tfisser delitt tal-gwerra kif imfisser fl-artikolu 54D;

“Ministru” tfisser il-Ministru responsabbli għall-Ġustizzja.

(2) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta’ dan l-Att il-qorti għandha tqis it-test oriġinali tat-Trattat ICC u ta’ kull trattat u konvenzjoni msemmija fit-Trattat ICC.

TAQSIMA 2 ASSISTENZA LILL-ICC

Għoti ta’
assistenza.

3. (1) Il-poteri mogħtija minn din it-Taqsima lill-Ministru għandhom jiġu eżerċitati għall-fini li tingħata assistenza lill-ICC għar-rigward ta’ investigazzjonijiet jew prosekuzzjonijiet meta –

(a) investigazzjoni tkun inbdiet mill-ICC, u

(b) l-investigazzjoni u kull proċediment li jtinissel minnha ma jkunux intemmu.

(2) Meta tintuża trasmissjoni *facsimile* –

(a) biex issir talba mill-ICC jew għat-trasmissjoni ta’ kull dokument li jingiebb b’sostenn, jew

(b) għat-trasmissjoni ta’ kull dokument b’konsegwenza ta’ dik it-talba,

din it-Taqsima tapplika bhallikieku d-dokumenti hekk mibgħutin kienu l-orijinali tad-dokumenti hekk trasmessi. Kull tali dokument jista’ jintlaqa’ u jkun ammissibbli bhala prova għaldaqstant.

(3) Ebda haġa f’din it-Taqsima ma għandha tinqara u tiftiehem bhala li tipprevjeni l-għoti ta’ assistenza lill-ICC xort’ oħra milli taħt din it-Taqsima.

Setgħa ta’ għemil
ta’ regolamenti.

4. Il-Ministru jista’ jagħmel regolamenti li jkunu jipprovdu biex jintlaqgħu talbiet għall-assistenza mill-ICC u b’mod partikolari u mingħajr preġudizzju għall-ġeneralità ta’ dik is-setgħa jista’ jagħmel regolamenti li jkunu jippreskrivu l-kondizzjonijiet u l-proċeduri għall-

eżekuzzjoni ta' kull talba bħal dik għal kull għan jew għanijiet minn dawn li ġejjin:

- (a) l-interrogazzjoni ta' persuni li jkunu qegħdin jiġu investigati jew ipproċessati mill-ICC;
- (b) il-gbir tal-provi jew l-għoti ta' xiehda;
- (c) in-notifika ta' kull dokument jew att tal-proċedimenti quddiem l-ICC;
- (d) it-trasferiment temporanju lill-ICC ta' prigionier għal għanijiet ta' identifikazzjoni jew sabiex tinkiseb xiehda jew assistenza oħra;
- (e) id-dhul u t-tfittxija f'kull fond u l-qbid ta' kull oġġett;
- (f) it-tehid ta' marki tas-swaba jew kampjuni mhux intimi;
- (g) l-eżumazzjoni ta' xi katavru;
- (h) l-għoti ta' *records* u dokumenti;
- (i) l-investigazzjoni dwar ir-rikavat ta' xi delitt ICC;
- (j) l-iffriżar jew il-qbid ta' xi rikavat biex dan ikun jista' jiġi eventwalment konfiskat;
- (k) il-verifika ta' kull prova jew materjal ieħor.

5. (1) Ebda haġa f'xi disposizzjoni ta' din it-Taqsima ma tehtieg ^{Interessi ta' sigurezza nazzjonali.} jew tawtorizza li jiġu prodotti dokumenti, jew li tinkixef informazzjoni, li tista' tkun ta' preġudizzju għas-sigurezza ta' Malta.

(2) Għal kull fini ta' xi disposizzjoni bħal dik, ċertifikat iffirmat minn jew f'isem il-Prim Ministru li jkun ifisser li jkun ta' preġudizzju għas-sigurezza ta' Malta li jiġu prodotti xi dokumenti speċifikati, jew li tinkixef xi informazzjoni speċifikata, ikun xiehda konkluziva ta' dak il-fatt.

6. (1) Kull xiehda jew materjal ieħor li jinkiseb taħt din it-Taqsima minn persuna minbarra mill-Avukat Ġenerali, flimkien ma' ^{Transmission ta' materjal lill-ICC.} kull verifika mehtieġa, għandhom jintbagħtu lill-Avukat Ġenerali li mbagħad jagħmel kull arrangament għat-trasmissjoni tal-provi jew ta' kull materjal ieħor lill-ICC.

(2) Meta xi provi jew materjal ieħor ikollhom jiġu trasmessi lill-ICC, għandhom jiġu trasmessi-

(a) meta l-materjal jkun jikkonsisti f' dokument, l-original jew kopja, u

(b) meta l-materjal jkun jikkonsisti f' xi oġġett ieħor, l-oġġett innifsu jew ritratt fotografiku jew deskrizzjoni oħra tiegħu,

skond ma jista' jkun meħtieġ biex tithares it-talba ta' l-ICC.

TAQSIMA 3 REATI GħAR-RIGWARD TA' L-ICC

Reati għar-rigward ta' l-ICC.

7. (1) Ikun reat li persuna xjentement tagħmel xi att imsemmi fl-Artiklu 70.1 tat-Trattat ICC (reati kontra l-amministrazzjoni tal-gustizzja għar-rigward ta' l-ICC), hawn iżjed 'il quddiem f'din it-Taqsima msejjaħ "l-artikolu rilevanti".

(2) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' l-artikolu rilevanti l-qorti għandha tqis kull sentenza jew deċiżjoni rilevanti ta' l-ICC u tista' wkoll tqis kull ġurisprudenza internazzjonali rilevanti oħra.

(3) Mingħajr preġudizzju għad-disposizzjonijiet ta' l-artikolu 5 tal-Kodiċi Kriminali, azzjoni kriminali tista' wkoll tkun ipproċessata f'Malta kontra kull ċittadin ta' Malta jew residenti permanenti f'Malta li jkun sar ħati ta' reat imsemmi fis-subartikolu (1) ta' dan l-artikolu għalkemm ir-reat jista' jkun sar barra minn Malta.

(4) Ma għandhomx jinb dew proċedimenti għal reat taħt dan l-artikolu hliel mill-Avukat Ġenerali jew bil-kunsens tiegħu.

(5) Id-disposizzjonijiet rilevanti ta' l-artikolu rilevanti jinsabu stipulati fl-Iskeda II li tinsab ma' dan l-Att.

(6) Persuna li tinsab ħatja ta' reat taħt is-subartikolu (1) ta' dan l-artikolu tista' tehel piena kif ġej:

(a) meta r-reat ikun jikkonsisti fl-att imsemmi fil-paragrafu (a) ta' l-artikolu rilevanti, għall-piena stipulata fl-artikoli 104, 105, 107 tal-Kodiċi Kriminali għal ċirkostanzi korrispondenti tal-każ;

(b) meta r-reat ikun jikkonsisti fl-att imsemmi fil-paragrafu (b) ta' l-artikolu rilevanti, għall-piena stipulata fl-artikolu 103 tal-Kodiċi Kriminali;

(ii) għar-rigward ta' konsegwenza, meta jkollha intenzjoni li tikkaguna l-konsegwenza jew tkun konsapevoli li din tkun se tigri fil-kors normali tal-ġrajjet, u

(b) "xjentement" tfisser l-għarfien li tkun teżisti xi ċirkostanza jew li tkun se tigri xi konsegwenza fil-kors normali tal-ġrajjet.

(4) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' dan l-artikolu (li jikkorrispondu għall-artikolu 30 tat-Trattat ICC) il-qorti għandha tqis kull sentenza jew deċiżjoni rilevanti ta' l-ICC u tista' wkoll tqis kull ġurisprudenza internazzjonali oħra rilevanti.

TAQSIMA 4 INFURZAR TA' SENTENZI U ORDNIJET

Detenzjoni f'Malta
konformi ma'
sentenza ICC.

Kap. 260.

9. (1) Dan l-artikolu japplika meta –

(a) Malta tisemma mill-ICC bħala l-istat fejn persuna, hawn iżjed 'il quddiem f'din it-Taqsima msejja "l-prigunier", għandha sservi sentenza ta' prigunerija imposta mill-ICC, u

(b) il-Ministru jgħarraf lill-ICC li dik it-tismija tkun aċċettata.

(2) Il-Ministru għandu jgħarraf ordni fejn jawtorizza –

(a) li l-prigunier jingieb Malta,

(b) id-detenzjoni tal-prigunier f'Malta skond is-sentenza ta' l-ICC, u

(ċ) it-tehid tal-prigunier f'habs, skond it-tifsir ta' l-Att dwar il-Habs, f'Malta.

Id-disposizzjonijiet ta' l-ordni jistgħu jkunu mibdula mill-Ministru, u jistgħu jkunu hekk mibdula li jagħtu seħħ lil kull tibdil li jsir fis-sentenza ta' l-ICC.

(2) Bla hsara għad-disposizzjonijiet tas-subartikolu (3) ta' dan l-artikolu, prigunier li jkun soġġett għal ordni li tawtorizza d-detenzjoni tiegħu f'habs f'Malta għandu jigi ttrattat għal kull fini bħallikieku kien soġġett għal sentenza ta' prigunerija imposta fit-twertiq ta' ġurisdizzjoni kriminali minn qorti f'Malta.

(3) Id-disposizzjonijiet ta' kull regolament magħmul taħt l-Att dwar il-Habs għandhom japplikaw għal prigionier taħt din it-Taqsima bla hsara għal kull tibdil, aġġustament jew adattament li l-Ministru jista' b'regolamenti taħt dan is-subartikolu jordna bi ftehim mal-Ministru responsabbli għall-habs.

10. (1) Dan l-artikolu japplika meta l-Ministru jirċievi talba mill-ICC –

Ritorn temporanju jew trasferiment tal-kustodja lejn xi stat iehor.

(a) għal xi ritorn temporanju tal-prigionier fil-kustodja ta' l-ICC għal xi fini ta' xi proċediment, jew

(b) għal xi trasferiment tal-prigionier fil-kustodja ta' xi stat iehor konformement ma' bidla fit-tismija ta' l-istat fejn isir l-infurzar.

(2) Il-Ministru għandu –

(a) jorog ordni li tkun tawtorizza r-ritorn jew trasferiment temporanju tal-prigionier skond it-talba,

(b) jagħmel kull arrangament mehtieg ma' l-ICC jew, skond ma jista' jkun il-każ, ma' l-istat l-iehor, u

(c) jagħti dawk l-ordnijiet dwar il-kustodja, thollija fil-libertà u, fejn adatt, ir-ritorn tal-prigionier bħalma jidhirlu li jkun adatt sabiex jingħata seħħ lill-arrangament.

(2) Meta l-prigionier jirritorna temporanjament fil-kustodja ta' l-ICC, l-ordni li tkun tawtorizza d-detenzjoni tiegħu f'Malta għandu jibqa' jkollha seħħ b'mod li tkun tista' terga' tapplika għalih meta huwa jerga' lura.

11. (1) Prigionier għandu jitqies li jkun fil-kustodja legali tal-Ministru f'kull żmien meta, għax ikun –

Kustodja ta' prigionier meta jkun qed jiġi trasportat eċċ.

(a) f'Malta, jew

(b) abbord bastiment jew ajruplan ta' Malta,

jkun qed jittiehed lejn jew minn xi post jew ikun qed jinżamm fil-kustodja.

(2) Il-Ministru jista', minn żmien għal żmien, isemmi lil xi persuna bħala persuna li tkun għal xi żmien qegħda tiġi awtorizzata tittrasporta lill-prigionier lejn jew minn xi post jew iżzomm lill-prigionier fil-kustodja tagħha.

(3) Persuna li tiġi hekk awtorizzata jkollha kull poter, awtorità, protezzjoni u privileġġ li jkollu uffiċjal tal-pulizija.

(4) Jekk il-prigunier ikun mahrub jew kontra l-ligi ma jkunx qiegħed fejn suppost ikun, huwa jista' jiġi arrestat bla ma l-pulizija jkollha ebda ordni u meħud f'xi post fejn ikun jista' jittieħded taħt l-ordni mahruġa taħt xi disposizzjoni ta' din it-Taqsima.

Seiġha ta' għernil ta' regolamenti.

12. Il-Ministru jista' jagħmel regolamenti biex jipprovdi għal xi infurzar f'Malta -

(a) ta' multi jew konfiski ordnati mill-ICC, u

(b) ordnijiet mill-ICC kontra persuni misjuba hatja fejn jiġu speċifikati tpattijiet lil, jew dwar vittmi,

u b'mod partikolari u mingħajr preġudizzju għal kull generalità ta' dik is-setgħa jista' jagħmel regolamenti li jkunu:

(i) jawtorizzaw lill-Ministru jahtar persuna biex taġixxi f'isem l-ICC għall-finijiet ta' l-infurzar ta' l-ordni u jagħti lil dik il-persuna dawk l-ordnijiet li l-Ministru jidhrulu li jkunu meħtieġa;

(ii) jeħtieġu r-registrazzjoni fir-Registru Pubbliku ta' xi ordni li dwaru japplika dan l-artikolu u jipprovdu dwar kull effett li jkollha dik ir-registrazzjoni;

(iii) japplikaw kull jew xi disposizzjoni konnessa ma' l-infurzar f'Malta ta' ordnijiet tal-qorti ta' xi pajjiż jew territorju barra minn Malta;

(iv) jipprovdu li l-ispejjeż raġonevoli kollha dwar u incidentali għar-registrazzjoni u l-infurzar ta' xi ordni jkunu jistgħu jingabru bħallikieku dawn kienu ammonti li jistgħu jiġu miġbura taħt l-ordni;

(v) jipprovdu dwar il-ġbir ta' multi bħala dejn ċivili jew dwar kif multi bħal dawk jistgħu jiġu konvertiti fi prigunerija jew detenzjoni jekk jibqgħu ma jithallsux:

Izda jistgħu jsiru provvedimenti differenti għal għamliet differenti ta' ordnijiet.

**TAQSIMA 5
DELITTI ICC**

13. (1) Il-Kodiċi Kriminali għandu jiġi emendat kif ġej: Emenda tal-Kodiċi
Kriminali.

(a) fil-paragrafu (d) tas-subartikolu (1) ta' l-artikolu 5 tiegħu, minnufih wara il-kliem "isir hati" għandhom jidhlu l-kliem "tar-reati imsemmija fl-artikolu 54A jew"; Kap. 9.

(b) It-Titolu I tat-Taqsima II ta' l-Ewwel Ktieb tal-Kodiċi Kriminali għandu jiġi enumerat mill-ġdid "Titolu I Bis" u minnufih qabel dak it-Titolu għandu jidhol dan it-Titolu ġdid li ġej":

"Titolu I
FUQ IL-ĠENOĊIDJU, DELITTI KONTRA
L-UMANITÀ U DELITTI TAL-GWERRA

Generali. 54A. (1) Huwa delitt li persuna tikkommetti ġenoċidju, delitt kontra l-umanità jew delitt tal-gwerra.

(2) F'dan it-Titolu –

"it-Trattat ICC" tfisser l-Istatut tal-Qorti Kriminali Internazzjonali magħmul f'Ruma fis-17 ta' Lulju, 1998;

"l-ICC" tfisser il-Qorti Kriminali Internazzjonali mwaqqfa bit-Trattat ICC;

"ġenoċidju" tfisser att ta' ġenoċidju kif imfisser fl-artikolu 54B;

"delitt kontra l-umanità" tfisser delitt kontra l-umanità kif imfisser fl-artikolu 54C;

"delitt tal-gwerra" tfisser delitt tal-gwerra kif imfisser fl-artikolu 54D;

"Ministru" tfisser il-Ministru responsabbli għall-Gustizzja.

(3) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' dan it-Titolu l-qorti għandha tqis it-test originali tat-Trattat ICC u ta' kull trattat u konvenzjoni msemmija fit-Trattat ICC.

(4) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' l-artikoli 54B, 54C u 54D hawn iżjed 'il quddiem f'dan it-Titolu msejja "l-artikoli rilevanti" il-qorti għandha tqis –

(a) kull Element ta' Delitt rilevanti adottat skond l-artikolu 9 tat-Trattat ICC, u

(b) sa dak iż-żmien meta jigu adottati l-Elementi ta' Delitti taht dak l-artikolu l-Elementi ta' Delitti rilevanti kollha li jinsabu fir-rapport tal-Kummissjoni Preparatorja dwar il-Qorti Kriminali Internazzjonali adottat fit-30 ta' ta' Ġunju, 2000.

(5) Il-Ministru jista' jistipula f'regolamenti it-test ta' l-Elementi ta' Delitti msemmija f'subartikolu (2) ta' dan l-artikolu kif emendat minn żmien għal żmien.

(6) L-artikoli rilevanti għandhom għal kull fini ta' dan it-Titolu jiftiehem bla hsara u skond kull riserva jew dikjarazzjoni rilevanti magħmula minn Malta meta tkun qed tirtatfika xi trattat jew ftehim rilevanti għall-interpretazzjoni ta' dawk l-artikoli.

