

# **KABUL STATUTE OF THE INTERNATIONAL TERRORISM TRIBUNAL**

## **PART 1. ESTABLISHMENT OF THE COURT**

### Article 1 The Court

An International Terrorism Tribunal (“the ITT” or “the Tribunal”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for acts of international terrorism, as defined by this Statute. The jurisdiction and function of the Tribunal shall be governed by the provisions of this Statute.

### Article 2 Seat of the Court

1. The permanent Seat of the Court shall be established in Kabul, Afghanistan (“the host state”).
2. Until the Governing Council determines that the Kabul facilities are prepared to host the ITT, the tribunal shall be temporarily located in Jakarta, Indonesia (“the temporary host state”).
3. The Tribunal shall enter into a headquarters agreement with the host state, to be approved by the Governing Council of the ITT. Until the permanent facilities are prepared in Kabul, the Governing Council shall enter into a headquarters agreement with the temporary host state.

### Article 3 Legal Status and powers of the ITT

1. The ITT shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.
2. The ITT may exercise its functions and powers, as provided in this Statute, on the territory of any member state and by special agreement, on the territory of any other state.

## **PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW**

### Article 4 Jurisdiction of the Tribunal

The jurisdiction of the Tribunal shall be limited to acts of international terrorism as defined by this Statute.

#### Article 5

#### Definition of International Terrorism

1. In this Statute, the act of international terrorism means the use or threat of action where:

(a) The use or threat is made for the purpose of advancing a political, religious or ideological cause; and

(b) The use or threat is made by a citizen of one state against property, a citizen or citizens of another state; and

(i) When a person uses or threatens an act against property, a citizen or citizens of his or her own state as well as against property, a citizen or citizens of another state then that person shall be tried before the ITT.

(ii) There is no threshold for how many victims must be involved or how much property damage must be caused to have an act qualify as international terrorism under this definition. It is up to the discretion of the states involved to decide whether or not the acts were significant enough to warrant bringing the case before the ITT. The procedures for bringing or not bringing the case before the ITT as described in Article 7 of this Treaty will apply.

(d) The use or action as defined within subsections 2 and 3 is designed to influence a government or to intimidate the public;

2. The action or threat of action falls within this subsection if it leads to the following outcomes or was threatened with the intention of leading to the following outcomes:

(a) It involves a serious act of violence against a person; or

(b) It involves serious damage to property; or

(c) It endangers or a person's life, other than that of the person committing or threatening the action; or

(d) It creates a serious risk to the health or safety of the public or a section of the public; or

- (e) It is designed to seriously interfere with or to seriously disrupt an electronic system, an information system, a telecommunications system, a financial system, or an essential service, facility or system.

3. A person will be guilty of being an international terrorist if he or she is found to have committed the following offenses. Any state will be guilty of acts of international terrorism if it is found to have committed the following offenses:

- (a) The person intentionally provides training to, or intentionally receives training from an international terrorist organization or a recognized international terrorist.

- (b) The person is a member of a recognized international terrorist organization.

- (1) The Governing Council will create a list of recognized international terrorist organizations, international terrorists and state sponsors of international terrorism.

- (2) Each member state may submit organizations or individuals to the Governing Council to be considered for inclusion on the list of recognized international terrorist organizations or individuals.

- (3) The Governing Council must hold a vote to determine whether or not the organization or individual is an international terrorist organization or individual. To be included on the list, three quarters of the Governing Council must agree to add the organization or individual to the list.

- (c) The person or the state knowingly harbors a member(s) of a recognized international terrorist organization or a state knowingly allows a person to conduct acts of international terrorism as described in this Article while inside its borders.

- (d) The person or the state provides money or other property and knows or has reasonable cause to suspect that it will or may be used for the purposes of international terrorism.

- (e) The person or the state recruits or encourages any person to undergo training, to provide financial support, to provide weapons or to harbor international terrorists.

- (f) The person hijacks an aircraft, ship or any other means of transportation traveling across international borders or carrying citizens from multiple countries.

- (g) The person or the state commits an act of theft or robbery of any nuclear material, any chemical weapons, any biological weapons or any other weapons of mass destruction.

- (f) The person or state seizes a hostage or hostages or kidnaps a citizen or citizens of another nationality.

4. It is left to the discretion of the Judges hearing the case to determine the definition of “serious” as it pertains to this Article of the Treaty.

#### Article 6

##### Preconditions to the exercise of jurisdiction

1. A state which becomes a Party to this Statute (accepting state) thereby accepts the jurisdiction of the Tribunal with respect to acts of international terrorism as defined by article 5.

(a) If the act of international terrorism, as defined by this Treaty, occurred in a member state then the ITT has jurisdiction.

(b) If the act of international terrorism, as defined by this Treaty, occurred on board a vessel or aircraft and the state of registration of that vessel or aircraft is a member state then the ITT has jurisdiction.

(c) If the person(s) committed an act of international terrorism, as defined by this Treaty, is a citizen of any of the member states, then the ITT has jurisdiction.

3. A non-member state may ask the ITT to accept jurisdiction of a case of international terrorism. The ITT will accept this request if the act falls within the definition of international terrorism as set forth in Article 5. If the act does fall within the definition offered by this Treaty then the ITT will consider the non-member state as a member state for that specific case. Thus, provisions in paragraph 1 above must apply to the act of international terrorism.

(a) Once a non-member state asks the ITT to accept jurisdiction then the ITT will conduct a hearing before a Pre-Trial panel consisting of one judge in order to determine if the case is a valid case that should be heard by the ITT.

(b) If the Judge determines that the act is in violation of this Treaty then the case shall proceed. If the Judge determines that the act is not an act in violation of this Treaty then the case will not be tried before the ITT. There shall be no appeal process for these decisions.

#### Article 7

##### Exercise of jurisdiction

1. The ITT has no right to independently exercise its jurisdiction over acts of international terrorism.

2. Acts of international terrorism committed on the soil of any member state or against any national of any member states must be brought before the ITT.
3. If any member state fails to bring an act of international terrorism before the ITT then that state is in violation of this Treaty.
  - (a) If a member state fails to bring an act of international terrorism on its soil or against one of its nationals before the ITT then any other member state may bring a complaint to the Tribunal.
  - (b) The Tribunal shall then conduct a hearing before one of the Judges.
  - (c) If that Judge determines that the act was in violation of this Treaty then the ITT shall inform the member state that it is in violation of this Treaty. If the state refuses to bring the matter before the ITT then the ITT may decide to take actions discussed in Paragraph 5 of Article 23.
4. Any non-member state may ask the ITT to try a case of international terrorism committed against that same state. The process for the ITT to exercise jurisdiction over a Non-Member state is described in Article 6 Paragraph 3.

#### Article 8

#### Challenges to the jurisdiction of the ITT

1. The ITT shall satisfy itself during the Pre-Trial that it has jurisdiction in any case brought before it. The Tribunal may, on its own motion, determine the admissibility of a case in accordance with this Statute.
2. Challenges to the jurisdiction of the ITT may be made by:
  - (a) An accused international terrorist or a state accused of international terrorism before the Tribunal.
  - (b) A Member State from which acceptance of jurisdiction is required under article 7.
3. The jurisdiction of the ITT may be challenged only once by any person or member state referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial.
  - (a) Prior to the resolution of the challenge the ITT shall suspend any investigations into the case.

(b) The prosecution may seek authority from the Tribunal to proceed with further investigation of the case while the jurisdictional challenge is heard. It is up to the discretion of the Tribunal to decide whether this is justified.

Article 9  
Neb is in idem

1. No person shall be tried by another member states' court for an act of international terrorism for which that person has already been convicted or acquitted by the ITT nor shall any person be tried by any member states' domestic court for an act of international terrorism while they are a defendant in an ongoing trial before the ITT.
2. No member state shall try a person for international terrorism as defined by this Treaty in its domestic courts once this Treaty is ratified.

(a) If a member state does initiate a domestic trial against a person for international terrorism and the ITT determines that person should be brought before this Tribunal according to Article 7 Paragraph 3, then that domestic trial shall be immediately suspended.

(b) If a member state completes a trial against a person for international terrorism as defined by this Treaty before a complaint under article 8 paragraph 3 is brought then the ITT is prevented from hearing the case and the decision of that member states' domestic court will stand. However, that member state will be deemed to be in violation of this Treaty and will be referred to the Governing Council. The Governing Council may then decide whether or not to find the state in violation of this Treaty.

