



UNITED
NATIONS



**United Nations Diplomatic Conference
of Plenipotentiaries on the Establishment
of an International Criminal Court**

Distr.
LIMITED

A/CONF.183/C.1/WGPP/L.5/Rev.2
3 July 1998

Rome, Italy
15 June-17 July 1998

Original: ENGLISH

COMMITTEE OF THE WHOLE
Working Group on General Principles
of Criminal Law

WORKING PAPER ON ARTICLE 23, PARAGRAPHS 5 AND 6

5. Without prejudice to any individual criminal responsibility of natural persons under this Statute, 1/ the Court may also have jurisdiction over a juridical person for a crime under this Statute.

Charges may be filed by the Prosecutor 2/ against a juridical person, and the Court may render a judgement over a juridical person for the crime charged, if:

(a) The charges filed by the Prosecutor against the natural person and the juridical person allege the matters referred to in subparagraphs (b) and (c); and

(b) The natural person charged was in a position of control within the juridical person under the national law of the State where the juridical person was registered at the time the crime was committed; and

1/ This new phrase was inserted to replace former paragraph 6 of article 23 (A/CONF.183/2/Add.1): "The criminal responsibility of legal persons shall not exclude the criminal responsibility of natural persons ..."

2/ Language will have to be consistent with the eventual language in Part 5.

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(c) The crime was committed by the natural person acting on behalf of and with the explicit consent of that juridical person and in the course of its activities; and

(d) The natural person has been convicted of the crime charged.

For the purpose of this Statute, "juridical person" means a corporation whose concrete, real or dominant objective is seeking private profit or benefit, and not a State or other public body in the exercise of State authority, a public international body ³ or an organization registered, and acting under the national law of a State as a non-profit organization.

6. The proceedings ⁴ with respect to a juridical person under this article shall be in accordance with this Statute and the relevant Rules of Procedure and Evidence. The Prosecutor may file charges against the natural and juridical persons jointly or separately. The natural person and the juridical person may be jointly tried. ⁵

If convicted, the juridical person may incur the penalties referred to in article 76. ⁶ These penalties shall be enforced in accordance with the provisions of article 99. ⁷

3/ The applicable law under this Statute is defined in article 20.

4/ Footnote 45 on page 41 of A/CONF.183/2/Add.1 states: "The terms 'proceedings' covers both investigations and prosecutions."

5/ N.B. The Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia include rule 48, Joinder of accused: "Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried." United Nations document IT/32/Rev.9, 5 July 1996. Rule 82 A reads: "In joint trials, each accused shall be accorded the same rights as if he were being tried separately."

6/ Once there is final agreement on articles 76 and 99, references to these articles could be deleted.

7/ Ibid.