(7) Il-Ministru jista' b'regolamenti jistipula l-pattijiet ta' kull riserva jew dikjarazzjoni msemmija f'subartikolu (5) ta' dan l-artikolu u meta xi riserva jew dikjarazzjoni bħal dik tigi rtirata għalkollox jew f'parti minnha, huwa jista' jirrevoka jew jemenda kull regolament kif hawn qabel imsemmi li jkun fih il-pattijiet ta' dik ir-riserva jew dikjarazzjoni.

(8) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' l-artikoli rilevanti l-qorti għandha tqis kull sentenza jew deċiżjoni rilevanti ta' l-ICC u tista' wkoll tqis kull ġurisprudenza oħra rilevanti internazzjonali.

Ġenoċidju.

54B. Isir ġenoċidju meta jitwettag xi att minn dawn li ġejjin bil-ħsieb li jinqered, għalkollox jew f'parti minnu, grupp nazzjonali, etniku, razzjali jew reliġjuż, bħala tali:

(a) il-qtil ta' membri tal-grupp;

(b) l-ikkagunar ta' hsara gravi fil-ġisem jew fil-mohh tal-membri tal-grupp;

(c) it-tqeghid b'mod deliberat fuq il-grupp ta' kondizzjonijiet ta' hajja bil-ghan li jikkagunaw il-qirda fiżika tal-grupp għalkollox jew f'parti minnu;

(d) l-impożizzjoni ta' miżuri maħsuba li jipprevjenu t-twelid ta' l-ulied fi hdan il-grupp;

(e) it-trasferiment bil-forza tat-tfal tal-grupp lejn xi grupp iehor.

Delitti
kontra
l-umanità.

54C. (1) Isir delitt kontra l-umanità meta jitwettaq xi att minn dawn li ġejjin bhala parti minn attakk, mifruq jew sistematiku, dirett kontra xi popolazzjoni ċivili, b'gharfien ta' l-attakk:

(a) omiċidju;

(b) esterminazzjoni;

(ċ) tjassir;

(d) deportazzjoni jew trasferiment ta' popolazzjoni bil-forza;

(e) prigunerija jew deprivazzjoni ohra harxa tal-libertà fiżika bi ksur tar-regoli fundamentali tal-liġi internazzjonali;

(f) tortura;

(g) stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, sterilizzazzjoni kostretta, jew kull forma ohra ta' vjolenza sesswali li tkun daqstant gravi;

(h) persekuzzjoni kontra xi grupp identifikabbli jew kollettività għal raġunijiet politiċi, razzjali, nazzjonali, etniċi, kulturali, reliġjużi, ta' ġeneru sesswali kif imfisser fis-subartikolu (3), jew għal raġunijiet ohra li huma universalment rikonoxxuti bhala mhux permissibbli taht il-liġi internazzjonali, f'konnessjoni ma' xi att imsemmi f'dan is-subartikolu jew xi delitt taht l-artikolu 54A;

(i) għajbien mġieghel ta' persuni;

(j) id-delitt ta' apartheid;

(k) atti ohra kontra l-bniedem ta' xorta simili li xjentement jikkagunaw tbatija kbira, jew hsara gravi fil-ġisem jew fil-moħħ jew fis-saħħa fiżika.

(2) Għall-finijiet tas-subartikolu (1):

(a) “attakk dirett kontra xi popolazzjoni ċivili” tfisser dik ix-xorta ta’ mgieba li tinvolvi l-għemil għal bosta drabi ta’ l-atti msemmija fis-subartikolu (1) kontra popolazzjoni ċivili, konformement jew bi tkomplija ta’ xi politka Statali jew organizzazzjonali li jitwettaq dak l-attakk;

(b) “esterminazzjoni” tinkludi l-impożizzjoni bil-ħsieb ta’ kondizzjonijiet ta’ ħajja, fost l-oħrajn il-privazzjoni ta’ aċċess għall-ikel u medicina, meqjusa biex iġibu l-qirda ta’ xi parti mill-popolazzjoni;

(ċ) “tjassir” tfisser it-twettiq ta’ xi poter jew tal-poteri kollha relattivi għall-jedd ta’ proprjetà fuq persuna u tinkludi t-twettiq ta’ dik is-setgħa fil-kors tat-traffikar fil-persuni, b’mod partikolari tan-nisa u t-tfal;

(d) “deportazzjoni jew trasferiment ta’ popolazzjoni bil-forza” tfisser ċ-ċaqlieq tal-persuni milquta b’atti ta’ espulsjoni jew atti oħra ta’ gēghil mill-area fejn dawn ikunu preżenti skond il-liġi, bla ebda raġuni li tkun permessa taht il-liġi internazzjonali;

(e) “tortura” tfisser l-impożizzjoni bil-ħsieb ta’ uġiġħ jew tbatija horox, kemm fiżiċi kemm mentali, fuq persuna fil-kustodja jew taht il-kontroll ta’ l-akkużat; hlief li t-tortura ma għandhiex tinkludi uġiġħ jew tbatija li jitnisslu biss minn, huma inerenti fi jew inċidentali għal, sanzjonijiet legittimi;

(f) “tqala kostretta” tfisser id-detenzjoni mgieghla kontra l-liġi ta’ mara li tkun saret tqila bil-forza, bil-ħsieb li tintlaqat il-kompożizzjoni etnika ta’ xi popolazzjoni jew li jitwettqu vjolazzjonijiet oħra serji tal-liġi internazzjonali. Din it-tifsira ma għandha b’ebda mod tkun imfissra bhala li tolqot il-liġijiet nazzjonali konnessi mat-tqala;

(g) “persekkuzzjoni” tfisser id-deprivazzjoni maħsuba u harxa tad-drittijiet fundamentali kuntrarju għal-liġi internazzjonali minhabba fl-identità tal-grupp jew kollettività;

(h) “id-delitt ta’ apartheid” tfisser atti kontra l-bniedem ta’ xorta simili għal dawk imsemmija fis-subartikolu (1), li jitwettqu fil-kuntest ta’ xi reġim istituzzjonalizzat ta’ oppressjoni u dominazzjoni sistematika minn grupp razzjali wiehed fuq xi grupp jew gruppi razzjali oħra u li jsir bil-ħsieb li jibqa’ jriegi dak ir-reġim;

(i) “għajbien mgieghel ta’ persuni” tfisser l-arrest, id-detenzjoni jew is-serq ta’ persuni minn, jew bl-awtorizzazzjoni, l-appoġġ jew il-kunsens sieket ta’ xi Stat jew organizzazzjoni politika, segwit b’rifjut ta’ rikonoxximent ta’ dik il-privazzjoni ta’ libertà jew li tinghata informazzjoni dwar id-destin jew fejn ikunu jinsabu dawk il-persuni, bil-ħsieb li dawn jitnehhew minn taht il-protezzjoni tal-liġi għal perjodu ta’ żmien twil.

(3) Għal kull fini ta’ dan it-Titolu, hu miftiehem li l-frazi “ta’ ġeneru sesswali” tirreferixxi għaż-żewġ sessi, raġel u mara, fi hdan il-kuntest ta’ soċjetà. Il-frazi “ta’ ġeneru sesswali” ma tindikax xi tifsira differenti minn dik hawn qabel mogħtija.

Delitti tal-gwerra.

54D. Isir delitt tal-gwerra meta jitwettaq xi att minn dawn li ġejjin:

(a) il-ksur serju tal-Konvenzjonijiet ta’ Ġinevra tat-12 ta’ Awissu 1949, jiġifieri, xi att minn dawn li ġejjin kontra persuni jew proprjetà protetti taht id-disposizzjonijiet tal-Konvenzjoni ta’ Ġinevra rilevanti:

(i) qtil volontarju;

(ii) tortura jew trattament inuman, inklużi esperimenti bioloġiċi;

(iii) il-kagunament volontarju ta’ tbatija harxa, jew feriment gravi fil-ġisem jew fis-sahha;

(iv) qirda estensiva u approprjazzjoni ta’ proprjetà, li mhux ġustifikati b’neċessità militari u li jsiru b’mod mhux legittimu u b’vandalizmu;

(v) l-isfurzar ta’ prigionier tal-gwerra jew persuna protetta oħra biex iservu fil-forzi armati ta’ xi Setgħa ostili;

(vi) id-deprivazzjoni volontarja ta' prigionier tal-gwerra jew ta' persuna oħra protetta mid-drittijiet ta' proċess ġust u regolari;

(vii) id-deportazzjoni jew trasferiment mhux legittimi jew id-detenzjoni mhux legittima;

(viii) it-tehid ta' ostaġġi;

(b) vjolazzjonijiet oħra serji tal-liġijiet u d-drawwiet li japplikaw fil-konflitt armat internazzjonali, fi hdan il-qafas stabbilit tal-liġi internazzjonali, jiġifieri, xi att minn dawn l-atti li ġejjin:

(i) meta jiġu xjentement diretti attakki kontra l-popolazzjoni ċivili bħala tali jew kontra persuni ċivili individwali li ma jkunux qeghdin jiehdu sehem dirett fl-ostilitajiet;

(ii) meta jiġu xjentement diretti attakki kontra hwejjeġ ċivili, jiġifieri, hwejjeġ li ma jkunux objettivi militari;

(iii) meta jiġu xjentement diretti attakki kontra persunal, stallazzjonijiet, materjal, unitajiet jew vetturi involuti f'assistenza umanitarja jew f'missjoni ta' żamma ta' paċi skond iċ-*Charter* tan-Nazzjonijiet Uniti, sakemm dawn ikunu intitolati għall-protezzjoni mogħtija lil persuni ċivili jew hwejjeġ ċivili taht il-liġi internazzjonali dwar il-konflitt armat;

(iv) meta jiġi xjentement sferrat attakk bl-gharfien li dak l-attakk ikun se jikkaguna telfien incidentali ta' hajja jew feriment ta' persuni ċivili jew hsara fi hwejjeġ ċivili jew hsara mifruxa, għal żmien twil u harxa fl-ambjent naturali li tkun b'mod ċar eċċessiva għar-rigward tal-vantaġġ militari totali antiċipat, konkret u dirett;

(v) l-attakk jew il-bumbardament, b'liema mezz ikun, ta' bliet, rhula, dwejriet jew bini li ma jkollhom ebda difiża u li ma jkunux objettivi militari;

(vi) il-qtil jew il-feriment ta' kumbattent li, ghax ikun iddepona l-armi tieghu jew ghax ma jkunx ghad fadallu aktar mezzi ta' difiża, jkun ċeda ghax ried hu;

(vii) l-użu mhux kif imiss tal-bandiera ta' armistizju, tal-bandiera jew ta' l-insinji militari u l-uniformi ta' l-ghadu jew tan-Nazzjonijiet Uniti, kif ukoll ta' l-emblemi distintivi tal-Konvenzjonijiet ta' Ġinevra, li jirriżulta fil-mewt jew fil-feriment gravi fil-persuna;

(viii) it-trasferiment, direttament jew indirettament, mis-Setgha Okkupanti ta' partijiet mill-popolazzjoni ċivili tagħha stess ghal got-territorju li tkun tokkupa, jew id-deportazzjoni jew it-trasferiment ta' xi parti jew partijiet tal-popolazzjoni tat-territorju okkupaat gewwa jew barra minn dan territorju;

(ix) meta jiġu xjentement diretti attacchi kontra bini dedikat ghar-religjon, l-edukazzjoni, l-arti, x-xjenza jew ghanijiet karitattevoli, monumenti storiċi, sptarijiet u postazzjonijiet fejn jingabru l-morda u l-feruti, sakemm dawn ma jkunux objettivi militari;

(x) l-assogġettar ta' persuni li jkunu fis-setgha ta' xi parti avversa ghal mutilazzjoni fiżika jew ghal esperimenti mediċi jew xjentifiċi ta' kull xorta li la jkunu ġustifikati mill-kura medika, dentali jew fl-isptar tal-persuna inkwistjoni u lanqas ma jsiru fl-interess tieghu, u li jikkagunaw il-mewt jew jipperikolaw gravement is-saħħa ta' dik il-persuna jew dawk il-persuni;

(xi) il-qtil jew il-feriment b'perfidja ta' individwi li jkunu jappartjenu ghal xi nazzjon jew armata ostili;

(xii) id-dikjarazzjoni li mhu se jinghata ebda kenn;

(xiii) il-qirda jew il-qbid ta' proprjetà ta' l-ghadu kemm-il darba dik il-qirda jew dak il-qbid ma jkunux mehtieġa b'mod imperattiv bil-htigiet tal-gwerra;

(xiv) id-dikjarazzjoni bhala abolit, sospiz jew mhux ammissibbli f'qorti tal-gustizzja tad-drittijiet u l-azzjonijiet tal-persuni ta' nazzjonalità tal-parti ostili;

(xv) l-isfurzar ta' persuni b'nazzjonalità tal-parti ostili li jieħdu sehem fl-operazzjonijiet tal-gwerra diretti kontra pajjiżhom stess, ukoll jekk dawn kienu fis-servizz tal-belligeranti qabel ma tkun bdiet il-gwerra;

(xvi) htif ta' belt jew post, ukoll meta dawn jittieħdu b'assalt;

(xvii) l-użu ta' velenu jew armi vvelenati;

(xviii) l-użu ta' gassijiet asfissjanti, velenużi jew ohra, u kull likwidu, materjal jew apparat bħal dawk;

(xix) l-użu ta' balal li jespandu jew jifattru faċilment f'għisem il-bniedem, bħalma huma balal b'invilup iebes li ma jkunx ikopri għalkollox il-qalba jew li jitniffed b'incizjonijiet;

.... *omissis*

(xxi) l-għemil ta' oltraġġi fuq id-dinjità personali, b'mod partikolari trattament umiljanti u degradanti;

(xxii) l-għemil ta' stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, kif imfisser fil-paragrafu (f) tas-subartikolu (2) ta' l-artikolu 54C, sterilizzazzjoni kostretta, jew xi forma ohra ta' vjolenza sesswali li wkoll tikkostitwixxi ksar serju tal-Konvenzjonijiet ta' Ġinevra;

(xxiii) li jsir użu mill-preżenza ta' xi persuna ċivili jew persuna ohra protetta biex xi postijiet, arei jew forzi militari isiru immuni minn operazzjonijiet militari;

(xxiv) l-ordni li ssir b'għarfien ta' attacchi kontra bini, materjal, unitajiet mediċi u ta' trasport, u persunal li juża emblemi distintivi tal-

Konvenzjonijiet ta' Ġinevra b'mod konformi mal-ligi internazzjonali;

(xxv) l-użu li jsir b'għarfien mit-thollija fi stat ta' għuh ta' persuni ċivili bhala metodu ta' gwerra billi ċaħhadhom minn oġġetti indispensabbli għas-sopravivenza tagħhom, inkluż it-tfixkil li jsir b'għarfien ta' provvisti ta' għajnuna kif hemm provdut dwar dan taht il-Konvenzjonijiet ta' Ġinevra;

(xxvi) il-qbid bil-lewa jew l-ingaġġar ta' tfal taht l-eta' ta' hmistax-il sena fil-forzi armati nazzjonali jew li dawn jintużaw sabiex jieħdu sehem attiv fl-ostilitajiet;

(ċ) Fil-każ ta' xi konflitt armat li ma jkunx ta' xorta internazzjonali, vjolazzjonijiet gravi ta' l-artikolu 3 komuni għall-erba' Konvenzjonijiet ta' Ġinevra tat-12 ta' Awissu 1949, jiġifieri, xi att minn dawn l-atti li ġejjin li jsiru kontra persuni li ma jieħdu ebda sehem attiv fl-ostilitajiet, inklużi membri tal-forzi armati li jkunu ċedew l-armi tagħhom u dawk li jkunu jinsabu fi stat ta' *hors de combat* minhabba f'mard, feriti, detenzjoni jew għal xi raġuni oħra:

(i) Vjolenza fuq il-ħajja u l-persuna, b'mod partikolari omiċidju ta' kull xorta, mutilazzjoni, trattament krudil u tortura;

(ii) L-għemil ta' oltraġġi fuq id-dinjità personali, b'mod partikolari trattament umiljanti u degradanti;

(iii) It-tehid ta' ostagġi;

(iv) L-għoti ta' sentenzi u t-twettiq ta' eżekuzzjonijiet mingħajr sentenza li tkun inghatat qabel minn qorti regolarment kostitwita, u li tkun tagħti garanziji ġudizzjarji li jkunu ġeneralment rikonoxxuti bhala indispensabbli;

(d) paragrafu (ċ) ta' dan l-artikolu japplika għal konflitti li ma jkunux ta' xorta internazzjonali u għaldaqstant ma japplikax għal sitwazzjonijiet ta' irvell intern u tensjonijiet, bħalma huma rewwixti, atti ta' vjolenza iżolati u sporadiċi jew atti oħra ta' xorta simili;