3. No person shall be tried by the ITT for acts of international terrorism against a non-member state if that non-member state has already tried that person in its domestic courts.

Article 10  
Applicable law

1. The ITT shall apply:

(a) This Statute.

(b) Where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict.

(b) Failing that, general principles of law derived by the ITT from national laws of legal systems of the world, including, as appropriate, the national laws of states that would normally exercise jurisdiction over the act of international terrorism, provided that

those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The ITT may apply principles and rules of law as interpreted in its previous decisions.

### PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

#### Article 11

##### Nullum crimen sine lege

1. A person or a state shall not be convicted under this Statute unless the conduct in question constitutes an act of international terrorism within the jurisdiction of the ITT as according to Article 5 of this Statute.

2. In case of ambiguity, the definition of an act of international terrorism shall be interpreted in favor of the person being investigated and or tried.

#### Article 12

##### Nulla poena sine lege

A person or a state convicted by the ITT may be punished only in accordance with this Statute.

#### Article 13

##### Individual responsibility for acts of international terrorism

1. A person or a state which commits an act of international terrorism as defined by Article 5 of this Statute shall be responsible and liable for punishment in accordance with this Statute if that person or state:

(a) Commits such an act, whether as an individual, jointly with another or through another person;

(b) Orders, solicits or induces the commission of such an act, which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such an act, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such an act by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the act or purpose of international terrorism, where such activity or purpose involves the commission of an act within the jurisdiction of the ITT; or

(ii) Be made in the knowledge of the intention of the group to commit the act;

(e) If the person or state directly and publicly incites others to commit acts of international terrorism;

(f) Attempts to commit such an act by taking action that commences its execution by means of a substantial step, but the act does not occur because of circumstance independent of the person or state's intentions. However, a person or state which abandons the effort to commit the act and prevents the completion of the act shall not be liable for punishment under this Statute for the attempt to commit that act if that person or state completely and voluntarily gives up the purpose and prevented it from occurring.

#### Article 14

##### Exclusion of jurisdiction over minors

The ITT shall have no jurisdiction over any person who was a minor at the time of the alleged commission of the act of international terrorism.

(a) A minor is defined as any person under the age of 16 at the time that the act was conducted.

#### Article 15

##### Non-applicability of statute of limitations

Any and all acts of international terrorism within the jurisdiction of the ITT shall not be subject to any statute of limitations.

#### Article 16

##### Mental Element

1. Unless otherwise provided, a person shall be responsible and liable for punishment for an act of international terrorism within the jurisdiction of the ITT only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will most likely occur in the ordinary course of events.

3. For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will most likely occur in the ordinary course of events.

#### Article 17

##### Grounds for excluding responsibility

1. A person shall not be responsible for an act of international terrorism if, at the time of that person’s conduct:

(a) The person suffers from a mental disease or defect that destroys that person’s capacity (as determined by the Pre-Trial Panel) to appreciate the gravity of that act or capacity to control his or her conduct to conform to the requirements of law.

(i) It is the burden of the defense to prove that the defendant does not have the capacity to stand trial

(ii) A person’s belief that an act of international terrorism is justified based on his or her religious or ideological beliefs does not release that person from responsibility for that act.

(iii) The fact that the act of international terrorism was conducted because of a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person is not a valid reason to declare a person not responsible for their actions. However, it can be taken into consideration when determining that person’s punishment.

#### PART 4. COMPOSITION AND ADMINISTRATION OF THE ITT

#### Article 18

##### Protection of national security information

1. The ITT will strive to protect any information, which if made known to the general public, could jeopardize the national security of the states bringing cases before the Tribunal.

2. If a member state believes certain information needs to be kept secret in order to protect its national security then it may attempt to prevent that information from being presented during a trial before the ITT. The member state shall present the information to

the Judicial Panel on Sensitive Information (“JPSI”) to have it determine whether or not the information should be presented during the trial.

- (a) The JPSI will be formed based on Article 25 and Article 26.
- (b) The three judge panel will hear the evidence and the arguments presented by the defense attorney and the prosecutor.
- (c) The JPSI will then decide whether, based on a preponderance of evidence, the sensitive information being made public would negatively affect the national security of the member state that has brought the case before the JPSI.
- (d) If the JPSI finds that the information would negatively affect the national security of the member state then that information will be submitted by the JPSI Judges to the regular Trial Chamber Judges but will not be presented to the defense.
- (e) If the JPSI finds that the information being made public would not negatively affect the national security of the member state then that member state will have to decide whether to bring that information before the Trial Chamber.

1. If the Prosecutor for the member state decides to bring the information before the Trial Chamber then the member state can request the part of the trial where the information is presented to be closed to the media and the public. Otherwise the Prosecutor for the member state can decide to not bring the information in front of the Trial Chamber.

(f) If the JPSI finds that any information presented before it exonerates the defendant then the Panel shall submit that information to the Trial Panel. The Trial Panel may then decide to dismiss the case but it shall not make the information public or inform the defense of the information.

3. Once the ITT accepts jurisdiction over a case brought by a non-member state, that state may attempt to keep information secret by bringing it in front of the JPSI.

#### Article 19 Organs of the ITT

The ITT shall be composed of the following organs:

- (a) The Governing Council
- (b) The Administrative Council

(c) The Pre-Trial Judge, the Trial Panel, the Appeals Panel and the Judicial Panel on Sensitive Information

(e) The Lawyers Group

Article 20  
Service of Judges

All judges shall be elected as full-time members of the ITT and shall be available to serve on that basis from the commencement of their terms of office.

Article 21  
Qualifications, nomination and election of Judges

1. Subject to the provisions in paragraph 2, there shall be one judge for every member state that signs this Treaty.

(a) Each member state will submit a nomination for a prospective judge to the Governing Council.

(i) Each nomination shall be accompanied by a detailed statement specifying how the candidate fulfils the requirements set forth below.

(ii) Each nominee shall be interviewed by the Governing Council in order to determine their qualification.

(b) The Governing Council will vote on whether or not that judge is qualified or not. In order to become a member of the Tribunal the prospective judge must obtain a two thirds majority vote and meet the requirements of paragraph 4 of this article.

(c) If a member states' nomination for judge is not passed then that member state will nominate another judge until one is accepted.

2. The Presidency of Governing Council may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate and specifying the number of additional judges needed.

(a) The proposal will then be distributed to all the members of the Governing Council.

(b) A meeting of the Governing Council will convene within two months of the submission of the proposal to vote on the proposal.

(c) The proposal must pass by a simple majority of votes in the Governing Council

(d) If the proposal is passed then the Presidency of the Governing Council will randomly select the states which will appoint additional judges.

(e) If additional judges are appointed then it is up to the Governing Council, at any time thereafter, if the workload of the Tribunal justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The Governing Council will decide the number of judges that shall be progressively decreased as the terms of office of serving judges expired, until the determined necessary number has been reached. The proposal to reduce the number of judges shall be passed by a simply majority.

(i) At all times there shall be at least one Judge per member state. The Governing Council shall not reduce the number of Judges in a manner that would interfere with that rule.

### 3. Qualifications of the Judges.

(a) The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective states for appointment to that states highest judicial office.

(b) The judges shall have established competence in criminal law and procedure, and the necessary relevant experience, whether as a judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(c) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Tribunal;

(d) Every candidate for election to the Tribunal shall have an excellent knowledge of and be fluent in English.

### 4. Security Clearance

(a) Because each judge selected will be eligible to preside over the Judicial Panel on Sensitive Information each judge must receive a security clearances from each of the member states.

### 5. Judges shall hold office for a term of nine years subject to Paragraph 6 of this Article and Article 21.

6. During the initial selection of judges one third of the judges shall be selected to serve for a term of three years; one third of the judges shall be selected to serve for a term of six years; and the remainder shall be selected to serve a term of nine years.

(a) The selection of which judges will serve three years, which will serve six years and which will serve nine years will be made randomly by the Presidency of the Governing Council.

7. No judge selected to serve on the ITT is eligible to serve another term once their original term has expired subject to exceptions in article 23.

Article 22  
Judicial vacancies

1. If, for any reason, a judge cannot serve out his or her full term then the member state that nominated that judge will have to nominate a new judge to fulfill the original judge's term.