(e) vjolazzjonijiet ohra gravi tal-ligijiet u drawwiet li japplikaw f'konflitti armati li ma jkunux ta' xorta internazzjonali, fi hdan il-qafas stabbilit tal-ligi internazzjonali, jigifieri, xi att minn dawn l-atti li gejjin:

(i) l-ordni li ssir b'gharfien ta' attackki kontra l-popolazzjoni civili bhala tali jew kontra persuni civili individwali li ma jkollhomx sehem dirett fl-ostilitajiet;

(ii) l-ordni li ssir b'gharfien ta' attackki kontra bini, materjal, unitajiet mediçi u ta' trasport, u persunal li juza emblemi distintivi tal-Konvenzjonijiet ta' Ginevra b'mod konformi mal-ligi internazzjonali;

(iii) l-ordni li ssir b'gharfien ta' attackki kontra persunal, stallazzjonijiet, materjal, unitajiet jew vetturi involuti f'assistenza umanitarja jew f'missjoni ta' zamma ta' paçi skond ic-*Charter* tan-Nazzjonijiet Uniti, sakemm dawn ikunu intitolati ghall-protezzjoni moghtija lil persuni civili jew hwejjeġ civili taht il-ligi internazzjonali dwar il-konflitt armat;

(iv) l-ordni li ssir b'gharfien ta' attackki kontra bini dedikat ghar-religjon, l-edukazzjoni, l-arti, x-xjenza jew ghanijiet karitattevoli, monumenti storici, sptarijiet u postazzjonijiet fejn jingabru l-morda u l-feruti, sakemm dawn ma jkunux objettivi militari;

(v) htif ta' belt jew post, ukoll meta dawn jittiehdu b'assalt;

(vi) l-ghemil ta' stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, kif imfisser fil-paragrafu (f) tas-subartikolu (2) ta' l-artikolu 54C, sterilizzazzjoni kostretta, u xi forma ohra ta' vjolenza sesswali li wkoll tikkostitwixxi vjolazzjoni gravi ta' l-artikolu 3 komuni ghall-erba' Konvenzjonijiet ta' Ginevra;

(vii) il-qbid bil-leva jew l-ingaggar ta' tfal taht l-eta' ta' hmistax-il sena fil-forzi armati jew fi gruppi jew li dawn jintużaw sabiex jiehdu sehem attiv fl-ostilitajiet;

(viii) l-ordnar taċ-ċaqlieg tal-popolazzjoni civili għal raġunijiet li jkollhom x'jaqsmu mal-konflitt, sakemm ma jkunux hekk jeftiegu s-sigurtà tal-persuni civili involuti jew raġunijiet militari imperattivi;

(ix) il-qtil jew il-feriment b'perfidja ta' avversarju kumbattent;

(x) id-dikjarazzjoni li mhux se jingħata ebda kenn;

(xi) l-assogġettar ta' persuni li jkunu fis-setgħa ta' xi parti oħra fil-konflitt għal mutilazzjoni fiżika jew għal esperimenti mediċi jew xjentifiċi ta' kull xorta li la jkunu ġustifikati mill-kura medika, dentali jew fl-isptar tal-persuna involuta u lanqas ma jsiru fl-interess tiegħu, u li jikkawunaw il-mewt jew jipperikolaw gravement is-saħħa ta' dik il-persuna jew ta' dawk il-persuni;

(xii) il-qirda jew il-qbid ta' proprjetà ta' xi avversarju kemm-il darba dik il-qirda jew qbid ma jkunux meħtieġa b'mod imperattiv mill-esigenzi tal-konflitt;

(f) paragrafu (e) ta' dan l-artikolu japplika għal konflitti li ma jkunux ta' xorta internazzjonali u għaldaqstant ma japplikax għal sitwazzjonijiet ta' irvell intern u tensjonijiet, bħalma huma rewwixti, atti ta' vjolenza iżolati u sporadiċi jew atti oħra ta' xorta simili. Dan japplika għal konflitti armati li jseħhu fit-territorju ta' xi Stat meta jkun hemm konflitt armat fit-tul bejn awtoritajiet tal-gvern u gruppi armati organizzati jew bejn dawk il-gruppi.

Responsabbiltà
ta' kmandanti
u superjuri
oħra.

54E. (1) Dan l-artikolu japplika għar-rigward ta' reati taħt din it-Taqsima.

(2) Kmandant militari jew persuna li effettivament taġixxi bħala kmandant militari tkun responsabbli għal reati li jsiru minn forzi li jkunu taħt il-kmand u kontroll effettiv tiegħu jew skond ma jista' jkun il-każ l-awtorità u l-kontroll effettivi tiegħu bħala riżultat tan-nuqqas tiegħu li jeżerċita kontroll kif imiss fuq dawk il-forzi meta –

(a) jew kien jaf jew minhabba ċ-ċirkostanzi tal-waqt kien imissu jaf li l-forzi kienu qegħdin jagħmlu jew se jagħmlu dawk ir-reati, u

(b) ikun naqas milli jiehu l-mizuri mehtieġa u raġonevoli fis-setgħa tiegħu biex jipevjeni jew jireprimi l-għemil tagħhom jew biex iqiegħed il-kwistjoni quddiem l-awtoritajiet kompetenti għal kull azzjoni u prosekuzzjoni.

(3) Għar-rigward ta' azzjonijiet superjuri u subordinati li m'humix deskritti fis-subartikolu (2), superjur ikun responsabbli għal reati li jsiru minn subordinati tiegħu taħt l-awtorità u l-kontroll effettivi tiegħu bħala riżultat tan-nuqqas tiegħu li jeżerċita kontroll kif imiss fuq dawk is-subordinati meta –

(a) ma kienx jaf jew xjentement naqas milli jagħti każ ta' informazzjoni li b'mod ċar kienet tindika li s-subordinati kienu qed jagħmlu jew ser jagħmlu dawk ir-reati,

(b) ir-reati kienu jirigwardaw attivitajiet li kienu jaqgħu taħt ir-responsabbiltà ul-kontroll effettivi tiegħu, u

(c) jkun naqas milli jiehu l-mizuri mehtieġa u raġonevoli fis-setgħa tiegħu biex jipprevjeni jew jirreprimi l-għemil tagħhom jew biex jissottometti l-kwistjoni lill-awtoritajiet kompetenti għal kull investigazzjoni u prosekuzzjoni.

(4) Persuna responsabbli għal reat taħt dan l-artikolu għandha titqies bħala komplici fl-għemil tar-reat.

(5) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' dan l-artikolu (li jikkorrispondi għall-artikolu 28 tat-Trattat ICC) il-qorti għandha tqis kull sentenza jew deċiżjoni rilevanta' l-ICC u tista' tqis ukoll kull ġurisprudenza oħra rilevanti internazzjonali.

(6) Ebda haġa f'dan l-artikolu ma għandha tittiehed bħala li tirrestringi jew teskludi -

(a) xi responsabbiltà tal-kmandant jew superjur apparti minn dan l-artikolu jew

(b) ir-responsabbiltà ta' persuni minbarra l-kmandant jew superjur.

54F. (1) Referenzi f'din it-Taqsima ghal persunali ^{Element mentali.} tagħmel—

- (a) ġenocidju,
- (b) delitt kontra l-umanità, jew
- (ċ) delitt tal-gwerra,

għandhom jiftehmu skond dan l-artikolu.

(2) Kemm-il darba ma jiġix provdut xort'ohra —

(a) bl-artikoli msemmija fit-tifsira fl-artikolu tad-delitti speċifikati fis-subartikolu (1)(a) sa (ċ) ta' dan l-artikolu jew f'xi Elementi ta' Delitti rilevanti msemmija fl-artikolu 54A(3),

(b) bl-artikolu 54E,

persuna titqies li tagħmel delitt msemmi f'subartikolu (1) biss jekk l-elementi materjal tad-delitt isiru bil-ħsieb u xjentement.

(3) Għal dan l-ghan —

(a) persuna jkollha ħsieb—

(i) għar-rigward ta' mġieba, meta tkun intiża li twettaq dik l-imġieba, u

(ii) għar-rigward ta' xi konsegwenza, meta tkun intiża li tikkaguna konsegwenza jew tkun konxja li din tkun se tiġri fil-kors ordinarju tal-ġrajjet, u

(b) “xjentement” tfisser l-għarfien li tkun teżisti ċirkostanza jew li tkun se tiġri konsegwenza fil-kors ordinarju tal-ġrajjet.

(4) Fl-interpretazzjoni u l-applikazzjoni tad-disposizzjonijiet ta' dan l-artikolu (li jikkorrispondi għall-artikolu 30 tat-Trattat ICC) il-qorti għandha tqis kull sentenza jew deċiżjoni rilevanti ta' l-ICC u tista' wkoll tqis kull ġurisprudenza internazzjonali rilevanti ohra.

Ġurisidizzjoni. 54Ġ. Mingħajr preġudizzju għad-disposizzjonijiet ta' l-artikolu 5, azzjoni kriminali għal reat taht dan it-Titolu tista' wkoll tkun ipproċessata f'Malta:

(a) kontra kull persuna li tkun soġġetta għal-liġi militari skond l-artikoli 178, 179 u 180 ta' l-Att dwar il-Forzi Armati ta' Malta, ukoll jekk ir-reat ikun sar barra minn Malta; jew

(b) kontra kull ċittadin ta' Malta jew residenti permanenti f'Malta li jassoċjaw barra minn Malta biex jagħmlu xi reat taht dan it-Titolu ukoll jekk ir-reat ikun se jsir barra minn Malta.

Protezzjoni ta' vittmi u ta' xhieda. 54H. Id-disposizzjonijiet ta' xi liġi li jipprovdu għall-protezzjoni ta' vittmi u ta' xhieda f'xi reati għandha tkun tapplika għal kull vittma jew xhud ta' xi reat taht dan it-Titolu.

Disposizzjonijiet supplimentari għal reati taht dan it-Titolu. 54I. (1) Id-disposizzjonijiet li ġejjin japplikaw għar-rigward ta' reati taht dan it-Titolu.

(2) Ma għandhomx jinbdew procedimenti dwar xi reat hlief mill-Avukat Ġenerali jew bil-kunsens tiegħu.

(3) Persuna misjuba hatja ta' xi reat li jinvolvi omiċidju għandha tiġi ttrattata bħallikieku għal reat li jkun jikkonsisti fil-qtil ta' persuna f'dawk iċ-ċirkostanzi li jkunu, jekk dawn isiru f'Malta, jikkostitwixxu omiċidju volontarju.

(4) F'kull każ iehor persuna misjuba hatja ta' xi reat tista' tehel prigunerija għal żmien mhux iżjed minn 30 sena.

(5) Id-disposizzjonijiet tat-Titolu VI tat-Taqsima III tat-Tieni Ktieb ta' dan il-Kodici ma japplikawx.”.

TAQSIMA 6 ARREST U KONSENJA TA' PERSUNI

Emenda ta' l-Att dwar l-Estradizzjoni.

14. L-Att dwar l-Estradizzjoni għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) ta' l-artikolu 2 tiegħu, minflok il-kliem “kemm-il darba r-rabta tal-kliem” għandhom jidhlu l-kliem “minbarra fit-Taqsima VI tiegħu u kemm-il darba r-rabta tal-kliem”; u

(b) Taqsima VI tieghu ghandha tigi enumerata mill-gdid bhala Taqsima VII u minnufih wara l-artikolu 26 tieghu, qabel it-Taqsima VII kif enumerata mill-gdid, ghandha tidhol it-Taqsima VI gdida li ghejja:

“Taqsima VI

Konsenja ta' Hatjin lill-Qorti Kriminali Internazzjonali

Kif tapplika
l-Taqsima
VI.

26A. Huma biss id-disposizzjonijiet ta' din it-Taqsima, hliet meta jigi xort'ohra espressament indikat, li għandhom japplikaw ghal talbiet mill-ICC għall-arrest u l-konsenja ta' persuna li tkun allegata li għamlet delitt ICC, jew li tkun giet misjuba hatja mill-ICC.

Interpretazzjoni.

26B. (1) F'din it-Taqsima, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort'ohra -

“ordni ta' konsenja” għandha l-istess tifsir kif mogħti lilha bis-subartikolu 26E;

“delitt ICC” tfisser delitt (minbarra d-delitt ta' aggressjoni) li fuqu l-ICC għandha ġurisdizzjoni skond it-Trattat ICC li l-artikoli rilevanti tiegħu jinsabu riprodotti fl-Iskeda I li tinsab ma' l-Att dwar il-Qorti Kriminali Internazzjonali;

“l-ICC” tfisser il-Qorti Kriminali Internazzjonali mwaqqaf bit-Trattat ICC;

“it-Trattat ICC” tfisser l-Istatut tal-Qorti Kriminali Internazzjonali, magħmul f'Ruma fis-17 ta' Lulju, 1998;

“il-Ministru” tfisser il-Ministru responsabbli għall-Ġustizzja.

(2) Il-kliem u l-frazzjiet li jintużaw f'din it-taqsima u li jintużaw ukoll fit-Trattat ICC għandu jkollhom l-istess tifsir bħalma hu mogħti lilhom fl-imsemmi Trattat ICC.

Talba għal
arrest
u konsenja.

26C (1) Meta l-Ministru jircievi talba mill-ICC għall-arrest u konsenja ta' persuna li tkun allegata li għamlet xi delitt ICC, jew li tkun giet misjuba hatja mill-ICC, huwa għandu jgħaddi t-talba u d-dokumenti relattivi kollha lill-Avukat Ġenerali.

(2) Jekk mat-talba jkun hemm ukoll ordni ta' arrest u l-Avukat Ġenerali jkun sodisfatt li kif jidhru l-affarijiet

l-ordni tkun inharget mill-ICC, huwa għandu jagħmel rikors quddiem Maġistrat biex dan jawtorizza l-eżekuzzjoni ta' l-ordni. Il-Maġistrat għandu jawtorizza dik l-eżekuzzjoni meta jkun sodisfatt li l-ordni tkun tabilhaqq inharget mill-ICC.

(3) Jekk fil-każ ta' persuna misjuba hatja mill-ICC ma jkunx hemm flimkien mat-talba ordni ta' arrest, imma jkun hemm –

(a) kopja tas-sentenza tas-sejbien ta' htija,

(b) informazzjoni li tkun turi li l-persuna mfittxa tkun dik imsemmija fis-sentenza tas-sejbien ta' htija, u

(c) meta l-persuna mfittxa tkun giet mogħtija sentenza, kopja tas-sentenza mogħtija u dikjarazzjoni dwar kull żmien diġà mghoddi fil-habs u ż-żmien li jifdal biex jingħadda fil-habs,

l-Avukat Ġenerali għandu jagħmel rikors quddiem Maġistrat għall-hruġ ta' ordni għall-arrest tal-persuna li dwarha tkun saret it-talba u għandu jehmeż id-dokumentazzjoni u l-informazzjoni msemmija f'dan is-subartikolu.

(4) Il-Maġistrat għandu joffro l-ordni meta jkun sodisfatt li kif jidhru l-affarijiet, il-persuna mfittxa tkun giet misjuba hatja mill-ICC u li jkunu ingiebu d-dokumentazzjoni u l-informazzjoni msemmija f'dan l-artikolu.

(5) Id-disposizzjonijiet tas-subartikoli (4) u ta' l-artikoli msemmija f'subartikolu (5) ta' l-artikolu 14 għandhom japplikaw għal ordni maħruġa taht din it-Taqsima.

Talba għal
arrest
provvizorju.

26D. (1) Meta l-Ministru jirċievi mill-ICC talba għall-arrest provvizorju ta' persuna li tkun allegata li għamlet delitt ICC jew li tkun giet misjuba hatja mill-ICC huwa għandu jittrasmetti t-talba u d-dokumenti li jkun hemm magħha lill-Avukat Ġenerali.

(2) Meta jsir rikors mill-Avukat Ġenerali fejn jiddikjara li jkollu tassew għaliex jahseb -

(a) li tkun saret talba mill-ICC għall-arrest ta' persuna, u

(b) li dik il-persuna tkun qegħda jew tkun gejjja lejn Malta,

Maġistrat għandu johroġ ordni għall-arrest ta' dik il-persuna u għandu javża lill-Ministru bil-hruġ ta' l-ordni.

Kif tiġi
trattata
persuna
arrestata taht
ordni
provviżorja.

26E. (1) Id-disposizzjonijiet tas-subartikolu (1) ta' l-artikolu 15, minbarra r-riferenza li hemm fihom għas-subartikolu (3) ta' l-artikolu 14, għandhom ikunu *mutatis mutandis* japplikaw għal persuna arrestata taht ordni provviżorja taht din it-Taqsima.

(2) Jekk tingieb quddiem il-qorti ordni ta' arrest maħruġa taht l-artikolu 26C dwar il-persuna mressqa quddiemha, il-qorti għandha tmexxi bħallikieku l-persuna kienet arrestata taht dik l-ordni. Jekk ma tingieb ebda ordni bħal dik, il-qorti għandha żzommha arrestata sakemm tingieb dik l-ordni.