(a) The newly nominated judge will have to be accepted by the Governing Council under the procedures set forth in article 20.

2. A judge selected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is two years or less, shall be eligible to be re-nominated for a full term of nine years under article 22.

Article 23  
The Governing Council

1. Each member state shall appoint one member to serve on the Governing Council.

2. The members of the Governing Council do not have to be lawyers.

3. The members of the Governing Council shall serve terms of six years.

(a) The first group of members of the Governing Council shall be split randomly into two groups.

(i) The first group will serve three years. The second group will serve six years. Thereinafter all members will serve an entire six year term.

(b) Members of the Governing Council may be re-appointed to additional terms.

4. The Governing Council shall be in charge of the financial running of the ITT as well as any other functions conferred upon it in accordance with this Statute.

5. The Governing Council shall meet at least once every two months to ensure the ITT is operating satisfactorily. The Presidency of the Governing Council shall be full time positions. The President's offices shall be stationed in the Country that holds the seat of the court.

5. The Governing Council will determine the best manner in which to deal with member states found to be in violation of this Treaty. The Governing Council will hear testimony from representatives from the member state as to why it has failed or refused to cooperate with the Tribunal. Any consequences determined by the Governing Council must be passed by a two-thirds majority vote.

(a) Possible consequences may include but are not be limited to:

(i) Fines;

(ii) Financial Sanctions;

(a) The Governing Council may order member states to impose financial sanctions on another member state violating this Treaty.

(iii) Suspension from the ITT for a period of time determined appropriate by the Governing Council;

(iv) Expulsion from the ITT;

(b) If the member state disputes the decision of the Governing Council in this area then the member state and the President of the Governing Council shall enter into arbitration before three judges selected at random from the ITT. None of the Judges shall be from a state involved in the dispute. If the President of the Governing Council is a national of the member state disputing the consequences then the Vice-President will be in charge of the arbitration. The decisions of the three judge arbitral panel are final.

6. The Presidency of the Governing Council

(a) The Governing Council shall elect three officers to serve as the Presidency of the Governing Council.

(b) The three officers shall be:

(i) The President

(ii) The Vice-President

(iii) The Secretary

(c) The officers of the Governing Council shall be elected by a simple majority by the entire Governing Council.

(i) In the event that no candidate receives a majority of the vote then the candidate receiving the least amount of votes will be dropped from the election and another election will be held. This process will repeat until one candidate receives a simple majority of the votes.

(ii) No two members of the Presidency of the Governing Council may be from the same member state.

(d) The Presidency of the Governing Council will preside over all Governing Council meetings and will set the agenda for these meetings.

## 7. Removal

(a) The Presidency of the Governing Council may decide that any member of the Governing Council should be replaced based on violations of ITT's Code of Conduct which will be created and voted on by the initial Governing Council of the ITT.

(i) If the Presidency decides that a member should be replaced then it shall submit a report detailing the reasons for such a replacement to the entire Governing Council.

(ii) The Governing Council will then convene within two months to determine if that member should be replaced.

(iii) The Governing Council must vote by a two thirds majority to remove a member of the Governing Council.

(vi) The removed Governing Council Member's state will appoint a new Governing Council member to fill the vacancy created by this removal process.

### (b) Removal of a member of the Presidency

(i) In order to remove a member of the Presidency, a majority of the Governing council must agree that the officer should be replaced based on violations of the ITT's Code of Conduct. The majority should then submit a report to the entire membership of the council detailing the reasons for the removal.

(ii) The Governing Council will then convene within two months to determine if that member should be replaced.

(iii) The Governing Council must vote by a two thirds majority to remove a member of the Presidency of the Governing Council.

(iv) In order to fill the vacancy on the Governing Council the state representing the removed member of the Governing Council will appoint a new Governing Council Member.

(v) The Governing Council will then hold a new election to elect a member of the Governing Council to hold the Presidency office vacated by the removal process.

#### Article 24

#### The Administrative Council

1. The Administrative Council will be in charge of the day to day running of the ITT.

(a) It will coordinate the security for the ITT, for Tribunal employees, witnesses and defendants.

(b) It will hire ITT employees.

2. The Administrative Council will consist of a number of members to be determined by the Governing Council based on the Administrative Council requirements. The Governing Council may periodically adjust the number of people serving on the Administrative Council based on work requirements. Should the Governing Council reduce the number of people serving on the Administrative Council, a member shall not be removed, rather a term that has expired shall not be renewed,

(a) Member states will nominate candidates to serve on the Administrative Council.

(b) The Governing Council will evaluate, interview and elect Administrative Council members.

(i) The candidates must receive a two thirds majority vote from the Governing Council to serve on the Administrative Council.

(c) Members of the Administrative Council will serve two year terms but are eligible to be re-elected.

(c) After the establishment of the Administrative Council the officers of the Council will be selected.

(i) The Administrative Council will elect, by a simply majority, a President, a Vice-President and a Secretary who will preside over and set the agenda for Administrative Council meetings.

(d) Members of the Administrative Council will be stationed in the host state of the Tribunal. These positions will be full time jobs unless otherwise specified by the Governing Council.

### 3. Removal

(a) Removal of members of the Administrative Council can be set in motion either by Administrative Council or Governing Council members.

(b) The process for removal will follow the same procedural rules as set for under article 22 above.

(c) The Governing Council will elect a new member to the Administration Council to replace one removed.

## Article 25 Chambers

1. There will not be a judicial hierarchy in the ITT as all judges shall have equal authority.

### 2. Procedures:

#### (a) Pre-Trial decisions

(i) A pre-trial procedure will heard by one judge randomly selected by the President of the Administrative Council.

(ii) The judge's decision will not be subject to appeal.

(iii) The pre-trial judge will not be eligible to sit for that trial.

(iv) The judge presiding over pre-trial motions may not be a national of the member state bringing the charges against the defendant nor may he or she be a citizen of the defendant's state of citizenship.

#### (b) Trial Panel

(i) The trial panel will consist of three judges selected at random by the President of the Administrative Council.

(ii) The Judge with the most seniority in the ITT will serve as the Presiding Judge for that trial. If that Judge does not wish to serve as the Presiding Judge then the second most senior Judge will serve. Should that judge also not wish to serve as the Presiding Judge then the third judge will serve as the Presiding Judge.

(iii) In the event all the Judges have equal seniority then the Administrative Council President will randomly determine which judge shall serve as the Presiding Judge. The selected Judge may not refuse in this case.

(c) Appeals Panel

(i) The appeals panel will consist of three ITT Judges randomly selected by the Administrative Council President.

(ii) Judges serving on the appeals panel must not have sat either in the pre-trial nor trial proceeding for the case.

(iii) The Judge with the most seniority in the ITT will serve as the Presiding Judge for that appeals panel. If that Judge does not wish to serve as the Presiding Judge then the second most senior Judge will serve. Should that judge also not wish to serve as the Presiding Judge then the third judge will serve as the Presiding Judge.

(iv) In the event all the Judges have equal seniority then the Administrative Council President will randomly determine which judge shall serve as the Presiding Judge. The selected Judge may not refuse in this case.

(d) Judicial Panel for Sensitive Information (JPSI)

(i) JPSI will be comprised of three judges.

(ii) One judge on the JPSI will be from the member state that is arguing that its national security considerations required the non-release of certain information.

(iii) The other two judges will be randomly selected by the President of the Administrative Council. If the case is brought by a non-member state all three judges will be randomly selected and none will be a national of the non-member state.

(iv) Judges sitting on the JPSI panel shall take an oath of secrecy for each case. A judge who violates this oath will be subjected to immediate expulsion from the ITT and will be subjected to domestic charges of treason or similar crimes.

(v) The Judge with the most seniority in the ITT will serve as the Presiding Judge for that JPSI matter. If that Judge does not wish to serve as the Presiding Judge then the second most senior Judge will serve. Should that judge also not wish to serve as the Presiding Judge then the third judge will serve as the Presiding Judge.

(vi) In the event all the Judges have equal seniority then the Administrative Council President will randomly determine which judge shall serve as the Presiding Judge. The selected Judge may not refuse in this case.

(vii) Decisions by the JPSI are final and may not be appealed.

### 3. Protesting the Selection of a Judge

(a) The prosecution or the defense may protest the selection of any judge sitting on pre-trial, trial or appeals.

(b) The President of the Administrative Council will randomly select a judge to hear the reasons for protesting the selection of the judge.

(c) The decision of the judge presiding over the protestation hearing may not be appealed.

(d) The judge hearing the challenge of the selection of another judge may not be a national of the member state bringing the charges against the defendant nor can this judge have taken part in any other aspect of the present case.

(e) The judges selected to hear a matter before the JPSI may not be contested.

### 4. Excusing and disqualification of judges

(a) Any judge may request to be excused from any case.

(b) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case by the President of the Administrative Council in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Tribunal or in a related case at the national level involving the defendant.

(c) Any question as to the disqualification of a judge shall be determined through the procedure set forth in paragraph 3.

### 5. Removal

(a) A judge may be removed from office for violations of the Code of Conduct of the ITT by the Governing Council by two means:

(i) If a majority of the judges submit a report to the Governing Council; or

(ii) If a majority of the members of the Governing Council submit a report to the Governing Council;

(b) The Governing Council will convene within two weeks and will review the report and hear from the judge in question.

(c) Should the Governing Council vote by a two thirds majority to remove the judge, the member state that appointed the judge shall nominate a new judge according to the procedure set forth in Article 21.

## Article 26 The lawyers

### 1. The prosecutors

(a) A prosecutor for each case must be from one of the member states. Prosecutors will not be full time employees of the ITT.

(i) If a case is brought by a non-member state then that state may appoint its own prosecutor to try the case but the lead attorney will be from a member state.

(b) Each prosecutor, before trying his or her first case before the ITT, must be approved by the Governing Council by a simple majority vote.

(c) The prosecutor trying the case will also appear before the JPSI. Non-member state prosecutors may bring actions before the JPSI without the cooperation of a member state's attorney.

(d) The member state bringing the case before the ITT is responsible for the fees of the prosecutor. If more than one state is involved, then the fees may be divided as they determine.

### 2. The defense attorneys

(a) The ITT will have a pool of defense attorneys who will not be full time employees of the ITT.

(b) Each member state will submit to the Governing Council the names of no more than three defense attorneys eligible to try cases before the ITT.

(c) Each defense attorney, in order to try a case before the ITT, must be approved by the Governing council by a simple majority vote. The defense attorneys will serve terms of four years and are eligible to be re-nominated.

(d) A defense attorney will be randomly selected by the President of the Administrative Council to try each case.

(i) The defendant may select a particular defense attorney from a list of approved defense attorneys.

(ii) The defendant may not select a defense attorney not on the list of approved defense attorneys.

(e) The defense attorney that represents that defendant on the JPSI will not be the same defense attorney that represents that defendant in the regular trial. The JPSI defense attorney will be an attorney from the member state bringing the sensitive information before the JPSI. A non-member state may appoint a defense attorney to represent both its interests and that of the defendant before the JPSI.

### 3. Removal

(a) A prosecutor's or a defense attorney's right to appear before the ITT may be revoked in two manners:

(i) If a majority of judges submit a report to the Governing Council asking for his or her removal for behavior in violation of the Code of Conduct of the ITT; or

(ii) If a majority of the Governing Council submits a report to the Governing Council asking for his or her removal for behavior in violation of the Code of Conduct of the ITT;

(iii) Once that report is received by the Governing Council it will convene within two months, review the report and hear from the lawyer in question.

(iv) A two thirds majority vote is needed to remove a prosecutor or a defense attorney he Governing Council.

4. The ITT shall provide both the defense and the prosecution with the infrastructure required for maximum job performance.

### Article 27 Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the lawyers, the members of the Governing Council, the members of the Administrative Council and all staff members shall each make a solemn undertaking to exercise his or her respective functions impartially and conscientiously.

### Article 28 Privileges and Immunities

1. The ITT shall enjoy in the territory of each member state such privileges and immunities necessary for fulfillment of its purposes.
2. The judges, lawyers, members of the Governing Council, members of the Administrative Council and staff shall enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiration of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.
3. The judges, lawyers, experts, witnesses or any other person required to be present at the seat of the Tribunal shall be accorded such treatment as is necessary for the proper functioning of the Tribunal, in accordance with the agreement on the privileges and immunities of the Tribunal.

#### Article 29

##### Salaries, allowances and expenses

The judges, defense attorneys, members of the Governing Council, members of the Administrative Council and the staff shall receive such salaries, allowances and expenses as may be decided upon by the Governing Council. These salaries and allowances shall not be reduced during their terms of office. The salary of prosecutors shall be paid by the member state(s) trying the case.

#### Article 30

##### Official and working languages

1. The official languages of the Tribunal shall be English and the official language of every member state. All Tribunal decisions shall be published in the official languages.

(a) The Governing Council may adjust the official languages of the court by a simple majority vote.

2. The working language of the Court shall be English.

(a) At the request of any party to a proceeding, the Tribunal shall authorize a language other than English to be used by such a party or state, provided that the Tribunal considers such authorization justified.

4. The Tribunal shall provide the best translators available for each defendant so that the defendant can completely understand the proceedings and so that the Tribunal can completely understand the defendant.

Article 31  
Rules of Procedure and Evidence

1. The ITT will not be bound by any member states' evidence rules.

3. General Provisions relating to evidence

(a) A Panel shall have the authority to consider all evidence submitted in order to determine its relevance or admissibility in accordance with this article.

(i) Evidence obtained by means of a violation of Article 34 or internationally recognized humanitarian rights shall not be admissible.

(ii) All evidence shall be stored in facilities provided by the ITT administered by the Administrative Council which will be responsible for preserving and protecting the evidence.

(b) Hearsay is admissible evidence.

(c) Character issues of the defendant and witnesses are admissible evidence.

(i) Hearsay or character issues may not be the determining factor for the Judges deciding the case. The Judges should be skeptical of both hearsay and character issues being presented and have the discretion to ignore the testimony, limit the amount of hearsay or character issue testimony or not allow it in specific cases.

4. Relevance or admissibility of evidence

(a) An issue relating to relevance or admissibility must be raised by the prosecutor or the defense when the evidence was first submitted.

(b) A Chamber shall give reasons in writing for any rulings it makes on evidentiary matters.

(c) Evidence ruled irrelevant or inadmissible shall not be considered by the Panel.

5. Solemn Undertaking

(a) Except as described in paragraph b, every witness shall make the following solemn undertaking before testifying:

“I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.”

(b) A person declared a minor under the rules of this statute or a person whose judgment has been impaired and who, in the opinion of the Panel, does not understand

the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Panel considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.

## 6. Testimony

(a) A Panel may allow a witness to give oral testimony before the Panel by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defense and by the Panel itself, at the time that the witness testifies.

(b) A Panel may allow a witness to give testimony via affidavit when necessary. The Judges, the Prosecutor and the defense will be allowed to submit questions to the witness when possible.

## 7. Agreements as to evidence

The Prosecutor and the defense may agree not to contest a fact alleged in the charges. However, if the Panel is of the opinion that a more complete presentation of the alleged fact is required, then the Tribunal may refuse to accept the fact as alleged.

## 8. Privileged communications and information

(a) Communications between a defendant and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless:

(i) The defendant consents in writing to such a disclosure; or

(ii) The person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosing; or

(iii) The information alerts the legal counsel of an impending threat to a third party. If disclosing the information would save that person(s) from harm then disclosure is required with or without consent of the defendant.

## 9. Self-incrimination by a witness

(a) A witness may object to making any self-incriminating statement. If an issue of self-incrimination arises in the course of the proceedings, the Tribunal shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice.

(i) If the Tribunal requires a witness to answer a question after the witness has objected to answering the question, it will assure the witness that the answer will not

be used either directly or indirectly against him or her in any subsequent prosecution by the ITT.

(b) In determining whether to require the witness to answer, the Tribunal shall consider:

(i) The importance of the anticipated evidence;

(ii) Whether the witness would be providing unique evidence;

(iii) The nature of the possible incrimination, if known; and

(iv) The sufficiency of the protections for the witness, in the particular circumstances.

(c) If the Tribunal determines that it would not be appropriate to provide an assurance to the witness then it shall not require the witness to answer the question. If the Tribunal determines not to require the witness to answer, it may still continue the questioning of the witness on other matters.