(3) Il-Ministru jista' jagħmel regolamenti li jispeċifikaw –

(a) il-perjodu li fih persuna tista' tkun hekk miżmuma fil-kustodja f'kull żmien, u

(b) il-perjodu totali li fih persuna tista' tkun hekk miżmuma fil-kustodja,

fil-qies ta' l-iskadenzi speċifikati fir-Regoli dwar Xieħda u Proċedura għall-finijiet ta' l-Artiklu 92.3 tat-Trattat ICC.

(4) Jekk f'kull żmien li l-persuna tkun miżmuma fil-kustodja kif hawn qabel imsemmi tingieb fil-qorti ordni maħruġa taht l-artikolu 26C dwarha –

(a) il-qorti għandha ttemm il-perjodu ta' kustodja, u

(b) il-persuna għandha tiġi trattata bħallikieku arrestata taht dik l-ordni –

(i) jekk tkun miżmuma fil-kustodja, meta tingieb l-ordni fil-qorti;

(ii) jekk tkun miżmuma fil-kustodja bi plegg, meta tiflew il-plegg tagħha.

(5) Jekk ma tingieb ebda ordni bhal dik fil-qorti gabel tmiem il-perjodu ta' kustodja (inkluza kull estensjoni ta' dak il-perjodu), il-qorti ghandha tilliberaha.

(6) Il-fatt li persuna tkun giet liberata taht dan l-artikolu ma jipprevjenix l-arrest taghha mill-gdid taht ordni mahruġa taht l-artikolu 26C.

Trattament ta' persuna arrestata taht ordni mahruġa taht l-artikolu 26C.

26F. (1) Id-disposizzjonijiet tas-subartikolu (1) ta' l-artikolu 26E ghandhom ikunu japplikaw ghal persuna arrestata taht ordni mahruġa taht l-artikolu 26C.

(2) Jekk il-qorti tkun sodisfatta -

(a) li l-ordni-

(i) tkun ordni ta' l-ICC, jew

(ii) tkun inharget kif imiss taht l-artikolu 26C (3), u

(b) li l-persuna miġjuba quddiem il-qorti tkun il-persuna msemmija jew deskritta fl-ordni,

il-qorti ghandha taghmel ordni ta' konsenja.

(3) "Ordni ta' konsenja" hija ordni li l-persuna tiġi konsenjata -

(a) fil-kustodja ta' l-ICC, jew

(b) jekk l-ICC hekk jordna fil-każ ta' persuna misjuba hatja mill-ICC, fil-kustodja ta' l-istat ta' infurzar,

skond arrangament li jsir mill-Ministru.

(4) Fil-każ ta' persuna li tkun allegata li ghamlet delitt ICC, il-qorti tista' taggorna l-proċedimenti sakemm ikun hemm eżitu għall-kontestazzjoni quddiem l-ICC dwar l-ammissibilità tal-każ jew dwar il-gurisdizzjoni ta' l-ICC.

(5) Meta tiddeciedi li taghmel ordni ta' konsenja l-qorti m'ghandhiex għalfejn tinvestiga -

(a) jekk xi ordni mahruġa mill-ICC tkunx inharget kif imiss jew le, jew

(b) fil-każ ta' persuna li tkun allegata li ghamlet delitt ICC, jekk ikunx hemm provi li jiġġustifikaw li tiġi pprocessata għal xi reat li tkun allegata li ghamlet.

Kunsens
għall-
konsenja.

26G. (1) Meta persuna arrestata taht din it-Taqsima tingieb quddiem il-qorti, dik il-persuna tista' taghti l-kunsens tagħha li tintbagħat fil-kustodja ta' l-ICC jew, fil-każ ta' persuna misjuba hatja mill-ICC, ta' l-istat ta' infurzar. Dak il-kunsens jissejjah f'din it-Taqsima bhala "kunsens għall-konsenja".

(2) Meta l-persuna arrestata taghti l-kunsens tagħha għall-konsenja, il-qorti għandha, meta tkun sodisfatta bil-volontarjetà tal-kunsens, tagħmel ordni ta' konsenja u kull disposizzjoni ta' din it-Taqsima għall-konsenja ta' dik il-persuna għandha titqies li tkun giet sodisfatta.

(3) Ma għandu jkun hemm ebda appell minn ordni ta' konsenja magħmula taht dan l-artikolu.

Procedimenti meta qorti tiċhad milli taghti ordni ta' konsenja

Meta ordni
ta'
konsenja
tkun
rifjutata.

26H. (1) Meta l-qorti tirrifjuta milli tagħmel ordni ta' konsenja, hija għandha madankollu tagħmel ordni fejn tibgħat lill-persuna arrestata fil-kustodja u dik il-persuna għandha tibqa' fil-kustodja kif provdut fil-proviso mas-subartikolu (3) ta' l-artikolu 15.

(2) Il-qorti għandha tavża lill-Ministru bid-deċizzjoni li ma tagħmilx ordni ta' konsenja u bir-raġunijiet għal dan.

Appell mill-
Avukat
Generali
kontra r-
rifjut ta'
ordni ta'
konsenja.

26I. Meta l-qorti tiffifjuta milli tagħmel ordni ta' konsenja, id-disposizzjonijiet ta' l-artikolu 19 għandhom *mutatis mutandis* japplikaw u jekk Qorti ta' l-Appel Kriminali tilqa' l-appell, din għandha tagħmel ordni ta' konsenja li għandha tiġi ttrattata, għal kull għan minbarra appell minnha, bhala ordni li tibgħat f'kustodja lill-persuna li għandha tiġi konsenjata.

Procedimenti meta qorti tagħmel ordni ta' konsenja

Meta qorti
tagħmel
ordni ta'
konsenja.

26J (1) Meta l-qorti tagħmel ordni ta' konsenja dwar xi persuna, il-qorti għandha -

(a) tibghat lill-persuna fil-kustodja biex jistenna l-ordnijiet tal-Ministru dwar l-eżekuzzjoni ta' l- ordni,

(b) tavza lill-Ministru bid-deċizzjoni tagħha.

(2) Salvi d-disposizzjonijiet ta' l-artikolu 26K, id-disposizzjonijiet ta' l-artikoli 16 u 17 għandhom *mutatis mutandis* japplikaw għal persuna li tintbagħat fil-kustodja taht dan l-artikolu.

Appell minn ordni ta' konsenja minn persuna li għandha tiġi konsenjata.

26K. Salvi d-disposizzjonijiet ta' l-artikolu 26L, il-persuna li għandha tiġi konsenjata wara ordni ta' konsenja tista' tappella mill-ordni quddiem il-Qorti ta' l-Appell Kriminali u d-disposizzjonijiet ta' l-artikolu 18 għandhom *mutatis mutandis* ikunu japplikaw għall-appell.

Twarrab tad-dritt ta' appell u ta' drittijiet oħra.

26L. (1) Persuna li dwarha tkun saret ordni ta' konsenja tista' twarrab id-dritt tagħha li tappella u d-dritt tagħha li tapplika għal rimedju taht il-Kostituzzjoni u kull dritt ieħor li tapplika għal revizzjoni tal-legittimità ta' l-arrest u d-detenzjoni tagħha.

(2) Meta persuna tkun warrbet id-drittijiet tagħha skond kif provdut fis-subartikolu (1), il-qorti għandha tissodisfa lilha nnifisha bil-volontarjetà ta' dak it-twarrab u malli dan l-ordni ta' konsenja għandha titwettaq għal kull għan validu tal-liġi.

Effett ta' ordni ta' konsenja.

26M. (1) Ordni ta' konsenja tikkostitwixxi awtorità biżżejjed biex persuna taġixxi skond l-ordnijiet tal-Ministru li jirċievi lill-persuna li l-ordni tkun inhargett dwarha, li żżommha fil-kustodja u li twassalha fil-post fejn tkun se tiġi konsenjata fil-kustodja ta' l-ICC (jew, skond ma jista' jkun il-każ, ta' l-istat ta' infurzar) skond arrangamenti magħmula mill-Ministru.

(2) Jekk persuna li dwarha jkun hemm ordni ta' konsenja tahrab jew tkun fil-libertà b'mod mhux legittimu, hija tista' tkun arrestata mill-pulizija mingħajr ebda ordni u tittiehed f'xi post fejn, bis-saħħa ta' din it-Taqsima, tenhtieg li tkun jew li tittiehed fih.

(3) Id-disposizzjonijiet tas-subartikolu (2) ta' l-artikolu 21 għandhom *mutatis mutandis* japplikaw għal kull persuna li dwarha tkun saret ordni ta' konsenja.

Pleġġ, liberazzjoni, passaqg u inzul bla mistenni

Konsultazzjoni
ma' l-ICC
dwar
pleġġ.

26N. (1) Meta tintalab pleġġ fi proċedimenti taht din it-Taqsima-

- (a) il-qorti ghandha tavza lill-Ministru bir-rikors,
- (b) il-Ministru ghandu jikkonsulta ma' l-ICC, u
- (c) ma ghandhiex tinghata pleġġ minghajr ma titqies kull rakkomandazzjoni maghmula mill-ICC.

(2) Fid-deliberazzjoni dwar applikazzjoni ghal pleġġ taht dan l-artikolu l-qorti ghandha tikkonsidra -

(a) jekk, fil-qies tal-gravità tar-reat jew reati li l-persuna tkun allegata li ghamlet jew, skond ma jista' jkun il-każ, li dwaru tkun giet misjuba hatja mill-ICC, ikunx hemm cirkostanzi urgenti u eċċezzjonali li jkunu jiggustifikaw l-iskarċerazzjoni bi pleġġ, u

(b) jekk ikunux ittiehdu jew se jittiehdu miżuri mehtiega sabiex jiġi zgurat li persuna taghti ruhha biex tittiehed fil-kustodja skond il-pattijiet tal-pleġġ tieghu.

Liberazzjoni
ta'
persuna li ma
tkunx
konsenjata.

26O. (1) Jekk il-persuna li dwarha tkun saret ordni ta' konsenja ma tiġix konsenjata taht l-ordni fi żmien xahrejn li jibdwew ghaddejin ma' l-ewwel jum meta, skond id-disposizzjonijiet tas-subartikolu (3) ta' l-artikolu 26M ta' dan l-Att, hija setgħet tiġi mreggħha lura, hija tista' tapplika quddiem il-Qorti ta' l-Appell Kriminali, li toqghod bhala qorti ta' l-appell minn sentenzi tal-Qorti tal-Maġistrati, ghal-liberazzjoni taghha.

(2) Malli jsir rikors bhal dak id-disposizzjonijiet tas-subartikolu (2) ta' l-artikolu 24 ghandhom *mutatis mutandis* japplikaw b'dan illi r-riferenza għall-ordni taht dak is-subartikolu ghandha titqies bhala riferenza għall-ordni ta' konsenja.

Liberazzjoni
ta' persuna
li ma tkunx
renhtieg aktar
li tiġi
konsenjata.

26P. Meta l-ICC jgharraf lill-Ministru li xi persuna arrestata taht din it-Taqsima ma tkunx ghadha mehtiega li tiġi konsenjata -

(a) il-Ministru ghandu javza lill-Avukat Ġenerali b'dak il-fatt, u

(b) L-Avukat Ġenerali għandu, meta jirċievi dak l-avviż, jagħmel rikors quddiem il-qorti għal ordni ta' liberazzjoni tal-persuna arrestata.

Talba għal
passaġġ.

26Q. (1) Dan l-artikolu japplika meta l-Ministru jirċievi talba mill-ICC għall-passaġġ ta' persuna li tkun qegħda tiġi konsenjata minn xi stat iehor.

(2) Jekk il-Ministru jilqa' t-talba -

(a) it-talba għandha tiġi ttrattata għal kull fini ta' din it-Taqsima bħallikieku din kienet talba għall-arrest u l-konsenja ta' dik il-persuna,

(b) l-eżekuzzjoni ta' l-ordni li tmur flimkien mat-talba għandha titqies li tkun giet awtorizzata taht is-subartikolu (2) ta' l-artikolu 26C, u

(ċ) il-persuna li ssir it-talba dwarha għandha, bla hsara għad-disposizzjonijiet ta' dan l-artikolu, tiġi ttrattata meta din tasal Malta bħallikieku hija kienet arrestata taht dik l-ordni.

(3) Għar-rigward ta' xi każ fejn japplika dan l-artikolu -

(a) il-qorti li quddiemha tingieb il-persuna li dwarha ssir it-talba konformement mad-disposizzjonijiet ta' l-artikolu 26F(2)(a)(i), għandha d-dmir li taċċerta ruħha li l-Ministru jkun fil-fatt laqa' t-talba għall-passaġġ; u

(b) l-artikolu 16 imsemmi fl-artikolu 26J(2) għandu jkollu effett bħallikieku r-riferenza għal hmistax-il gurnata kienet riferenza għal jumejn tax-xogħol.

(4) Persuna li tkun qegħda f'passaġġ taht dan l-artikolu ma għandhiex tingħata plegg.

Inżul bla
mistenni.

26R. (1) Jekk persuna li tkun qegħda tiġi konsenjata minn xi stat iehor tagħmel inżul bla mistenni f'Malta, hija tista' tkun arrestata mill-pulizija minghajr ordni b'dan illi għandhom *mutatis mutandis* japplikaw id-disposizzjonijiet tas-subartikolu (1) ta' l-artikolu 15, hlief għar-riferenza li hemm fih għas-subartikolu (3) ta' l-artikolu 14 u bla hsara għad-disposizzjonijiet ta' dan l-artikolu.

(2) Il-qorti ghandha tibghatha fil-kustodja sakemm –

(a) il-Ministru jirċievi t-talba mill-ICC għall-passaġġ tagħha, u

(b) tinghata d-deċiżjoni tal-Ministru dwar jekk jilqagħx it-talba.

(3) Jekk il-Ministru ma jirċevix talba bħal dik qabel tmiem sitta u disghin siegħa li jibdwew għaddejjin fil-waqt ta' l-inżul bla mistenni tal-persuna arrestata –

(a) il-Ministru ghandu minnufih javża lill-qorti b'dak il-fatt, u

(b) il-qorti ghandha, malli jaslilha dak l-avviż, tillibera lill-persuna arrestata.

(4) Jekk il-Ministru jirċievi dik it-talba qabel tmiem dak il-perjodu, huwa ghandu javża lill-qorti minghajr dewmien bid-deċiżjoni tiegħu dwar jekk ghandux jilqa' t-talba.

(5) Jekk il-Ministru javża lill-qorti li jkun iddeċieda li jilqa' t-talba –

(a) il-qorti ghandha, malli tirċievi l-avviż, ittemm il-perjodu ta' kustodja, u

(b) d-disposizzjonijiet ta' l-artikolu 26Q għandhom japplikaw billi minflok kull riferenza għaż-żmien tal-wasla f'Malta fis-subartikolu (2)(ċ) ta' dak l-artikolu tiġi sostitwita riferenza għaż-żmien ta' l-avviż li jinghata lill-qorti taht dan is-subartikolu.

(6) Jekk il-Ministru javża lill-qorti li jkun iddeċieda li ma jilqax it-talba tagħha, il-qorti ghandha, malli tirċievi l-avviż, tillibera lill-persuna arrestata.

Disposizzjonijiet supplimentari

Immunità
statali jew
diplomatika.

26S. (1) Meta persuna jkollha immunità statali jew diplomatika minhabba fil-konnessjoni li jkollha ma' xi stat li jkun parti fit-Trattat ICC, din ma tipprevjenix procedimenti taht din it-Taqsima għar-rigward ta' dik il-persuna.

(2) Meta –

(a) persuna jkollha immunità statali jew diplomatika minhabba fil-konnessjoni li jkollha ma' xi stat minbarra stat li jkun parti fit-Trattat ICC, u

(b) jinkiseb it-twarrib ta' dik immunità mill-ICC għar-rigward ta' talba għall-konsenja ta' dik il-persuna,

dak it-twarrib għandu jiġi ttrattat bħala li jestendi għal proċedimenti taht din it-Taqsima f'konnessjoni ma' dik it-talba.

(3) Certifikat mill-Ministru –

(a) li stat ikun jew ma jkunx parti għat-Trattat ICC, jew

(b) li kien hemm twarrib bhal dak imsemmi fis-subartikolu (2),

hu prova konklużiva għal dak il-fatt għal kull fini ta' din it-Taqsima.

(4) Il-Ministru jista' f'xi każ partikolari, wara konsultazzjoni ma' l-ICC u l-istat inkwistjoni, jordna li ma għandhomx jinbdew proċedimenti (jew proċedimenti ulterjuri) kontra xi persuna taht din it-Taqsima li, għajr għas-subartikolu (1) jew (2), kienu jkunu prevjenuti minhabba fl-immunità statali jew diplomatika li jkollha persuna.

(5) Is-setgħa li jsiru regolamenti mogħtija bis-subartikolu (1) ta' l-artikolu 3 ta' l-Att dwar Poteri li jsiru Regolamenti fl-Interess Nazzjonali, tinkludi s-setgħa li jsiru għar-rigward ta' kull proċediment kull tali provvediment li jikkorrispondi għall-provvediment magħmul b'dan l-artikolu għar-rigward tal-proċedimenti, imma bl-ommissjoni –

(a) fis-subartikolu (1), tal-kliem “minhabba fil-konnessjoni li jkollha ma' xi stat li jkun parti fit-Trattat ICC”, u

(b) tas-subartikoli (2) u (3),

bħalma jkun jidher lill-Prim Ministru li jkun meħtieġ jew spedjenti b'konsegwenza ta' dak ir-riferiment bħalma hemm

imsemmi fl-artikolu 13(b) (riferiment mill-Kunsill tas-Sigurtà tan-Nazzjonijiet Uniti).

(6) F'dan l-artikolu "immunità statali jew diplomatika" tfisser kull privileġġ jew immunità li persuna jkollha, minhabba fl-istatus ta' dik il-persuna jew ta' xi persuna oħra bhala kap ta' stat, jew bhala rappreżentant, uffiċjal jew aġent ta' stat, taht –

(a) l-Att dwar l-Immunitajiet u l-Privileġġi Diplomatici, Kap. 191, l-Att dwar il-Konvenzjonijiet dwar il-Konslijiet, Kap.144, l-Att dwar it-Twaqqif ta' Delegazzjoni tal-Komunitajiet Ewropej, Kap. 344, l-Att dwar id-Dhul ta' Malta bhala Membru ta' Orgnizzazzjonijiet Finanzjarji Internazzjonali, Kap. 235,

(b) xi provvedimenti legiſlattiv iehor magħmul għall-fini ta' l-implimentazzjoni ta' xi obbligazzjoni internazzjonali, jew

(c) xi liġi derivata mill-liġi internazzjonali konswetudinarja.

Il-konsenja ta' persuni skond ċerti procedimenti eċċ.

26T. Il-Ministru jista' jagħmel regolamenti għat-tweġġ ahjar tad-disposizzjonijiet ta' din it-Taqsima u mingħajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi jista' b'dawk ir-regolamenti jipprovdi dwar każijiet meta huwa jirċievi talba għall-arrest jew il-konsenja, jew l-arrest provvizorju, ta' xi persuna –

(a) li kontriha jkun hemm pendenti jew għaddejin procedimenti kriminali quddiem qorti f'Malta, jew li tkun giet ittrattata fi procedimenti bħal dawk, jew

(b) li kontriha jkun hemm pendenti jew għaddejin procedimenti ta' estradizzjoni f'Malta, jew li dwarha tkun saret xi ordni bil-miktub jew ingħata ordni f'dawk il-procedimenti.

Dokumenti.

26U. (1) Għal kull fini ta' din it-Taqsima l-kopja ta' l-ordni maħruġa mill-ICC, jiġifieri trasmessa lis-Segretarju ta' xi Stat Ministru, għandha tiġi ttrattata bħallikieku din kienet l-ordni oriġinali.

(2) Meta facsimile tintuza trasmissjoni *facsimile* –

(a) għall-għemil ta' xi talba mill-ICC jew għat-trasmissjoni ta' xi dokument li jingiebb b'sostenn, jew

(b) għat-trasmissjoni ta' xi dokument għax tkun saret dik it-talba,

din it-Taqsima għandha tapplika bħallikieku d-dokumenti hekk miġhuta kienu l-originali tad-dokumenti hekk trasmessi u dawn għandhom jiġu riċevuti u jkunu ammissibbli daqslikieku kienu prova għaldaqstant.

(3) Meta l-ICC jemenda ordni ta' arrest, id-disposizzjonijiet ta' din it-Taqsima japplikaw għall-ordni emendat bħallikieku din kienet xi ordni ġdida; hekk li dan ma jolqotx il-validità ta' xi haġa li tkun saret abbażi ta' l-ordni l-qadima.”.

Emenda ta'
l-Att dwar il-Habs.

15. Fil-paragrafu (ċ) ta' l-artikolu 4 ta' l-Att dwar il-Habs, Kap. 260, minflok il-kliem “qorti barranija” għandhom jidhlu l-kliem “qorti barranija jew internazzjonali” u minnufih wara l-kliem “għal dak il-ghan” għandhom jidhlu l-kliem “li Malta tkun parti fih jew”.

L-artikoli tat-Trattat
ICC fl-Iskeda.

16. Id-disposizzjonijiet rilevanti ta' l-artikoli 9, 13, 70 u 92 tat-Trattat ICC msemmi f'dan l-Att huma riprodotti fl-Iskeda II li tinsab ma' dan l-Att u kull riferenza għal xi artikolu bhal dak f'dan l-Att jew f'xi liġi oħra għandha tiftiehem bħala riferenza għall-istess artikolu kif riprodott f'dik l-Iskeda.

SKEDA I

(Artikolu 2)

Delitti li jaqghu taht il-gurisdizzjoni tal-Qorti Kriminali Internazzjonali**Artiklu 6****Genocidju**

Ghal kull fini ta' dan l-Istatut, "genocidju" tfisser xi att minn dawn l-atti li għejjin li jsir bil-hsieb li jeqred, għalkollox jew f'parti minnu, grupp nazzjonali, etniku, razzjali jew reliġjuż, bħala tali:

- (a) Il-qtil ta' membri tal-grupp;
- (b) L-ikkagunar ta' hsara gravi fil-gisem jew fil-mohh ta' membri tal-grupp;
- (c) It-tqeghid deliberat fuq il-grupp ta' kondizzjonijiet ta' hajja intiżi biex iġibu fis-sehh il-qirda fizika għalkollox jew f'parti minnha;
- (d) L-impozizzjoni ta' miżuri intiżi li jipprevjenu milli jsir twelid fi hdan il-grupp;
- (e) It-trasferiment bil-forza ta' tfal tal-grupp fi grupp iehor.

Artiklu 7**Delitti kontra l-umanità**

1. Ghal kull fini ta' dan l-Istatut, "delitt kontra l-umanità" tfisser xi att minn dawn l-atti li għejjin meta dan isir bħala parti minn attakk mifrux jew sistematiku dirett kontra xi popolazzjoni ċivili, b'gharfien ta' l-attakk:

- (a) Omičidju;
- (b) Esterminazzjoni;
- (c) Tjassir;
- (d) Deportazzjoni jew trasferiment bil-forza ta' popolazzjoni;
- (e) Prigunerija jew xi deprivazzjoni harxa ohra tal-libertà fizika bi vjolazzjoni tar-regoli fondamentali tal-ligi internazzjonali;
- (f) Tortura;

(g) Stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, sterilizzazzjoni kostretta, jew xi forma oħra ta' vjolenza sesswali ta' importanza paragonabbli;

(h) Persekuzzjoni kontra xi grupp identifikabbli jew kollettività għal raġunijiet politiċi, razzjali, nazzjonali, etniċi, kulturali, reliġjużi, ta' ġeneru sesswali kif imfisser fil-paragrafu 3, jew oħrajn li huma universalment rikonoxxuti bhala li mhux permissibbli taħt il-liġi internazzjonali, f'konnessjoni ma' xi att imsemmi f'dan il-paragrafu jew xi delitt li jaqa' taħt il-ġurisdizzjoni tal-Qorti;

(i) Ghajbien mġieghel ta' persuni;

(j) Id-delitt ta' apartheid;

(k) Atti oħra kontra l-bniedem ta' xorta simili li xjentement jikkagunaw tbatija harxa, jew feriment gravi fil-ġisem jew fil-moħħ jew għas-saħħa fiżika.

2. Għal kull fini ta' paragrafu 1:

(a) "Attakk dirett kontra popolazzjoni ċivili" tfisser kors ta' mġieba li jkun jinvolvi l-għemil ta' diversi atti minn dawk imsemmija f'paragrafu 1 kontra popolazzjoni ċivili, konformement ma' jew bi tkompliġa tal-politka ta' xi Stat jew organizzazzjoni li tagħmel dak l-attakk;

(b) "Esterminazzjoni" tinkludi t-tqegħid bil-ħsieb ta' kondizzjonijiet ta' ħajja, fost l-oħrajn id-deprivazzjoni ta' aċċess għall-ikel u l-medicina, magħmulin bil-ħsieb li jġibu l-qirda ta' xi parti tal-popolazzjoni;

(ċ) "Tjassir" tfisser l-eżerċizzju ta' xi poter jew poteri konnessi mal-jedd ta' proprjetà fuq persuna u tinkludi l-eżerċizzju ta' dik is-setgħa fil-kors ta' traffikar ta' persuni, b'mod partikolari ta' nisa u tfal;

(d) "Deportazzjoni jew trasferiment bil-forza ta' popolazzjoni" tfisser iċ-ċaqliq bil-forza tal-persuni inkwistjoni bl-espulsjoni jew b'atti oħra ta' gegħil mill-post fejn dawn ikunu legittimament preżenti, mingħajr raġunijiet permessi taħt il-liġi internazzjonali;

(e) "Tortura" tfisser l-impożizzjoni bil-ħsieb ta' uġiġħ jew tbatija horox, sew fiżika sew mentali, fuq persuna li tkun fil-kustodja jew taħt il-kontroll ta' l-akkużat; ħlief li t-tortura ma għandhiex tinkludi uġiġħ jew tbatija li jitnisslu biss minn, jew li jkunu inerenti jew incidentali għal, sanzjonijiet legittimi;

(f) "Tqala kostretta" tfisser id-detenzjoni mhux legittima ta' mara li ssir tqala bil-forza, bil-ħsieb li tintlaqat il-kompożizzjoni etnika ta' xi popolazzjoni jew l-għemil ta' vjolazzjonijiet serji oħra tal-liġi internazzjonali. Din it-tifsira ma għandha b'ebda mod tifisser bhala li tolqot il-liġijiet nazzjonali konnessi mat-tqala;

(g) Stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, sterilizzazzjoni kostretta, jew xi forma oħra ta' vjolenza sesswali ta' importanza paragonabbli;

(h) Persekuzzjoni kontra xi grupp identifikabbli jew kollettività għal raġunijiet politiċi, razzjali, nazzjonali, etniċi, kulturali, reliġjużi, ta' ġeneru sesswali kif imfisser fil-paragrafu 3, jew oħrajn li huma universalment rikonoxxuti bħala li mhux permissibbli taħt il-liġi internazzjonali, f'konnessjoni ma' xi att imsemmi f'dan il-paragrafu jew xi delitt li jaqa' taħt il-ġurisdizzjoni tal-Qorti;

(i) Ghajbien mgieghel ta' persuni;

(j) Id-delitt ta' apartheid;

(k) Atti oħra kontra l-bniedem ta' xorta simili li xjentement jikkagunaw tbatija harxa, jew feriment gravi fil-ġisem jew fil-moħħ jew għas-saħħa fiżika.

2. Għal kull fini ta' paragrafu 1:

(a) "Attakk dirett kontra popolazzjoni ċivili" tfisser kors ta' mgieba li jkun jinvolvi l-għemil ta' diversi atti minn dawk imsemmija f'paragrafu 1 kontra popolazzjoni ċivili, konformement ma' jew bi tkompliġa tal-politka ta' xi Stat jew organizzazzjoni li tagħmel dak l-attakk;

(b) "Esterminazzjoni" tinkludi t-tqeghid bil-hsieb ta' kondizzjonijiet ta' hajja, fost l-oħrajn id-deprivazzjoni ta' aċċess għall-ikel u l-medicina, magħmulin bil-hsieb li jġibu l-qirda ta' xi parti tal-popolazzjoni;

(c) "Tjassir" tfisser l-eżerċizzju ta' xi poter jew poteri konnessi mal-jedd ta' proprjetà fuq persuna u tinkludi l-eżerċizzju ta' dik is-setgħa fil-kors ta' traffikar ta' persuni, b'mod partikolari ta' nisa u tfal;

(d) "Deportazzjoni jew trasferiment bil-forza ta' popolazzjoni" tfisser iċ-ċaqlieq bil-forza tal-persuni inkwistjoni bl-espulsjoni jew b'atti oħra ta' gegħil mill-post fejn dawn ikunu legittimament preżenti, mingħajr raġunijiet permessi taħt il-liġi internazzjonali;

(e) "Tortura" tfisser l-impożizzjoni bil-hsieb ta' uġiġħ jew tbatija horox, sew fiżika sew mentali, fuq persuna li tkun fil-kustodja jew taħt il-kontroll ta' l-akkużat; hlief li t-tortura ma għandhiex tinkludi uġiġħ jew tbatija li jitnisslu biss minn, jew li jkunu inerenti jew incidentali għal, sanzjonijiet legittimi;

(f) "Tqala kostretta" tfisser id-detenzjoni mhux legittima ta' mara li ssir tqala bil-forza, bil-hsieb li tintlaqat il-kompożizzjoni etnika ta' xi popolazzjoni jew l-għemil ta' vjolazzjonijiet serji oħra tal-liġi internazzjonali. Din it-tifsira ma għandha b'ebda mod titfisser bħala li tolqot il-liġijiet nazzjonali konnessi mat-tqala;

(g) “Persekuzzjoni” tfisser id-deprivazzjoni intiza u harxa tad-drittijiet fundamentali kuntrarju għal-liġi internazzjonali minhabba fl-identità tal-grupp jew tal-kollektività;

(h) “Id-delitt ta’ apartheid” tfisser atti inumani ta’ xorta simili għal dawk imsemmija f’paragrafu 1, li jsiru fil-kuntest ta’ xi reġim istituzzjonalizzat bhala l-oppressjoni u d-dominazzjoni sistematika minn xi grupp razzjali wiehed fuq grupp jew gruppi razzjali ohra u li jsiru bil-ħsieb li dak ir-reġim jibqa’ fis-setgħa;

(i) “Għajbien mgieghel ta’ persuni” tfisser l-arrest, id-detenzjoni jew is-serq ta’ persuni ta’ persuni minn, jew bl-awtorizzazzjoni, l-appoġġ jew is-skiet ta’ xi Stat jew organizzazzjoni politika, segwiti mir-rifjut ta’ għarfien ta’ dik id-deprivazzjoni ta’ libertà jew l-ghoti ta’ informazzjoni dwar xi jkun ġara lil jew fejn ikunu jinsabu dawk il-persuni, bil-ħsieb li dawn jitnehhew minn taħt il-protezzjoni tal-liġi għal perjodu mtawwal ta’ żmien.

3. Għal kull fini ta’ dan l-Istatut, jiftiehem li l-frazi “ta’ ġeneru sesswali” tirreferi għaż-żewġ sessi, raġel u mara, li jaqghu fil-kuntest tas-soċjetà. Il-frazi “ta’ ġeneru sesswali” ma tindika ebda tifsira li hi differenti minn dik hawn qabel mogħtija.

Artiklu 8

Delitti tal-gwerra

1. Il-Qorti għandu jkollha ġurisdizzjoni dwar delitti tal-gwerra b’mod partikolari meta dawn isiru bhala parti minn pjan jew politka jew bhala parti mill-ghemil ta’ dawk id-delitti fuq skala mifruxa.

2. Għal kull fini ta’ dan l-Istatut, “delitti tal-gwerra” tfisser:

(a) Ksur serju tal-Konvenzjonijiet ta’ Ġinevra tat-12 ta’ Awissu 1949, jiġifieri, xi att minn dawn l-atti li ġejjin kontra persuni jew proprjetà protetti taħt id-disposizzjonijiet tal-Konvenzjoni ta’ Ġinevra rilevanti:

(i) Il-qtil volontarju;

(ii) It-tortura jew trattament inuman, inklużi esperimenti bioloġiċi;

(iii) L-ikkagunar volontarju ta’ tbatija harxa, jew feriment gravi fil-gisem jew għas-saħħa;

(iv) Il-qirda estensiva u l-appropriazzjoni ta’ proprjetà, li ma tkunx ġustifikata b’neċessità militari u li ssir b’mod mhux legittimu u b’vandalizmu;

(v) L-isfurzar ta’ prigionier tal-gwerra jew ta’ xi persuna protetta ohra li sservi fil-forzi ta’ xi Setgħa ostili;

(vi) Id-deprivazzjoni volontarja ta’ prigionier tal-gwerra jew ta’ xi persuna protetta ohra mid-drittijiet ta’ proċess ġust u regolari;

(vii) Id-deportazzjoni jew trasferiment mhux legittimi jew id-detenzjoni mhux legittima;

(viii) It-tehid ta' ostaġġi.