(d) If the Tribunal does give the witness the assurance that his or her answers will not be used either directly or indirectly against that person in any subsequent prosecution by the ITT then the Tribunal shall:

(i) Order that the evidence of the witness be given in camera;

(ii) Order that the identity of the witness and the content of the evidence given not be disclosed.

(iii) Specifically advise the Governing Council, the accused, the defense council, and any ITT staff present of the consequences of the breach.

(iv) Order the sealing of any record of the proceedings; and

(v) Use protective measures with respect to any decision of the Tribunal to ensure that the identity of the witness and the content of the evidence given are not disclosed.

(e) The defense council or the witness may advise the prosecutor or the Tribunal that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Tribunal may take the measures outlined in this section.

#### 10. Incrimination by family members

(a) A witness appearing before the Tribunal, who is a spouse, child or parent of an accused person, shall not be required by the Tribunal to make any statement that might

tend to incriminate the accused. However, the witness may choose to make such a statement.

## 11. Inspection of material

(a) The Defense, the Prosecution and the Judge(s) hearing the case all have the right to inspect any books, documents, photographs and other tangible objects the Prosecution or Defense possess intended for use as evidence at the trial.

(b) The Defense or the Prosecution must submit requests for discovery and allow reasonable time for the other side to comply.

(c) If either side finds a request for discovery as over-burdensome or unnecessary it may ask the Judge(s) to deny the request.

(i) The Judge(s) will ask each side to submit briefs addressing the relevance of the request.

(d) If either side asks for any information that a member state believes threatens its national security the request will be sent to JPSI to decide what information should be kept secret.

## 12. Disclosure

(a) The Defense shall notify the Prosecutor in writing of its intent to:

(i) Raise the existence of an alibi, in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged act and the names of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; or

(ii) Raise a ground for denying the responsibility for the act of international terrorism in which case the notification shall specify the names of witnesses and any other evidence upon which the accused intends to rely to establish the grounds.

(b) The prosecutor shall provide the defense with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defense.

(c) The Prosecutor shall subsequently advise the defense of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

(d) The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.

(e) The Prosecutor shall, subject to the restrictions on disclosure as provided for in this Treaty, permit the defense to inspect any books, documents, photographs, and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defense or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

(f) The defense shall permit the Prosecutor to inspect any books, documents, photographs and other tangible objects in the possession or control of the defense, which are intended for use by the defense as evidence for the purposes of the trial.

(g) This rule does not prevent a Panel from ordering disclosure of any other evidence.

### 13. Time limits

(a) The Tribunal shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defense and the victims when setting any time limits on the trial.

(b) Taking into account the rights of the accused, all those participating in the proceedings to whom any order is directed shall endeavor to act as expeditiously as possible, within the time limit ordered by the Tribunal.

### 14. Judges' right to investigate

(a) The Judge(s) hearing the case have the right to question a witness before, during or after a trial in any manner feasible determined by that Judge.

(b) The Judge(s) reserve the right to request any evidence before the Trial in order to conduct further investigation into such evidence. Both the defense attorney and the prosecutor must abide by this request.

15. The defense shall have the right to be the last to examine a witness.

### 16. Closure

(a) The Presiding Judge shall declare when the submission of new evidence shall not be permitted. If new evidence later becomes available then the Presiding Judge may decide to accept that evidence if it is likely to significantly impact the case.

(b) The Presiding Judge shall invite the Prosecutor and the Defense to make their closing statements. The Defense shall always have the opportunity to present closing arguments last.

## PART 5. INVESTIGATION AND PROSECUTION

### Article 32

#### Authority over the Accused Person

1. The ITT has no authority over an accused international terrorist until he or she is in the custody of the Tribunal. A person is considered to be in the custody of the ITT once the President of the Administrative Council has signed a detention order for that person.
2. A signed order will signify that the ITT has taken custody of the suspected international terrorist and that the member state that brought the accused to the ITT no longer has any responsibility for that person.
3. Until the accused international terrorist is in the custody of the ITT the laws of the state which has him or her in custody apply.
4. Once a member state arrests a suspected international terrorist the state shall report the arrest to the ITT within 48 hours to the Administration Council. This report will be confidential.
5. Once a report is submitted to the ITT the member state will then have seven days to turn the suspected international terrorist over to the custody of the ITT.
  - (a) If the member state believes it needs additional time to transfer the suspect into the custody of the ITT then it may submit a request, within the seven day period, to the ITT for additional time.
  - (b) At that point a pre-trial judge will be selected and will decide whether or not to grant the request.
    - (i) If the pre-trial judge decides to grant the request, the transfer will take place no more than 14 days from the day the suspect was originally put in custody by the member state. If the judge refuses to allow additional time then the member state must transfer the suspect to the ITT at the end of seven days from the time the arrest was reported to the ITT. If the member state refuses to comply then that member state will be declared to be in violation of the Treaty and subject to consequences detailed in Article 22.
    - (ii) While the suspect is detained by the member state he or she shall be treated in a manner prescribed by domestic and international legal standards. Once the ITT accepts the custody of the suspect he or she will undergo a medical examination to determine potential mistreatment.

(iii) If it comes to the attention of the Administrative Council that a suspect has possibly been mistreated by a member state in violation of the UN Convention Against Torture the Administrative Council will bring this to the attention of a Pre-Trial Judge in order to determine whether or not any mistreatment took place. If the Pre-Trial Judge determines that the suspect was mistreated then that information will not be allowed to be admitted to the Trial Panel. Additionally, the Pre-Trial Judge shall report any member state found to have mistreated a prisoner to the Governing Council. The Governing Council will then consider the issue and determine whether or not to enforce consequences as discussed in Paragraph 5 of Article 23.

6. If a non-member state refers a suspected international terrorist to the ITT then that suspect must be transferred to the custody of the ITT within 48 hours of the referral. If that does not occur then the ITT will refuse to accept the case. The provisions of paragraph 4 also apply to suspects being transferred to the ITT by non-member states.

7. A representative of the member state that transferred a suspect will be allowed to have access to the suspect in order to conduct interrogations. However, the interrogations will be strictly monitored by the Administrative Council and the suspect will be treated in accordance with the UN Convention Against Torture.

(a) Once the accused international terrorist is assigned a defense attorney he or she may request that attorney to be present at all interrogations. If a request is made then the attorney shall be present at all interrogations.

### Article 33

#### Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor will be appointed by the member state bringing the case before the ITT. The Prosecutor must be approved by the ITT to try the case.

(a) The provisions of this article only apply once the suspect has been turned over to the custody of the ITT.

2. In order to establish the truth, the Prosecution may extend the investigation to cover all facts and evidence relevant to an assessment of whether there is responsibility for an act of international terrorism under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(a) The Prosecutor shall take appropriate measures to ensure the effective investigation and prosecution of acts of international terrorism within the jurisdiction of the Tribunal, and in doing so, respect the interests and personal circumstances of victims and witnesses and take into account the nature of the crime and fully respect the rights of persons arising under this Statute.

3. The Prosecutor may conduct investigations on the territory of a state:
  - (a) In accordance with the provisions of Part 9 of this Treaty; or
  - (b) As authorized by Article 33.
4. The Prosecutor may:
  - (a) Collect and examine evidence;
  - (b) Request the presence of and question persons being investigated, victims and witnesses;
  - (c) Seek the cooperation of any member state, non-member state or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;
  - (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a state, intergovernmental organization or person;
  - (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of information consents; and
  - (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.
  - (g) Request the Governing Council to force the compliance of a non-cooperating member state by threatening possible consequences outlined in Paragraph 5 of Article 23.
  - (i) The Prosecutor shall submit a brief detailing its complaints to the Presidency of the Governing Council. If at least two members of the Presidency decide it is a valid complaint then the complaint will be submitted to the entire Governing Council. The Governing Council will then, by a majority vote, decide whether to force the member state to comply. If the Governing Council asks the member state to comply and the member state still does not cooperate then that state will be declared to be in violation of this Treaty and be subject to the consequences detailed in Paragraph 5 of Article 23.

#### Article 34

#### Rights of persons during an investigation

1. The Prosecutor will have no powers until the accused international terrorist is in the custody of the ITT or until the state accused of conducting acts of international terrorism has been brought before the ITT. Until that time the member state's laws will govern.