(b) Vjolazzjonijiet gravi ohra tal-ligijiet u d-drawwiet applikabbli fil-konflitt armat internazzjonali, li jaqgħu taht il-qafas stabbilit tal-ligi internazzjonali, jiġifieri, xi att minn dawn l-atti li ġejjin:

(i) L-ordni xjentement magħmula ta' attakki kontra l-popolazzjoni ċivili bħala tali jew kontra persuni ċivili individwali li ma jkollhomx sehem dirett fl-ostilitajiet;

(ii) L-ordni xjentement magħmula ta' attakki kontra hwejjeġ ċivili, jiġifieri, hwejjeġ li ma humiex objettivi militari;

(iii) L-ordni xjentement magħmula ta' attakki kontra l-persunal, stallazzjonijiet, materjal, unitajiet jew vetturi involuti f'assistenza umanitarja jew missjoni ta' żamma ta' paċi skond iċ-*Charter* tan-Nazzjonijiet Uniti, sakemm dawn ikunu intitolati għall-protezzjoni mogħtija lil persuni ċivili jew hwejjeġ ċivili taht il-ligi internazzjonali dwar il-konflitt armat;

(iv) L-attakk li jsir xjentement bl-gharfien li dak l-attakk se jikkawża telfien inċidentali ta' hajja jew feriment ta' persuni ċivili jew hsara fi hwejjeġ ċivili jew hsara miftuxa, għal żmien twil u harxa fl-ambjent naturali li b' mod ċar tkun eċċessiva għar-rigward tal-vantaġġ konkret u dirett totali militari antiċipat;

(v) L-attakk jew il-bumbardament, b'liema mezz ikun, ta' bliet, irhula, dwejriet jew bini li ma jkunux difiżi u li ma jkunux objettivi militari;

(vi) Il-qtil jew il-feriment ta' kumbattent li, wara li jkun iddepona l-armi jew ma jkollux aktar mezzi ta' difiża, jkun ċeda għax ried hu;

(vii) L-użu mhux kif imiss ta' bandiera ta' armistizju, tal-bandiera jew ta' l-insinji u l-uniformi militari ta' l-ghadu jew tan-Nazzjonijiet Uniti, kif ukoll ta' l-emblemi distintivi tal-Konvenzjonijiet ta' Ġinevra, li jirriżultaw fil-mewt jew fil-feriment gravi ta' xi persuna;

(viii) It-trasferiment, direttament jew indirettament, mis-Setghat Okkupanti ta' partijiet mill-popolazzjoni ċivili tagħha stess għal got-territorju li tkun tokkupa, jew id-

deportazzjoni jew it-trasferiment ta' xi partijiet mill-popolazzjoni tat-territorju okkupat ġewwa jew barra minn dan territorju;

(ix) L-ordni li ssir b'għarfien ta' attackki kontra bini dedikat għar-religjon, l-edukazzjoni, l-arti, x-xjenza jew għanijiet karitatevoli, monumenti storiċi, sptarijiet u postazzjonijiet fejn jingabru l-morda u l-feruti, sakemm dawn ma jkunux objettivi militari;

(x) L-assogġettar ta' persuni fis-setgħa ta' xi parti avversa għall-mutilazzjoni fiżika jew għal esperimenti mediċi jew xjentifiċi ta' liema xorta jkunu u li la jkunu ġustifikati bil-kura medika, dentali jew fl-isptar tal-persuna inkwistjoni u lanqas ma jsiru fl-interess tagħha, u li jkunu jikkagunaw il-mewt jew jipperikolaw gravement is-saħħa ta' dik il-persuna jew dawk il-persuni;

(xi) Il-qtil jew il-feriment b'perfidja ta' individwi li jkunu jappartjenu għal nazzjon jew armata ostili;

(xii) Id-dikjarazzjoni li mhu se jingħata ebda kenn;

(xiii) Il-qirda jew il-qbid ta' proprjetà ta' l-għadu kemm-il darba dik il-qirda jew dak il-qbid ma jkunux meħtieġa b'mod imperattiv mill-htigiet tal-gwerra;

(xiv) Id-dikjarazzjoni li d-drittijiet u l-azzjonijiet tal-persuni b'nazzjonalità tal-parti ostili jkunu qegħdin jiġu aboliti, sospiżi jew mhux ammissibbli f'qorti ta' ligi;

(xv) Il-ġegħil ta' persuni b'nazzjonalità tal-parti ostili li jieħdu sehem fl-operazzjonijiet tal-gwerra diretti kontra pajjiżhom stess, ukoll jekk dawn kienu fis-servizz tal-belligeranti qabel ma tkun bdiet il-gwerra;

(xvi) Il-htif ta' belt jew post, ukoll meta dawn jittieħdu b'assalt;

(xvii) L-użu ta' velenu jew armi vvelenati;

(xviii) L-użu ta' asfissjanti, velenużi jew gassijiet oħra, u kull likwidu, materjal jew apparat analogu;

(xix) L-użu ta' balal li jespandu jew jitfattru f'ċilment fil-ġisem tal-bniedem, bħalma huma balal b'invilopp iebes li ma jkunx ikopri għalkollox il-qalba jew li jitniffed b'incizjonijiet;

.... *omissis*

(xxi) L-għemil ta' oltraġġi fuq id-dinjità personali, b'mod partikolari trattament umiljanti u degradanti;

(xxii) L-għemil ta' stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, kif imfisser fl-Artiklu 7, paragrafu (2) (f), sterilizzazzjoni

kostretta, jew xi forma ohra ta' vjolenza sesswali li wkoll tikkostitwixxi ksur serju tal-Konvenzjonijiet ta' Ġinevra;

(xxiii) Li jsir użu mill-preżenza ta' ċivili jew xi persuna protetta ohra biex xi postijiet, arei jew forzi militari jsiru immuni minn operazzjonijiet militari;

(xxiv) L-ordni li ssir b'gharfien ta' attackki kontra bini, materjal, unitajiet mediċi u ta' trasport, u persunal li juża emblemi distintivi tal-Konvenzjonijiet ta' Ġinevra b'mod konformi mal-liġi internazzjonali;

(xxv) L-użu li jsir b'gharfien dwar li persuni ċivili jithallew fi stat ta' għu u dan bħala metodu ta' gwerra billi jiġu mcaħhda minn oġġetti indispensabbli għas-sopravivenza tagħhom, inkluż it-tfixkil li jsir b'gharfien ta' provvisti ta' għajjuna kif hemm provdut dwar dan taħt il-Konvenzjonijiet ta' Ġinevra;

(xxvi) Il-qbid bil-lewa jew l-ingaġġar ta' tfal taħt l-età ta' hmistax-il sena fil-forzi armati nazzjonali jew li dawn jintużaw sabiex jiehdu sehem attiv fl-ostilitajiet.

(ċ) Fil-każ ta' xi konflitt armat li ma jkunx ta' xorta internazzjonali, vjolazzjonijiet gravi ta' l-artikolu 3 komuni għall-erba' Konvenzjonijiet ta' Ġinevra tat-12 ta' Awissu 1949, jiġifieri, xi att minn dawn l-atti li ġejjin li jsiru kontra persuni li ma jiehdu ebda sehem attiv fl-ostilitajiet, inklużi membri tal-forzi armati li jkunu ċedew l-armi tagħhom u daww li jkunu jinsabu fi stat ta' *hors de combat* minhabba f'mard, feriti, detenzjoni jew għal xi raġuni ohra:

(i) Vjolenza fuq il-hajja u l-persuna, b'mod partikolari omiċidju ta' kull xorta, mutilazzjoni, trattament krudil u tortura;

(ii) L-ghemil ta' oltraġġi fuq id-dinjità personali, b'mod partikolari trattament umiljanti u degradanti;

(iii) It-tehid ta' ostaġġi;

(iv) L-ghoti ta' sentenzi u t-twettiq ta' eżekuzzjonijiet mingħajr sentenza li tkun ingħatat qabel minn qorti regolamentarment kostitwita, u li tkun tagħti garanziji ġudizzjarji li jkunu ġeneralment rikonoxxuti bħala indispensabbli.

(d) Paragrafu 2 (ċ) japplika għal konflitti li ma jkunux ta' xorta internazzjonali u għaldaqstant ma japplikax għal sitwazzjonijiet ta' irvelli u tensjonijiet interni, bħalma huma rewwixti, atti ta' vjolenza iżolati u sporadiċi jew atti ohra ta' xorta simili.

(e) Vjolazzjonijiet gravi ohra tal-liġijiet u d-drawwiet li japplikaw f'konflitti armati li ma jkunux ta' xorta internazzjonali, li jaqgħu taħt il-qafas stabbilit tal-liġi internazzjonali, jiġifieri, xi att minn dawn l-atti li ġejjin:

(i) L-ordni li ssir b'gharfien ta' attacchi kontra l-popolazzjoni ċivili bħala tali jew kontra persuni ċivili individwali li ma jkollhomx sehem dirett fl-ostilitajiet;

(ii) L-ordni li ssir b'gharfien ta' attacchi kontra bini, materjal, unitajiet mediċi u ta' trasport, u persunal li juza emblemi distintivi tal-Konvenzjonijiet ta' Ġinevra b'mod konformi mal-ligi internazzjonali;

(iii) L-ordni li ssir b'gharfien ta' attacchi kontra persunal, stallazzjonijiet, materjal, unitajiet jew vetturi involuti f'assistenza umanitarja jew missjoni ta' żamma ta' paċi skond iċ-*Charter* tan-Nazzjonijiet Uniti, sakemm dawn ikunu intitolati għall-protezzjoni mogħtija lil persuni ċivili jew hwejjeġ ċivili taħt il-ligi internazzjonali dwar il-konflitt armat;

(iv) L-ordni li ssir b'gharfien ta' attacchi kontra bini dedikat għar-religjon, l-edukazzjoni, l-arti, x-xjenza jew għanijiet karitattevoli, monumenti storiċi, sptarijiet u postazzjonijiet meta jingabru l-morda u l-feruti, sakemm dawn ma jkunux objettivi militari;

(v) Il-ħtif ta' belt jew post, ukoll meta dawn jittiehdu b'assalt;

(vi) L-għemil ta' stupru, jasar skond is-sess, prostituzzjoni kostretta, tqala kostretta, kif imfisser fl-artikolu 7, paragrafu 2 (f), sterilizzazzjoni kostretta, u xi forma oħra ta' vjolenza sesswali li wkoll tikkostitwixxi vjolazzjoni gravi ta' l-artikolu 3 komuni għall-erba' Konvenzjonijiet ta' Ġinevra;

(vii) Il-qbid bil-lewa jew l-ingaġġar ta' tfal taħt l-eta' ta' ħmistax-il sena fil-forzi armati jew fi gruppi jew li dawn jintużaw sabiex jieħdu sehem attiv fl-ostilitajiet;

(viii) L-ordnar taċ-ċaqlieg tal-popolazzjoni ċivili għal raġunijiet li jkollhom x'jaqsmu mal-konflitt, kemm-il darba s-sigurtà tal-persuni ċivili involuti jew raġunijiet militari imperattivi ma jkunux hekk jeħtieġu;

(ix) Il-qtil ta' jew il-feriment b'perfidja ta' kumbattent avversarju;

(x) Id-dikjarazzjoni li mhu se jingħata ebda kenn;

(xi) L-assogġettar ta' persuni li jkunu fis-setgħa ta' xi parti oħra fil-konflitt għal mutilazzjoni fiżika jew għal esperimenti mediċi jew xjentifiċi ta' kull xorta li la huma ġustifikati mit-trattament mediku, dentali jew ta' l-isptar tal-persuna inkwistjoni u lanqas ma jsiru fl-interess tagħha, u li jikkagunaw il-mewt jew jipperikolaw gravement is-saħħa ta' dik il-persuna jew dawk il-persuni;

(xii) Il-qirda jew il-qbid tal-proprjetà ta' xi avversarju kemm-il darba dik il-qirda jew dak il-qbid ma jkunux imperattivament mitluba mill-ħtiġiet tal-konflitt.

(f) Paragrafu 2 (e) japplika għal konflitti li ma jkunux ta' xorta internazzjonali u għaldaqstant ma japplikax għal sitwazzjonijiet ta' irvelli u tensjonijiet interni, bħalma huma rewwixti, atti ta' vjolenza iżolati u sporadiċi jew atti oħra ta' xorta simili. Dan japplika għal konflitti armati li jiġru fit-territorju ta' xi Stat meta jkun hemm konflitt armat fit-tul bejn awtoritajiet tal-gvern u gruppi armati organizzati jew bejn dawk il-gruppi.

SKEDA II

(Artikolu 16)

Artikoli tat-Trattat ICC msemija fl-Att

Artiklu 9

Elementi ta' Delitti

1. L-Elementi ta' Delitti ghandhom jghinu lill-Qorti fl-interpretazzjoni u l-applikazzjoni ta' l-artikoli 6, 7 u 8. Dawn ghandhom jigu adottati b'maggoranza ta' zewg terzi tal-membri ta' l-Assemblea ta' Stati Partijiet.

2. Emendi ghall-Elementi ta' Delitti jistghu jkunu proposti minn:

- (a) Kull Stat Parti;
- (b) L-imhallfin li jagixxu b'maggoranza assoluta;
- (c) Il-prosekutur.

Dawk l-emendi ghandhom jigu adottati b'maggoranza ta' zewg terzi tal-membri ta' l-Assemblea ta' Stati Partijiet.

3. L-Elementi ta' Delitti u l-emendi li jsirulhom ghandhom ikunu konsistenti ma' dan l-Istatut.

Artiklu 13

Eżercizzju tal-gurisdizzjoni

Il-Qorti tista' teżercita l-gurisdizzjoni taghha għar-rigward ta' delitt imsemmi fl-Artiklu 5 skond id-disposizzjonijiet ta' dan l-Istatut jekk:

.... *omissis*

(b) Ghandha tigi riferita sitwazzjoni li fiha jidhru li jkunu saru xi wiehed jew aktar minn dawk id-delitti, lill-prosekutur mill-Kunsill tas-Sigurtà li jagixxi taht Kapitlu VII tač-*Charter* tan-Nazzjonijiet Uniti;

Artiklu 70

Reati kontra l-amministrazzjoni tal-ġustizzja

1. Il-Qorti għandu jkollha ġurisdizzjoni fuq dawn ir-reati li ġejjin kontra l-amministrazzjoni tagħha tal-ġustizzja meta dawn isiru xjentement:

(a) L-ghoti ta' xiehda falza meta persuna tkun taht obligazzjoni konformi ma' l-Artiklu 69, paragrafu 1, li tgħid is-sewwa;

(b) Li jingiebu provi li l-parti tkun taf li huma foloz jew falsifikati;

(c) L-influenzar ta' xhud b'korruzzjoni, ostruzzjoni jew indhil fl-attendenza jew ix-xiehda li jagħti xhud, b'ritaljazzjoni kontra xhud talli jagħti xiehda jew il-qirda, tbagħbis jew indhil fil-ġbir ta' provi;

(d) L-impediment, intimidazzjoni jew influenzar b'korruzzjoni ta' uffiċjal tal-Qorti bil-ghan li dak l-uffiċjal jiġi sfurzat jew persważ li ma jaqdx, jew li ma jaqdx kif imiss, dmirijietu;

(e) Ir-ritaljazzjoni kontra uffiċjal tal-Qorti minhabba fid-dmirijiet li dak l-uffiċjal jew xi uffiċjal iehor ikun wettaq;

(f) Is-sollecitazzjoni jew l-aċċettazzjoni ta' rigal bhala uffiċjal tal-Qorti f'konnessjoni mad-dmirijiet uffiċjali tiegħu jew tagħha.

.... *omissis*

4 (a) Kull Stat Parti għandha testendi l-liġijiet kriminali tagħha li jippenalizzaw reati kontra l-integrità tal-proċess tiegħu investigattiv jew gudizzjarju għal reati kontra l-amministrazzjoni tal-ġustizzja msemmija f'dan l-artikolu, li jsiru fit-territorju tiegħu, jew minn xi persuna li jkollha n-nazzjonalità tiegħu;

.... *omissis*

NOTA:

Artiklu 69.1, imsemmi fl-Artikolu 70.1(a), jipprovdi dan li ġej:

“I Qabel ma jibda jixhed, kull xhud għandu, skond ir-Regoli ta' Proċedura u Provi, jintrabat dwar il-veracità tax-xiehda li għandha tinghata minn dak ix-xhud.”.

Artiklu 92

Arrest provvizorju

.... *omissis*

3. Persuna li tkun provvizorjament arrestata tista' tigi liberata mill-kustodja jekk l-Istat mitlub ma jkunx irċieva t-talba għall-konsenja u d-dokumenti li jingiebu b'sostenn għat-talba kif speċifikati fl-Artiklu 91 fil-perjodi ta' żmien speċifikati fir-Regoli ta' Proċedura u Provi. Madankollu, l-persuna tista' tagħti l-kunsens tagħha għall-konsenja qabel ma jiskadi dan il-perjodu jekk dan ikun permess li jsir taħt il-liġi ta' l-Istat mitlub. F'dak il-każ, l-Istat mitlub għandu jgħaddi biex jikkonsenja lil dik il-persuna lill-Qorti kemm jista' jkun malajr.

Għanijiet u Raġunijiet

L-għan prinċipali ta' dan l-Abbozz huwa sabiex jipprovdi għall-ghoti ta' għajnuna lill-Qorti Kriminali Internazzjonali, sabiex jiġu kriminalizzati taħt il-liġi ta' Malta d-delitti internazzjonali ta' genoċidju, delitti tal-gwerra u delitti kontra l-umanità, u sabiex jiġi provdut dwar emendi konsegwenzjali u disposizzjonijiet oħra anċillari għal dan kollu.