2. Once the suspect is in the custody of the ITT that person has the following rights:

(a) That person shall not be compelled to incriminate him or herself or to confess to guilt;

(b) That person shall be treated in a manner complying with the UN Convention Against Torture.

(c) That person shall, if questioned in a language other than a language that person fully understands and speaks, have, free of any cost, the assistance of a highly competent interpreter and such translations as are necessary to meet the requirements of fairness.

(d) That person has the right to be informed, prior to being questioned and immediately after being transferred to the custody of the ITT, that there are grounds to believe that he or she has committed a crime within the jurisdiction of the Tribunal;

(e) That person has the right to remain silent which shall not be used against him or her;

(f) A record shall be made of formal statements by any person questioned in connection with an investigation or with proceedings. The record shall be signed by the person who records and conducts the question and by the person who is questioned and his or her counsel, if present, and, where applicable, the prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during the questioning. It shall also be noted when someone has not signed the record as well as the reason thereof. This record shall be available to the Judges, the defense and the prosecution unless the JPSI determines it should be kept secret.

(g) The person questioned shall be informed, in a language he or she fully understands and speaks, that the questioning is to be audio- or video-recorded, and that the person concerned may object if he or she so wishes. The fact that this information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be audio- or video-recorded, the procedure set forth in Section 33(2)(f) shall be followed.

(h) A waiver to the right to be questioned in the presence of counsel shall be recorded in writing and, if possible, be audio- or video recorded.

(i) In the event of an interruption in the course of questioning, the reason for the interruption and the time of the interruption shall be recorded before the audio- or video-recording ends as well as the time of resumption of the questioning.

(j) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted.

(k) The recording shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, on of the original recorded tapes.

(l) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the prosecutor and the person questioned and the counsel, if present.

(m) A person may be questioned without the questioning being audio- or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing and the procedure in Section 33(2)(f) shall be followed.

(n) A person has the right to have legal assistance provided by the ITT. The defendant will be allowed to select a defense attorney from the list of available lawyers. However, the defendant shall not be allowed to use a defense attorney not on the approved list.

(o) That person may represent themselves before the ITT.

(i) Self-representation will be discouraged and the possible consequences of the decision to represent themselves will be explained to the defendant before the final decision is made.

(ii) Once the defendant asks to represent themselves the Tribunal will appoint a defense attorney to observe the process. The attorney will be available to explain legal issues to the defendant when asked by the Tribunal or the defendant to do so. The attorney shall be prepared to take over the defense if the defendant chooses to no longer represent him or herself or if the Tribunal rules that the defendant no longer can represent him or herself.

(iii) The Tribunal will no longer allow the defendant to represent him or herself if the Tribunal determines that the defendant is intentionally attempting to prolong the trial or if the defendant violates the basic rules of behavior before the Tribunal (i.e. is disruptive, combative or violent). This decision may not be appealed

### Article 35

#### Functions and powers of the Pre-Trial Judge

1. Before the defendant is brought before the Pre-Trial Judge the prosecutor shall provide the defendant with the relevant information to the investigation.

(a) However, any information that the prosecutor plans to bring before JPSI will not be released to the defendant.

2. The Pre-Trial Judge will work with the Administrative Council in order to ensure the protection and privacy of victims and witnesses, the preservation of evidence and the protection of persons who have been arrested or appeared in response to a summons.

### Article 36

#### Initial proceedings before the Tribunal

1. The Pre-Trial Judge shall immediately satisfy him or herself that the defendant has been informed of the acts of international terrorism which he or she is alleged to have committed, and of his or her rights under the Statute.

2. The Pre-Trial Judge shall hold a ratification hearing to approve the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her counsel. This hearing shall be held no later than two weeks after the President of the Administrative Council signs the detention order for the suspected international terrorist.

3. Before the ratification hearing, the Prosecutor may continue the investigation and may amend or withdraw any charges. The person shall be given reasonable notice before the hearing of any amendment to or withdrawal of charges. In case of a withdrawal of charges, the Prosecutor shall notify the Pre-Trial Judge of the reasons for the withdrawal.

4. The defense has no right to object to the charges or bring evidence before the Pre-Trial Judge.

5. The Pre-Trial Judge shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed the acts of international terrorism charged.

(a) If the Prosecutor has information that he or she plans to present to the JPSI then the Pre-Trial Judge will wait until the JPSI rules on that information before considering it.

(b) Once the evidence from JPSI is presented to the Pre-Trial Judge or it is determined that there will be no evidence from JPSI the Pre-Trial Judge will then make his or her final determination.

6. Once the Pre-Trial Judge makes his or her final determination he or she shall:

(a) Ratify those charges in relation to which he or she has determined that there is sufficient evidence, and commit the defendant to a trial;

(b) Decline to ratify those charges in relation to which he or she has determined that there is insufficient evidence in which case the defendant will be released;

(c) Adjourn the hearing and request the Prosecutor to consider:

(i) Providing further evidence or conducting further investigation with respect to a particular charge.

(ii) The defendant will remain in the custody of the ITT until the Judge decides to either ratify or not ratify the charges.

7. After the charges are ratified and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Judge and after notice to the defendant, amend the charges. If the Prosecutor seeks to add additional charges a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

## PART 6. THE TRIAL

### Article 37

#### Trial in the presence of the defendant

1. The defendant shall be present during the trial.

2. If the defendant disrupts the trial, the Trial Chamber may remove the defendant and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only at the discretion of the Judges in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

### Article 38

#### Functions and powers of the Trial Chamber

1. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the defendant and due regard for the prosecution of victims and witnesses.

2. Upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder or severance in respect of charges against more than one accused.

3. Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of states as provided in this Statute.

(a) The ITT shall require the member states to order any of its nationals that are called on to be witnesses, to appear before the Tribunal.

(b) The ITT shall attempt, through diplomatic channels, to request a non-member state to order any of its nationals needed as witnesses to appear before the Tribunal. If this is not possible then the trial will go forward without that witness.

4. The Tribunal, with coordination of the Administrative Council, will provide for the protection of the defendant, witnesses and victims.

5. The trial shall be held in public. The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 42, or to protect confidential or sensitive information to be presented during the trial.

(a) JPSI proceedings shall not be open to the public.

6. At the commencement of the trial, the Trial Chamber shall read to the defendant the charges previously confirmed by the Pre-Trial Judge in English and the defendant's native language. The Trial Chamber shall satisfy itself that the defendant understands the nature of the charges. It shall afford him or her the opportunity to make an admission of guilt in accordance with article 39 or to plead not guilty.

7. The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Administrative Council.

#### Article 39

#### Proceedings on an admission of guilt

1. Where the defendant makes an admission of guilt pursuant to article 28, the Trial Chamber shall determine whether:

(a) The defendant understands the nature and consequences of the admission of guilt.

(b) The admission is voluntarily made by the defendant; and

(c) The admission of guilt is supported by the facts of the case that the Judge(s) have before them.

2. Where the Trial Chamber is satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as all the essential facts that are required to prove the crime to which the admission of guilt relates, and may convict the defendant of that act of international terrorism.

3. Where the Trial Chamber is not satisfied that the matters referred to in paragraph 1 are established, it shall consider the admission of guilt as not having been made; in which case it shall order that the trial be continued under the ordinary trial procedures provided by this Statute and may remit the case to another Trial Chamber.

#### Article 40

##### Presumption of innocence

1. A defendant shall be presumed innocent until proven guilty.
2. The burden is on the Prosecutor to prove the defendant's guilt.
3. The Tribunal must be convinced of the guilt of the defendant beyond a reasonable doubt.

#### Article 41

##### Rights of the defendant

1. In the determination of any charge, the defendant shall be entitled to a public hearing, possibly limited by the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees:

(a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;

(b) To have adequate time and facilities for the preparation of the defense and to communicate freely with the defense counsel in confidence;

(i) The right to confidence is not absolute. The ITT shall monitor all communications between the defendant and the defense counsel. This monitoring will be conducted by the Administrative Council via electronic video and audio surveillance. The communication between the defendant and the defense counsel shall be related to the Judges. However, if the President of the Administrative Council determines that any information could prevent a future terrorist act that information will be communicated to the appropriate law enforcement bodies.

(ii) If it is determined that a defense attorney or any other employee of the ITT has aided the defendant in communicating with persons outside of prison then that person shall immediately be permanently expelled from working for or with the ITT. Additionally, that person may be brought up on charges of international terrorism as defined by this Treaty.

(c) To be tried without undue delay;

(d) Subject to other provisions in this Statute, to be present at the trial, to conduct the defense in person or through legal assistance, to be informed, if the defendant does not have legal assistance, of this right and to have legal assistance assigned by the Tribunal in any case where the interests of justice so require, and without payment.

(e) To examine, or have examined, the witnesses against him or her and to examine or have examined the witnesses on his or her behalf under the same conditions as witnesses against him or her. The defendant shall also be entitled to raise defenses and to present other evidence admissible under this Statute.

(i) This right does not apply to witnesses that testify before the JPSI.

(f) To have provided, free of any cost, the assistance of a highly competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Tribunal are not in a language which the defendant fully understands or speaks.

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence.

2. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defense evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the defendant, or to mitigate the guilt of the defendant, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Tribunal shall decide.

(a) Any information presented to the JPSI that shows or tends to show the innocence of the defendant or mitigates the guilt of the defendant will not be presented to the defense. However, it will be presented to the Trial Chamber to be taken into consideration. If the information is convincing, the JPSI shall have the authority to dismiss the charges against the defendant.

3. Personal instruments of restraint shall not be used except as a precaution against escape, for the protection of the person in the custody of the Tribunal and others or for other security reasons, and shall be removed when the person appears before the Tribunal.

## Article 42

### Participation and Protection of Victims and Witnesses

1. The Tribunal, and specifically the Administrative Council, shall take appropriate measures to protect the safety, physical and psychological well being, dignity and privacy of victims and witnesses.
2. The ITT may, to protect victims and witnesses or a defendant, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means including via affidavit.

## Article 43

### Offenses against the administration of justice

1. The Tribunal shall have jurisdiction over the following offenses against the administration of justice when committed intentionally:
  - (a) Giving false testimony;
  - (b) Presenting evidence that the party knows is false or forged;
  - (c) 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 influencing an official of the Tribunal 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 Tribunal on account of duties performed by that or another official;
  - (f) Soliciting or accepting a bribe as an official of the Tribunal in connection with his or her official duties.
2. Each state shall extend its criminal law penalizing offenses against the integrity of its own investigative or judicial process to offenses against the administration of justice referred to in this article, committed on its territory, or by one of its nationals.
3. Upon request by the Tribunal, whenever it deems it proper, the member state shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

#### Article 44

#### Sanctions for misconduct before the Tribunal

The Tribunal may sanction any person who disrupts the proceedings or refuses to comply with its directions by fining or temporarily or permanently removing him or her from the courtroom.

#### Article 45

#### Requirements for the decision

1. All three of the trial judges shall be present at each stage of the trial and throughout their deliberations. The Governing Council may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.
2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Tribunal may base its decision only on evidence submitted and discussed before it at the trial or evidence submitted to it by the JPSI.
3. The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges.
4. The deliberations of the Trial Chamber shall remain secret.
5. The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary therefore shall be delivered in open court.
  - (a) Any discussion of information that may be deemed sensitive to a member state's national security shall be censored from the public version of the Trial Chamber's decision. The censored version will be given to the prosecutor but neither to the defendant nor the defendant's counsel.
  - (b) The Trial Chamber shall not discuss any evidence obtained from JPSI in its decision.

Article 46  
Reparations to victims

The ITT shall not have the authority to award reparations to victims.

Article 47  
Sentencing

1. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take into account the evidence presented during the trial and any possible information presented before the JPSI.
2. The sentence shall be pronounced in public and, whenever possible, in the presence of the defendant and his or her lawyer.

Article 48  
Applicable penalties

1. The Tribunal may impose one of the following penalties on a convicted person:
  - (a) Imprisonment for a specified number of years to be determined by the Trial Judges;
  - (b) A term of life imprisonment when justified by the extreme gravity of the act and the individual circumstances of the convicted person.
2. The ITT shall not have the authority to impose the death penalty.
3. In most circumstances the actual incarceration shall take place in the member state that brought the case against the defendant.
4. In the case of the most dangerous international terrorists, as determined by the judges, the defendant shall be imprisoned in the ITT Prison.

Article 49  
Determination of the sentence

1. In determining the sentence, the Tribunal shall take into account such factors as the gravity of the act of international terrorism and the individual circumstances of the convicted person.

2. In imposing a sentence of imprisonment, the Tribunal shall deduct the time, if any, previously spent in detention in accordance with an order of the Tribunal. The Tribunal may deduct any time otherwise spent in detention in connection with conduct underlying the crime.

3. When a person has been convicted of more than one act of international terrorism, the Tribunal shall pronounce a sentence for each crime specifying the total period of imprisonment. This period shall be no less than the highest individual sentence pronounced and shall not exceed 30 years imprisonment or a sentence of life imprisonment.

## PART 7. APPEAL AND REVISION

### Article 50

#### Appeal against decision of acquittal or conviction or against sentence

1. A decision under article 47 may be appealed as follows:

(a) The Prosecutor, the convicted defendant or the defense attorney may make an appeal on any of the following grounds:

- (i) Procedural error,
- (ii) Error of law,
- (iii) New information becomes available;

3. The Appeals Chamber shall not re-hear a case. It will only hear cases to determine if the Trial Chamber made a procedural error or an error of law or if new information becomes available.

### Article 51

#### Proceedings on appeal

1. If the Appeals Chamber finds that the decision or sentence appealed from was materially affected by error of law or procedural error, or if it determines that new information has become available that may have altered the outcome of the case it may:

- (a) Reverse or amend the decision or sentence; or
- (b) Order a new trial before a different Trial Chamber.

2. The judgment of Appeals Chamber shall be made by a majority and shall be delivered in open court. The judgment shall state the reasons on which it is based. When there is no unanimity, the judgment of the Appeals Chamber shall include the views of the majority and the minority.

#### Article 52

#### Revision of conviction or sentence

1. The defendant or his or her attorney may apply to the Appeals Chamber to revise the final judgment of conviction or sentence on the grounds that:

(a) New evidence has been discovered that:

(i) Was not available at the time of trial, and such unavailability was not wholly or partially attributable to the party making application; and

(ii) Is sufficiently important that had it been proved at trial it would have likely resulted in a different verdict.

(b) It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;

(c) One or more of the judges who participated in conviction or confirmation of the charges has committed, in that case, an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office.

(d) If classified information brought before JPSI was used by the Trial Chamber as a cause to convict the defendant then the ITT shall require the member state that classified that information to alert the ITT if that information is ever declassified.

(i) If that information is declassified then the Tribunal shall inform the defendant of the declassified information and that it was used to convict him or her.

(ii) The defendant will then be given the option to appeal his or her conviction and attempt to defend him or herself against that information.

(iii) The Appeals Chamber shall reject the application if it determines that the declassified information would not lead an overturned conviction. If the Appeals Chambers determines that the application is meritorious and that the conviction could be overturned, it may, either reconvene the original Trial Chamber or constitute a new Trial Chamber.

(e) The convicted defendant or the state to which he or she is a citizen may petition the Governing Council to recommend the Appeals Panel to reconsider the length of the determined imprisonment.

(i) The Governing Council shall accept the petitions and will subsequently hear from a representative from the convicted international terrorist or the state submitting the request.

(ii) The Governing Council will then hold a vote to determine whether or not the sentence was excessive. If two thirds of the Governing Council members vote that the sentence was excessive then the Governing Council will refer the case to the Appeals Chamber.

(iii) The decision of the Governing Council is final.

(f) Decisions of the Appeals Chamber are final.

## PART 8. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

### Article 53

#### General obligation to cooperate

Member states shall, in accordance with the provisions of this Statute, cooperate fully with the Tribunal in its investigation and prosecution of acts of international terrorism within the jurisdiction of the Tribunal. Failure to do so may result in the Governing Council initiating proceedings to determine consequences discussed in Paragraph 5 of Article 23.

### Article 54

#### Requests for cooperation: general provisions

1. The Tribunal shall have the authority to make requests to member states for cooperation in the investigation and trying of cases. The requests shall be transmitted through the diplomatic channel or any other appropriate channel as may be designated by each member state upon ratification, acceptance, approval or accession.