**A BILL
entitled**

An Act to provide for assistance to the International Criminal Court.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

**PART 1
PRELIMINARY**

1. (1) The short title of this Act is the International Criminal Court Act, 2002. Short title and commencement.

(2) The provisions of this Act shall come into force on such date as the Minister responsible for Justice may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes thereof.

2. (1) In this Act, unless the context otherwise requires: Definitions.

“ICC crime” means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with the ICC Treaty the relevant provisions of which are reproduced in Schedule I to this Act;

“the ICC Treaty” means the Statute of the International Criminal Court, done at Rome on 17th July, 1988;

“the ICC” means the International Criminal Court established by the ICC Treaty;

“genocide” means an act of genocide as defined in article 54B;

“crime against humanity” means a crime against humanity as defined in article 54C;

“war crime” means a war crime as defined in article 54D;

“Minister” means the Minister responsible for Justice.

(2) In interpreting and applying the provisions of this Act the court shall take into account the original text of the ICC Treaty and of any treaty and convention referred to in the ICC Treaty.

PART 2 ASSISTANCE TO THE ICC

Provision of assistance.

3. (1) The powers conferred by this Part on the Minister are exercisable for the purpose of providing assistance to the ICC in relation to investigations or prosecutions where –

- (a) an investigation has been initiated by the ICC, and
- (b) the investigation and any proceedings arising out of it have not been concluded.

(2) Where facsimile transmission is used –

- (a) for the making of a request by the ICC or the transmission of any supporting documents, or
- (b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted. Any such document shall be receivable and admissible in evidence accordingly.

(3) Nothing in this Part shall be read and construed as preventing the provision of assistance to the ICC otherwise than under this Part.

Power to make regulations.

4. The Minister may make regulations providing for the meeting of requests for assistance by the ICC and in particular and without prejudice to the generality of that power may make regulations prescribing the conditions and procedures for the execution of any such request for all or any of the following purposes:

- (a) the questioning of persons being investigated or prosecuted by the ICC;
- (b) the taking or production of evidence;
- (c) the service of any document or act of the proceedings before the ICC;
- (d) the temporary transfer to the ICC of a prisoner for purposes of identification or for obtaining testimony or other assistance;
- (e) the entry into and search of any premises and the seizure of any item;
- (f) the taking of fingerprints or non-intimate samples;
- (g) the exhumation of any body;
- (h) the provision of records and documents;
- (i) the investigation of proceeds of any ICC crime;
- (j) the freezing or seizure of proceeds for eventual forfeiture;
- (k) the verification of any evidence or other material.

5. (1) Nothing in any of the provisions of this Part, requires or authorises the production of documents, or the disclosure of information, which would be prejudicial to the security of Malta.

National security interests.

(2) For the purposes of any such provision a certificate signed by or on behalf of the Prime Minister to the effect that it would be prejudicial to the security of Malta for specified documents to be produced, or for specified information to be disclosed, is conclusive evidence of that fact.

6. (1) Any evidence or other material obtained under this Part by a person other than the Attorney General, together with any requisite verification, shall be sent to the Attorney General who shall make arrangements for the transmission of the evidence or other material to the ICC.

Transmission of material to the ICC.

(2) Where any evidence or other material is to be transmitted to the ICC, there shall be transmitted-

(a) where the material consists of a document, the original or a copy, and

(b) where the material consists of any other article, the article itself or a photograph or other description of it,

as may be necessary to comply with the request of the ICC.

PART 3 OFFENCES IN RELATION TO THE ICC

Offences in
relation to
the ICC.

7. (1) It shall be an offence for any person to intentionally commit any of the acts mentioned in Article 70.1 of the ICC Treaty (offences against the administration of justice in relation to the ICC), hereinafter in this Part referred to as “the relevant article”.

(2) In interpreting and applying the provisions of the relevant article the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

(3) Without prejudice to the provisions of article 5 of the Criminal Code, a criminal action may also be prosecuted in Malta against any citizen of Malta or permanent resident in Malta who shall have become guilty of an offence mentioned in sub-article (1) of this article although the offence may have been committed outside Malta.

(4) Proceedings for an offence under this article shall not be instituted except by or with the consent of the Attorney General.

(5) The relevant provisions of the relevant article are set out in Schedule II of this Act.

(6) A person who is found guilty of an offence under sub-article (1) of this article shall be liable to punishment as follows:

(a) where the offence consists of the act mentioned in paragraph (a) of the relevant article, to the punishment laid down in articles 104, 105, 107 of the Criminal Code for the corresponding circumstances of the case;

(b) where the offence consists of the act mentioned in paragraph (b) of the relevant article, to the punishment laid down in article 103 of the Criminal Code;

(c) where the offence consists of any of the acts mentioned in paragraph (c) of the relevant article, to the punishment laid down in articles 102, 110, or 111 of the Criminal Code for the corresponding circumstances of the case;

(d) where the offence consists of any of the acts mentioned in paragraph (d) of the relevant article:

(i) to the punishment of imprisonment from two to five years if the official of the Court properly performs his or her duties; or

(ii) to the said punishment increased by two or three degrees where the official of the Court fails to perform, or improperly performs, his or her duties; or

(iii) to any punishment higher than imprisonment for a term of five years to which a person accused of an ICC crime may have been sentenced where the official of the Court fails to perform, or improperly performs, his or her duties in or in connection with the trial of that person;

(e) where the offence consists of the act mentioned in paragraph (e) of the relevant article, to the punishment laid down in sub-article (1) of article 95 of the Criminal Code as the circumstances of the case may be;

(f) where the offence consists of any of the acts mentioned in paragraph (f) of the relevant article, the offender may be dealt with as for the corresponding offence under articles 115 and 121(4)(d) of the Criminal Code and shall be liable to punishment accordingly.

8. (1) References in this Part to a person committing any of the acts mentioned in the relevant article, shall be construed in accordance with this article. Mental element.

(2) Unless otherwise provided by article 7 of this Act or by the relevant article, a person is regarded as committing an act referred to in sub-article (1) of this article only if the material elements are committed with intent and knowledge.

(3) For this purpose –

(a) a person has intent -

(i) in relation to conduct, where he means to engage in the conduct, and

(ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events, and

(b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying the provisions of this article (which corresponds to article 30 of the ICC Treaty) the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

PART 4 ENFORCEMENT OF SENTENCES AND ORDERS

Detention in Malta
in pursuance of
ICC sentence.

Cap. 260.

9. (1) This article applies where –

(a) Malta is designated by the ICC as the state in which a person, hereinafter in this Part referred to as “the prisoner”, is to serve a sentence of imprisonment imposed by the ICC, and

(b) the Minister informs the ICC that the designation is accepted.

(2) The Minister shall issue a warrant authorising –

(a) the bringing of the prisoner to Malta,

(b) the detention of the prisoner in Malta in accordance with the sentence of the ICC, and

(c) the taking of the prisoner to a prison, within the meaning of the Prisons Act, in Malta.

The provisions of the warrant may be varied by the Minister, and shall be so varied to give effect to any variation of the ICC's sentence.

(2) Subject to the provisions of sub-article (3) of this article, a prisoner subject to a warrant authorising his detention in a prison in Malta shall be treated for all intents and purposes as if he were subject to a sentence of imprisonment imposed in exercise of criminal jurisdiction by a court in Malta.

(3) The provisions of any regulations made under the Prisons Act shall apply to a prisoner under this Part subject to such modifications, adjustments or adaptations as the Minister may by regulations under this subarticle prescribe after consultation with the Minister responsible for prisons.

10. (1) This article applies where the Minister receives a request from the ICC –

Temporary return or transfer of custody to another state.

(a) for the temporary return of the prisoner to the custody of the ICC for the purposes of any proceedings, or

(b) for the transfer of the prisoner to the custody of another state in pursuance of a change in designation of state of enforcement.

(2) The Minister shall –

(a) issue a warrant authorising the prisoner's temporary return or transfer in accordance with the request,

(b) make the necessary arrangements with the ICC or, as the case may be, the other state, and

(c) give such directions as to the custody, surrender and, where appropriate, return of the prisoner as appear to him appropriate to give effect to the arrangements.

(2) Where the prisoner is temporarily returned to the custody of the ICC, the warrant authorising his detention in Malta shall continue to have effect so as to apply to him again on his return.

11. (1) The prisoner shall be deemed to be in the legal custody of the Minister at any time when, being –

Custody of prisoner in transit etc

(a) in Malta, or

(b) on board a Maltese vessel or aircraft,

he is being taken to or from any place or is being kept in custody.

(2) The Minister may, from time to time, designate a person as a person who is for the time being authorised to take the prisoner to or from any place or to keep the prisoner in custody.

(3) A person so authorised has all the powers, authority, protection and privileges of a police officer.

(4) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by the police and taken to any place to which he may be taken under the warrant issued under any provision of this Part.

Power to make regulations.

12. The Minister may make regulations to provide for the enforcement in Malta of -

- (a) fines or forfeitures ordered by the ICC, and
- (b) orders by the ICC against convicted persons specifying reparations to, or in respect of victims,

and in particular and without prejudice to the generality of that power may make regulations which:

(i) authorise the Minister to appoint a person to act on behalf of the ICC for the purposes of enforcing the order and to give that person such directions as appear necessary to the Minister;

(ii) require the registration in the Public Registry of any order to which this article applies and providing for the effects of such registration;

(iii) apply all or any of the provisions relating to the enforcement in Malta of orders of a court of a country or territory outside Malta;

(iv) provide that the reasonable costs for and incidental to the registration and enforcement of an order are recoverable as if they were sums recoverable under the order;

(v) provide for the recovery of fines as a civil debt or for the conversion into imprisonment or detention of any such fines in default of payment:

Provided that different provision may be made for different kinds of order.

PART 5 ICC CRIMES

Amendment of
the Criminal Code.

Cap. 9.

13. (1) The Criminal Code shall be amended as follows:

(a) in paragraph (d) of sub-article (1) of article 5 thereof, immediately after the words "shall have become guilty" there shall be inserted the words "of the offences mentioned in article 54A or";

(b) Title I of Part II of Book First of the Criminal Code shall be renumbered "Title I Bis" and immediately before it there shall be inserted the following new Title":

"Title I
OF GENOCIDE, CRIMES AGAINST HUMANITY
AND WAR CRIMES

General. 54A. (1) It is a crime for a person to commit genocide, a crime against humanity or a war crime.

(2) In this Title –

“the ICC Treaty” means the Statute of the International Criminal Court, done at Rome on 17th July, 1988;

“the ICC” means the International Criminal Court established by the ICC Treaty;

“genocide” means an act of genocide as defined in article 54B;

“crime against humanity” means a crime against humanity as defined in article 54C;

“war crime” means a war crime as defined in article 54D;

“Minister” means the Minister responsible for Justice.

(3) In interpreting and applying the provisions of this Title the court shall take into account the original text of the ICC Treaty and of any treaty and convention referred to in the ICC Treaty.

(4) In interpreting and applying the provisions of articles 54B, 54C and 54D, hereinafter, in this Title, referred to as “the relevant articles”, the court shall take into account -

(a) any relevant Elements of Crimes adopted in accordance with article 9 of the ICC Treaty, and

(b) until such time as Elements of Crimes are adopted under that article, any relevant Elements of Crimes contained in the report of the Preparatory Commission for the International Criminal Court adopted on 30th June, 2000.

(5) The Minister may set out in regulations the text of the Elements of Crimes referred to in sub-article (2) of this article, as amended from time to time.

(6) The relevant articles shall for the purposes of this Title be construed subject to and in accordance with any relevant reservation or declaration made by Malta when ratifying any treaty or agreement relevant to the interpretation of those articles.

(7) The Minister may by regulations set out the terms of any reservation or declaration referred to in sub-article (5) of this article and where any such reservation or declaration is withdrawn in whole or in part may revoke or amend any regulations as aforesaid which contain the terms of that reservation or declaration.

(8) In interpreting and applying the provisions of the relevant articles the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

Genocide

54B. Genocide is committed where any of the following acts is 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.

Crimes against
humanity.

54C. (1) A crime against humanity is committed where any of the following acts is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) murder;

(b) extermination;

(c) enslavement;

(d) deportation or forcible transfer of population;

(e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) torture;

(g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in sub-article (3), or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this sub-article or any crime under article 54A;

(i) enforced disappearance of persons;

(j) the crime of apartheid;

(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(2) For the purpose of sub-article (1):

(a) “attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in sub-article (1) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) “extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) “enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) “deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) “torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “the crime of apartheid” means inhumane acts of a character similar to those referred to in sub-article (1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

(3) For the purpose of this Title, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

War crimes.

54D. A war crime is committed where any of the following acts is committed:

(a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) wilful killing;

(ii) torture or inhuman treatment, including biological experiments;

(iii) wilfully causing great suffering, or serious injury to body or health;

(iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) unlawful deportation or transfer or unlawful confinement;

(viii) taking of hostages;

(b) 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:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) 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;

(iv) 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;

(v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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;

(xi) killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) declaring that no quarter will be given;

(xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) pillaging a town or place, even when taken by assault;

(xvii) employing poison or poisoned weapons;

(xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

.....*omissis*.....

(xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in paragraph (f) of sub-article (2) of article 54C, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kind, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable;

(d) paragraph (c) of this article applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;

(e) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) 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;

(iv) 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;

(v) pillaging a town or place, even when taken by assault;

(vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in paragraph (f) of sub-article (2) of article 54C, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) killing or wounding treacherously a combatant adversary;

(x) declaring that no quarter will be given;

(xi) subjecting persons who are in the power of another party to the conflict 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;

(xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) paragraph (e) of this article applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

Responsibility
of
commanders
and
other
superiors.

54E. (1) This article applies in relation to offences under this Part.

(2) A military commander, or a person effectively acting as a military commander, is responsible for offences committed by forces under his effective command and control, or (as the case may be) his effective authority and control, as a result of his failure to exercise control properly over such forces where –

(a) he either knew, or owing to the circumstances at the time, should have known that the forces were committing or about to commit such offences, and

(b) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(3) With respect to superior and subordinate relationships not described in sub-article (2), a superior is responsible for offences committed by subordinates under his effective authority and control, as a result of his failure to exercise control properly over such subordinates where –

(a) he either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such offences,

(b) the offences concerned activities that were within his effective responsibility and control, and

(c) he failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(4) A person responsible under this article for an offence is regarded as an accomplice in the commission of the offence.

(5) In interpreting and applying the provisions of this article (which corresponds to article 28 of the ICC Treaty) the court shall take into account any relevant judgment or decision of the ICC and account may also be taken of any other relevant international jurisprudence.

(6) Nothing in this article shall be read as restricting or excluding –

(a) any liability of the commander or superior apart from this article, or

(b) the liability of persons other than the commander or superior.

54F. (1) References in this Part to a person committing –

Mental
element.

(a) genocide,

(b) a crime against humanity, or

(c) a war crime,

shall be construed in accordance with this article.

(2) Unless otherwise provided by –

(a) the articles mentioned in the definition in article 54A(1) of the crimes specified in sub-article (1)(a) to (c) of this article, or in any relevant Elements of Crimes referred to in article 54A(3),

(b) article 54E,

a person is regarded as committing a crime referred to in sub-article (1) only if the material elements of the crime are committed with intent and knowledge.

(3) For this purpose –

(a) a person has intent -

(i) in relation to conduct, where he means to engage in the conduct, and

(ii) in relation to a consequence, where he means to cause the consequence or is aware that it will occur in the ordinary course of events, and

(b) “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events.

(4) In interpreting and applying the provisions of this article (which corresponds to article 30 of the ICC Treaty) the court shall take into account any relevant judgment or decision of the ICC and may also take into account any other relevant international jurisprudence.

Jurisdiction.

54G. Without prejudice to the provisions of article 5, a criminal action for an offence under this Title may also be prosecuted in Malta:

(a) against any person subject to military law in terms of articles 178, 179 and 180 of the Malta Armed Forces Act even if the offence was committed outside Malta; or

(b) against any citizen of Malta or permanent resident in Malta who outside Malta conspires to commit any offence under this Title even if the offence is to be committed outside Malta.

Protection of victims and witnesses.

54H. The provisions of any law which make provision for the protection of victims and witnesses of certain offences shall apply *mutatis mutandis* to any victim or witness of an offence under this Title.

Supplementary provisions for offences under this Title.

54I. (1) The following provisions apply in relation to offences under this Title.

(2) Proceedings for an offence shall not be instituted except by or with the consent of the Attorney General.

(3) A person convicted of an offence involving murder shall be dealt with as for an offence consisting in the killing of a person in such circumstances as would, if committed in Malta, constitute wilful homicide.

(4) In any other case a person convicted of an offence is liable to imprisonment for a term not exceeding 30 years.

(5) The provisions of Title VI of Part III of Book Second of this Code do not apply.”.

PART 6 ARREST AND SURRENDER OF PERSONS

Amendment of the Extradition Act.