(a) If the member state refuses cooperation then it shall be referred to the Governing Council for violating the terms of this Treaty. The Governing Council may decide to initiate possible consequences as discussed in Paragraph 5 of Article 23.

2. The requested state shall keep confidential a request for cooperation and any documents supporting the request, except to the extent that the disclosure is necessary for execution of the request.

3. The Tribunal may invite any non-member state to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such state or any other appropriate basis.

(a) Where a non-member state, which has entered into an ad hoc arrangement or an agreement with the Tribunal, fails to cooperate with requests pursuant to any such arrangement or agreement, the Tribunal shall so inform the Governing Council. If the Governing Council determines that the non-member state has violated an arrangement or agreement with the Tribunal then it may as member states to impose sanctions on that non-member state or it may refuse to allow that non-member state to bring cases before the ITT for a specific amount of time deemed appropriate by the Governing Council.

4. The Tribunal may ask any intergovernmental or international organization to provide information or documents. The Tribunal may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.

(a) If any of these parties refuse to cooperate with the arrangements or agreements then the Governing Council will take the appropriate actions according to the relevant standards of international law on such violations.

#### Article 55

##### Other forms of cooperation

1. Member states shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Tribunal to provide the following assistance in relation to investigations or prosecutions:

- (a) The identification and whereabouts of persons or the location of items;
- (b) The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Tribunal;
- (c) The questioning of any person being investigated or prosecuted;
- (d) The service of documents, including judicial documents;
- (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Tribunal;
- (f) The temporary transfer of persons as provided in paragraph 4;
- (g) The examination of places or sites;

- (h) The execution of searches and seizures;
  - (i) The providing of records and documents, including official records and documents except information determined as sensitive by JPSI;
  - (j) The protection of victims and witnesses and the preservation of evidence;
  - (k) Any other type of assistance which is not prohibited by the law of the member state, with a view to facilitating the investigation and prosecution of acts of international terrorism within the jurisdiction of the Tribunal.
2. The Tribunal shall have the authority to provide an assurance to a witness or an expert appearing before the Tribunal that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Tribunal in respect of any act or omission that preceded the departure of that person from the requested state.
3. A member state may deny a request for assistance, in whole or in part, only if the request concerns the production of any documents or disclosure of evidence which relates to its national security. If the request is denied then the issue will be submitted to the JPSI.
4. The Tribunal may request the temporary transfer of a person in the custody of a state for purposes of identification or for obtaining testimony or other assistance. The person may be transferred to the custody of the ITT if the following conditions are fulfilled:
- (a) The person freely gives his or her informed consent to the transfer; or
  - (b) The requested state agrees to the transfer, subject to such conditions as that state and the Tribunal may agree.

## PART 9. ENFORCEMENT

### Article 56

#### Role of states in enforcement of sentences and imprisonment

- 1) The Trial Chamber with the advice of the Governing Council shall determine where a convicted international terrorist shall be imprisoned.
- (a) In general, those convicted shall be imprisoned in the member state which brought the charges against the international terrorist.

(i) If more than one member state participated in the trial of the convicted international terrorist then it is up to the member states to determine which state the convicted individual will be imprisoned in.

(b) For the most dangerous international terrorists and for the gravest acts of international terrorism the convict will be imprisoned in the Host state in the ITT Prison which shall be run by the Administrative Council and funded by the Governing Council.

2) International terrorists that were sent to the ITT by a non-member state will be imprisoned in one of the member states. The Governing Council will ask for a member state to voluntarily take on the convict. If no member state volunteers then the Governing Council will randomly select a member state to imprison the convict.

#### Article 57

##### Enforcement of the sentence

1. The Tribunal alone shall have the right to decide any application for parole.

(a) A member state holding the convicted international terrorist shall not impede the making of any such application by a sentenced person.

(b) Once an application for Parole is received by the President of the Governing Council the Governing Council shall send the application to a three Judge Appeals Panel to determine the matter.

(c) Two of the three Judges on the Appeals Panel must agree to the Parole before it is granted. The terms of the parole are left to the discretion of the Appeals Panel.

(d) The decisions of the Appeals Panel on this issue are final.

(e) Convicted International Terrorists may submit an application for parole to the Governing Council once every two years. However, the Trial Panel may order that a sentence will be without the opportunity for parole or may alternative state a certain period of time that must pass before a convicted international terrorist may ask for parole after the start of his or her original sentence.

2. No member state can modify the sentence proscribed by the ITT.

#### Article 58

##### Supervision of enforcement and conditions of imprisonment

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Tribunal and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

2. The conditions of imprisonment shall be governed by the law of the state of enforcement (the state where the convicted international terrorist will be imprisoned) and shall be consistent with widely accepted international treaty standards governing treatment of prisoners specifically including the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; in no case shall such conditions be more or less favorable than those available to prisoners convicted of similar offense in the state of enforcement.

3. Standards in the ITT Prison shall meet with widely accepted international treaty standards and the laws of the Host state. However, there will be limits on the communication allowed between the convicted international terrorists and the outside world. Because of the risk of communicating with their organizations, the prisoners will only be allowed communication in very limited situations and it will be completely monitored. The Administrative Council will make the specific determinations.

(a) Once a prisoner is in the custody of a member state then that state shall be responsible for monitoring the communication of the prisoner and the outside world. It is up to the discretion of the member state to determine what level of communication and what level of monitoring is appropriate.

4. Communications between a sentenced person and the Tribunal shall be unimpeded and confidential.

#### Article 59

##### Transfer of the person upon completion of sentence

1. Following the completion of the sentence, a person who is not a national of the state of enforcement (the state where the convicted international terrorist was jailed) may, in accordance with the law of the state of enforcement, be transferred to a state which is obliged to receive him or her under international law, or to another state which agrees to receive him or her, taking into account any wishes of the person to be transferred to that state, unless the state of enforcement authorizes the person to remain in its territory.

(a) No member state shall transfer a person to a state which is classified as a state Sponsor of International Terrorism by the Governing Council.

2. If no state bears the costs arising out of transferring the person to another state pursuant to paragraph 1, such costs shall be borne by the Tribunal.

## PART 10. FINANCING

#### Article 60

##### Financial Regulations

Except as otherwise specifically provided, all financial matters related to the ITT shall be governed by this Statute and by the rules adopted by the Governing Council.

Article 61  
Funds of the ITT

The expenses of the ITT and of the ITT Prison shall be provided by the assessed contributions made by the member states.

Article 62  
Voluntary contributions

Without prejudice to article 65, the ITT may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Governing Council.

Article 63  
Assessment of contributions

1. The contributions of member states shall be assessed in accordance with an agreed scale of assessment. The fundamental criterion on which the scale of assessments shall be based is the capacity of countries to pay. That will be determined by considering their relative shares of total gross national product, adjusted to take into account a number of factors, including their per capita incomes.

(a) The assessed contribution will be re-evaluated every two years.

(b) At no time will one member state contribute more than 20% of the costs of the ITT.

(c) At no time will the highest contributing member state pay more than 5% more than the next highest contributing member state.

2. Fees will also be recovered for each case brought before the ITT. The Governing Council with advice from the Administrative Council shall set the fee for each case and may make adjustments for abnormally expensive or inexpensive cases.

(a) When two or more member states bring a case against a suspected international terrorist then the member states can divide the fee in any way they determine fair.

## PART 11. FINAL CLAUSES

### Article 64

#### Settlement of disputes

Any dispute between two or more member states relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Governing Council. The Governing Council may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute.

### Article 65

#### Reservations

No reservations may be made to this Statute.

### Article 66

#### Amending the Statute

1. The Governing Council may approve Amendments to this Statute.

(a) Any member state may offer an Amendment to the President of the Governing Council.

(b) Once a Proposed Amendment is received the Governing Council will convene within two weeks to debate the Proposed Amendment.

(c) After the debate is concluded, a motion to close the debate will be accepted by the President of the Governing Council and will be passed by a majority of the Members.

(d) A vote on the Proposed Amendment will then be held. Proposed Amendments must be passed by a two thirds majority.

### Article 67

#### Withdrawal

1. A member state may, by written notification addressed to the President of the Governing Council, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. A state shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Tribunal in connection with investigations and proceedings in relation to which the withdrawing state had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Tribunal prior to the date on which the withdrawal became effective.