14. The Extradition Act shall be amended as follows:

(a) in sub-article (1) of article 2 thereof, for the words “unless the context” there shall be substituted the words “other than in Part VI thereof and unless the context”; and

(b) Part VI thereof shall be renumbered as Part VII and immediately after article 26 thereof, before Part VII as renumbered, there shall be inserted the following new Part VI:

“Part VI Surrender of Offenders to the International Criminal Court

Applicability of Part VI.

26A. Only the provisions of this Part, save where otherwise expressly indicated, shall apply to requests from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC.

Interpretation. 26B. (1) In this Part, unless the context otherwise requires -

“delivery order” has the same meaning assigned to it by sub-article 26E;

“ICC crime” means a crime (other than the crime of aggression) over which the ICC has jurisdiction in accordance with the ICC Treaty the relevant articles of which are reproduced in Schedule I to the International Criminal Court Act;

“the ICC” means the International Criminal Court established by the ICC Treaty;

“the ICC Treaty” means the Statute of the International Criminal Court, done at Rome on the 17th July, 1998;

“the Minister” means the Minister responsible for Justice.

(2) Words and phrases used in this part and used also in the ICC Treaty shall have the same meaning assigned to them in the said ICC Treaty.

Request for
arrest
and
surrender.

26C. (1) Where the Minister receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or to have been convicted by the ICC, he shall transmit the request and the documents accompanying it to the Attorney General.

(2) If the request is accompanied by a warrant of arrest and the Attorney General is satisfied that the warrant appears to have been issued by the ICC, he shall apply to a Magistrate to authorise the execution of the warrant. The Magistrate shall authorise such execution where he is satisfied that the warrant purports to have been issued by the ICC.

(3) If in the case of a person convicted by the ICC the request is not accompanied by a warrant of arrest, but is accompanied by –

(a) a copy of the judgment of conviction,

(b) information to demonstrate that the person sought is the one referred to in the judgment of conviction, and

(c) where the person sought has been sentenced, a copy of the sentence imposed and a statement of any time already served and the time remaining to be served,

the Attorney General shall apply to a Magistrate for the issue of a warrant for the arrest of the person to whom the request relates and shall attach the documentation and information referred to in this sub-article.

(4) The Magistrate shall issue the warrant where he is satisfied that it appears that the person sought has been convicted by the ICC and that the documentation and information referred to in this article has been produced.

(5) The provisions of sub-articles (4) and of the articles referred to in sub-article (5) of article 14 shall apply to a warrant issued under this Part.

Request for provisional arrest.

26D. (1) Where the Minister receives from the ICC a request for the provisional arrest of a person alleged to have committed an ICC crime or to have been convicted by the ICC he shall transmit the request and the documents accompanying it to the Attorney General.

(2) Upon an application by the Attorney General stating that he has reason to believe –

(a) that a request has been made by the ICC for the arrest of a person, and

(b) that the person is in, or on his way to, Malta,

a Magistrate shall issue a warrant for the arrest of that person and shall notify the Minister of the issue of the warrant.

Dealing with person arrested under provisional warrant.

26E. (1) The provisions of sub-article (1) of article 15, other than the reference therein to sub-article (3) of article 14, shall *mutatis mutandis* apply to a person arrested under a provisional warrant under this Part.

(2) If an arrest warrant issued under article 26C is produced to the court in respect of the person brought before it, the court shall proceed as if he had been arrested under that warrant. If no such warrant is produced the court shall remand him pending the production of such a warrant.

(3) The Minister may make regulations specifying –

(a) the period for which a person may be so remanded at any time, and

(b) the total period for which a person may be so remanded,

having regard to the time limits specified in Rules of Evidence and Procedure for the purposes of Article 92.3 of the ICC Treaty.

(4) If at any time when the person is remanded as aforesaid there is produced to the court a warrant issued under article 26C in respect of him –

(a) the court shall terminate the period of remand, and

(b) he shall be treated as if arrested under that warrant –

(i) if he was remanded in custody, at the time the warrant was produced to the court;

(ii) if he was remanded on bail, when he surrenders to his bail.

(5) If no such warrant is produced to the court before the end of the period of remand (including any extension of that period), the court shall discharge him.

(6) The fact that a person has been discharged under this article does not prevent his subsequent arrest under a warrant issued under article 26C.

Dealing with
person
arrested
under
warrant
issued under
article 26C.

26F. (1) The provisions of sub-article (1) of article 26E shall apply to a person arrested under a warrant issued under article 26C.

- (2) If the court is satisfied-
 - (a) that the warrant-
 - (i) is a warrant of the ICC, or
 - (ii) has been duly issued under article 26C

(3), and

- (b) that the person brought before the court is the person named or described in the warrant,

it shall make a delivery order.

- (3) A “delivery order” is an order that the person be delivered up-

- (a) into the custody of the ICC, or

- (b) if the ICC so directs in the case of a person convicted by the ICC, into the custody of the state of enforcement,

in accordance with arrangements made by the Minister.

- (4) In the case of a person alleged to have committed an ICC crime, the court may adjourn the proceedings pending the outcome of any challenge before the ICC to the admissibility of the case or to the jurisdiction of the ICC.

- (5) In deciding to make a delivery order the court is not concerned to enquire -

- (a) whether any warrant issued by the ICC was duly issued, or

- (b) in the case of a person alleged to have committed an ICC crime, whether there is evidence to justify his trial for the offence he is alleged to have committed.

Consent to
surrender

26G. (1) When a person arrested under this Part is brought before the court that person may consent to being delivered up into the custody of the ICC or, in the case of a person convicted by the ICC, of the state of enforcement. Such consent is referred to in this Part as “consent to surrender”.

(2) When the person arrested gives his consent to surrender, the court, upon being satisfied of the voluntariness of the consent, shall make a delivery order and all the provisions of this Part for that person's surrender shall be deemed to be satisfied.

(3) No appeal shall lie from a delivery order made under this article.

Proceedings where court refuses delivery order

Where
delivery
order is
refused.

26H. (1) Where the court refuses to make a delivery order it shall nevertheless make an order remanding the person arrested into custody and that person shall remain in custody as provided in the proviso to sub-article (3) of article 15.

(2) The court shall notify the Minister of its decision not to make a delivery order and of the grounds for it.

Appeal by
the
Attorney
General
against
refusal of
delivery
order.

26I. Where the court refuses to make a delivery order the provisions of article 19 shall *mutatis mutandis* apply and if the Court of Criminal Appeal allows the appeal it shall make a delivery order which shall be treated, for all purposes other than an appeal therefrom, as an order committing to custody the person to be delivered up.

Proceedings where court makes delivery order

When court
makes
delivery
order.

26J. (1) Where the court makes a delivery order in respect of a person, the court shall -

(a) commit the person to custody to await the Minister's directions as to the execution of the order,

(b) notify the Minister of its decision.

(2) Saving the provisions of article 26K, the provisions of articles 16 and 17 shall *mutatis mutandis* apply to a person committed to custody under this article.

Appeal from
delivery
order
by person to
be
delivered up.

26K. Saving the provisions of article 26L, the person to be delivered up following a delivery order may appeal from the order to the Court of Criminal Appeal and the provisions of article 18 shall *mutatis mutandis* apply to the appeal.

Waiver of right of appeal and of other rights.

26L. (1) A person in respect of whom a delivery order has been made may waive his right of appeal and his right to apply for redress under the Constitution and any other right to apply for review of the lawfulness of his arrest and detention.

(2) Where a person has waived his rights as provided in sub-article (1), the court shall satisfy itself of the voluntariness of the waiver whereupon the delivery order shall be taken for all purposes of law to be validly made.

Effect of delivery order.

26M. (1) A delivery order is sufficient authority for any person acting in accordance with the directions of the Minister to receive the person to whom the order relates, keep him in custody and convey him to the place where he is to be delivered up into the custody of the ICC (or, as the case may be, of the state of enforcement) in accordance with arrangements made by the Minister.

(2) If a person in respect of whom a delivery order is in force escapes or is unlawfully at large, he may be arrested by the Police without warrant and taken to any place where or to which, by virtue of this Part, he is required to be or to be taken.

(3) The provisions of sub-article (2) of article 21 shall *mutatis mutandis* apply to any person in respect of whom a delivery order was made.

Bail, discharge, transit and unscheduled landing

Bail, discharge, transit and unscheduled landing
Consultation with the ICC concerning bail.

26N. (1) Where an application for bail is made in proceedings under this Part -

(a) the court shall notify the Minister of the application,

(b) the Minister shall consult with the ICC, and

(c) bail shall not be granted without full consideration of any recommendations made by the ICC.

(2) In considering any application for bail under this article the court shall consider -

(a) whether, given the gravity of the offence or offences which the person is alleged to have committed or, as the case may be, of which he has been convicted by the ICC, there are urgent and exceptional circumstances justifying release on bail, and

(b) whether any necessary measures have been or will be taken to secure that the person will surrender to custody in accordance with the terms of his bail.

Discharge of person not delivered up.

26O. (1) If the person in respect of whom a delivery order has been made is not delivered up under the order within the period of two months beginning with the first day on which, having regard to the provisions of sub-article (3) of article 26M of this Act, he could have been returned he may apply to the Court of Criminal Appeal, sitting as a court of appeal from judgments of the Court of Magistrates, for his discharge.

(2) Upon such application the provisions of sub-article (2) of article 24 shall *mutatis mutandis* apply so however that the reference to the warrant under that sub-article shall be construed as a reference to the delivery order.

Discharge of person no longer required to be surrendered.

26P. Where the ICC informs the Minister that a person arrested under this Part is no longer required to be surrendered –

(a) the Minister shall notify the Attorney General of that fact, and

(b) the Attorney General shall, on receipt of the notification, apply to the court for an order discharging the person arrested.

Request for transit.

26Q. (1) This article applies where the Minister receives a request from the ICC for transit of a person being surrendered by another state.

(2) If the Minister accedes to the request –

(a) the request shall be treated for the purposes of this Part as if it were a request for that person's arrest and surrender,

(b) the execution of the warrant accompanying the request shall be deemed to have been authorised under sub-article (2) of article 26C, and

(c) the person to whom the request relates shall, subject to the provisions of this article, be treated on arrival in Malta as if he had been arrested under that warrant.

(3) In relation to a case where this section applies-

(a) it shall be incumbent upon the court before whom the person to whom the request relates is produced in pursuance of the provisions of article 26F(2)(a)(i) to ascertain that the Minister has acceded to the request for transit; and

(b) article 16 to which reference is made in article 26J(2) shall have effect as if the reference to fifteen days were a reference to two working days.

(4) A person in transit under this article shall not be granted bail.

Unscheduled
landing.

26R. (1) If a person being surrendered by another state makes an unscheduled landing in Malta, he may be arrested by the Police without warrant whereupon the provisions of sub-article (1) of article 15, other than the reference therein to sub-article (3) of article 14 and subject to the provisions of this article, shall *mutatis mutandis* apply.

(2) The court shall remand him in custody pending -

(a) receipt by the Minister of a request from the ICC for his transit, and

(b) the Minister's decision whether to accede to the request.

(3) If no such request is received by the Minister before the end ninety-six hours beginning with the time of the arrested person's unscheduled landing -

(a) the Minister shall forthwith notify the court of that fact, and

(b) the court shall, on receipt of the notification, discharge the arrested person.

(4) If the Minister receives such a request before the end of that period, he shall notify the court without delay of his decision whether to accede to the request.

(5) If the Minister notifies the court that he has decided to accede to the request –

(a) the court shall, on receipt of the notification, terminate the period of remand, and

(b) the provisions of article 26Q shall apply with the substitution for the reference to the time of arrival in Malta in sub-article (2)(c) thereof of a reference to the time of notification to the court under this sub-article.

(6) If the Minister notifies the court that he has decided not to accede to the request, the court shall, on receipt of the notification, discharge the arrested person.

Supplementary provisions

State or
diplomatic
immunity.

26S. (1) Any state or diplomatic immunity attaching to a person by reason of a connection with a state party to the ICC Treaty does not prevent proceedings under this Part in relation to that person.

(2) Where –

(a) state or diplomatic immunity attaches to a person by reason of a connection with a state other than a state party to the ICC Treaty, and

(b) waiver of that immunity is obtained by the ICC in relation to a request for that person's surrender, the waiver shall be treated as extending to proceedings under this Part in connection with that request.

(3) A certificate by the Minister –

(a) that a state is or is not a party to the ICC Treaty,
or

(b) that there has been such a waiver as is mentioned in sub-article (2),

is conclusive evidence of that fact for the purposes of this Part.

(4) The Minister may in any particular case, after consultation with the ICC and the state concerned, direct that

proceedings (or further proceedings) under this Part which, but for sub-article (1) or (2), would be prevented by state or diplomatic immunity attaching to a person shall not be taken against that person.

(5) The power to make regulations conferred by sub-article (1) of article 3 of the National Interest (Enabling Powers) Act includes the power to make in relation to any proceedings such provision corresponding to the provision made by this article in relation to the proceedings, but with the omission –

(a) in sub-article (1), of the words “by reason of a connection with a state party to the ICC Treaty”, and

(b) of sub-articles (2) and (3),

as it appears to the Prime Minister to be necessary or expedient in consequence of such a referral as is mentioned in article 13(b) (referral by the United Nations Security Council).

(6) In this article “state or diplomatic immunity” means any privilege or immunity attaching to a person, by reason of the status of that person or another as head of state, or as representative, official or agent of a state, under –

(a) the Diplomatic Immunities and Privileges Act, Cap. 191, the Consular Conventions Act, Cap. 144, the European Communities (Establishment of Delegation) Act, Cap. 344, the Membership of International Financial Organisations Act, Cap. 235,

(b) any other legislative provision made for the purpose of implementing an international obligation, or

(c) any rule of law derived from customary international law.

Delivery up
of persons
subject to
certain
proceedings
etc.

26T. The Minister may make regulations for the better carrying into effect the provisions of this part and without prejudice to the generality of the aforesaid may by such regulations make provision in respect of cases where he receives a request for the arrest or surrender, or provisional arrest, of a person –

(a) against whom criminal proceedings are pending or in progress before a court in Malta, or who has been dealt with in such proceedings, or

(b) against whom extradition proceedings are pending or in progress in Malta, or in respect of whom a warrant or order has been made in such proceedings.

Documents. 26U. (1) For the purposes of this Part the copy of a warrant issued by the ICC that is transmitted to the Secretary of State Minister shall be treated as if it were the original warrant.

(2) Where facsimile transmission is used –

(a) for the making of a request by the ICC or the transmission of any supporting documents, or

(b) for the transmission of any document in consequence of such a request,

this Part applies as if the documents so sent were the originals of the documents so transmitted and shall be receivable and admissible in evidence accordingly.

(3) Where the ICC amends a warrant of arrest, the provisions of this Part apply to the amended warrant as if it were a new warrant; so however that this does not affect the validity of anything done in reliance on the old warrant.”.

15. In paragraph (c) of article 4 of the Prisons Act, Cap. 260, for the words “foreign court” there shall be substituted the words “foreign or international court” and immediately after the words “for that purpose” there shall be inserted the words “to which Malta is a party or which is”.

Amendment of
the Prisons Act.

16. The relevant provisions of Articles 9, 13, 70 and 92 of the ICC Treaty referred to in this Act are reproduced in Schedule II to this Act and any reference to any such article in this Act or in any other law shall be construed as a reference to the same article as reproduced in the said Schedule.

Articles of
ICC Statute
in Schedule

SCHEDULE I

(Article 2)

Crimes within the Jurisdiction of the International Criminal Court

Article 6

Genocide

For the purpose of this Statute, "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.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

1. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

- War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) 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:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) 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;

(iv) 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;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) 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;

(viii) 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;

(ix) 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;

(x) 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;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) 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;

(iv) 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;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict 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;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

SCHEDULE II

(Article 16)

Articles of the ICC Treaty referred to in the Act

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

- (a) Any State Party;
- (b) The judges acting by an absolute majority;
- (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

.....*omissis*.....

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;

Article 70

Offences against the administration of justice

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

- (a) Giving false testimony when under an obligation pursuant to Article 69, paragraph 1, to tell the truth;
- (b) Presenting evidence that the party knows is false or forged;
- (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

(e) Retaliating against an official of the Court on account of duties performed by that or another official;

(f) Soliciting or accepting a bribe as an official of the Court in connection with his or her official duties.

.....*omissis*.....

4 (a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

.....*omissis*.....

NOTE:

Article 69.1, referred to in Article 70.1(a), provides as follows:

“1 Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.”.

Article 92

Provisional arrest

.....*omissis*.....

3. A person who is provisionally arrested may be released from custody if the requested State has not received the request for surrender and the documents supporting the request as specified in Article 91 within the time limits specified in the Rules of Procedure and Evidence. However, the person may consent to surrender before the expiration of this period if permitted by the law of the requested State. In such a case, the requested State shall proceed to surrender the person to the Court as soon as possible.

Objects and Reasons

The main object of the Bill is to provide for the giving of assistance to the International Criminal Court, to criminalise under Maltese law the international crimes of genocide, war crimes and crimes against humanity, and to provide for consequential amendments and other provisions ancillary thereto.