UNITED
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Distr. GENERAL
S/25704 3 May 1993
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<u>Introduction</u>
1 1 5 100 (1003) of 22 Behavior 1993 the Segurity
1. By paragraph 1 of resolution 808 (1993) of 22 February 1993, the Security
Council decided "that an international tribunal shall be established for the
prosecution of persons responsible for serious violations of international
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2 Purpose to the second to Company Company was requested "to
2. By paragraph 2 of the resolution, the Secretary—General was requested "to
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	7. In resolution 780 (1992) of 6 October 1992, the Security Council r	equested
-4	the Secretary-General to establish an impartial Commission of Experts t	Evamine
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	and analyse the information as requested by resolution 771 (1992), toge	ther with

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internatio	onal tribunal	is circumscri	bed in scope	and purpose:	the prosecuti
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committed	in the territ	tory of the fo	rmer Yugosla	r	1. The decisio
committed	in the territ	tory of the fo	rmer Yugosla	7:	. The decisio

	15. The Secretary-General wishes to place on record his appreciation for the
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	offered valuable suggestions and comments.
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	16. In the main body of the report which follows, the Secretary-General first examines the legal basis for the establishment of the International Tribunal
	ezamines the renat Mada to the Escapitament of the
	I Company
	foreseen in resolution 808 (1993). The Secretary-General then sets out in
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	foreseen in resolution 808 (1993). The Secretary-General then sets out in

	it would be opened for signature and	ratification. Such an approach would have
	the advantage of allowing for a deta	ailed examination and elaboration of all the
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1	issues pertaining to the establishme	ent of the international tribunal. It also
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	English Page 8
	would need to take further measures under the Charter. Furthermore, the Council has repeatedly reaffirmed that all parties in the former Yugoslavia are bound to
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	II. COMPETENCE OF THE IN	7.—
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31. The compete	ence of the International Tr	ibunal derives from the mandate se
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temporis (temporal jurisdiction), as well as the question of the concurrent

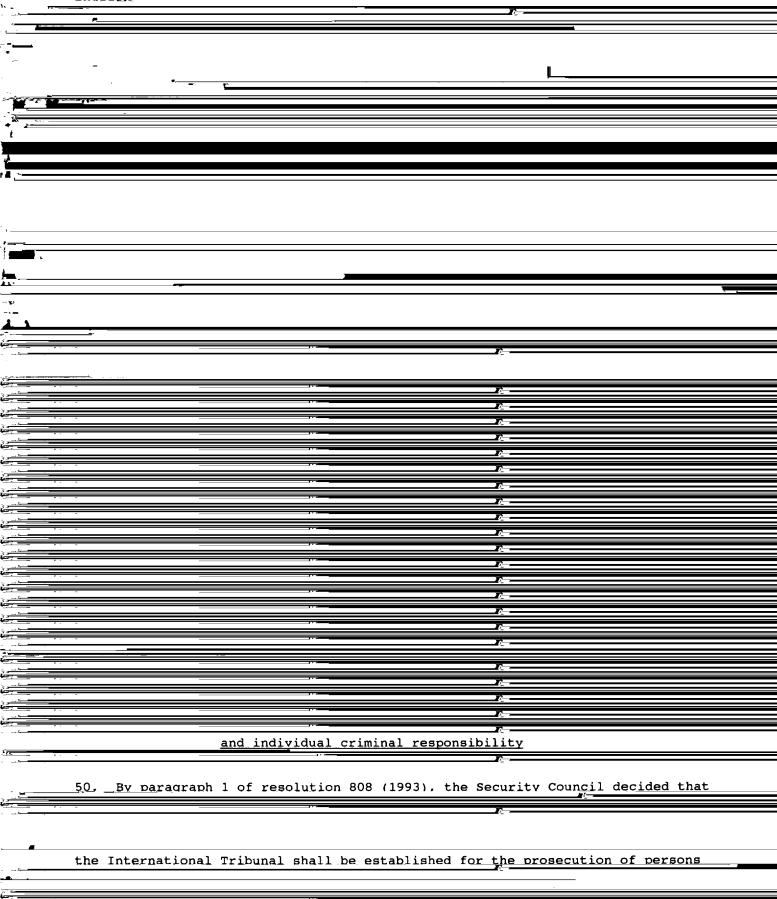
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	law. While international humanitarian law as outl	
	sufficient basis for subject-matter jurisdiction.	there is one related issue
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	which would require reference to domestic practice	, namely, penalties (see
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	Grave breaches of the 1949 Geneva Conventions	
	37. The Geneva Conventions constitute rules of in	
<b>_</b>	and provide the core of the customarv law applicab	le in international armed
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	conflicts. These Conventions regulate the conduct	of war from the humanitarian  f  f  r  r  r  r  r  r  r  r  rsons: namely, wounded and
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	perspective by protecting certain categories of pe	of war from the humanitarian  of war from the humanitarian  r  r  r  r  r  r  r  r  r  r  r  r  r
	perspective by protecting certain categories of pe	of war from the humanitarian  c  c  c  c  c  c  r  r  r  r  rsons: namelv, wounded and  c  c  c  c  c  c  c  c  c  c  c  c  c
	perspective by protecting certain categories of pe	of war from the humanitarian  c  c  c  c  c  r  r  r  r  r  rsons: namelv, wounded and  c  c  c  c  c  c  c  c  c  c  c  c  c
	perspective by protecting certain categories of pe	of war from the humanitarian  c  c  c  c  c  c  c  c  c  c  c  c  c
	perspective by protecting certain categories of pe	of war from the humanitarian  c  c  c  c  r  r  r  r  r  r  rsons: namelv, wounded and  c  c  c  c  c  c  c  c  c  c  c  c  c

of armed forces at sea: prisoners of war. and civilians in time of war.

(q) unlawful deportation or transfe	er or unlawful confinement of a
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civilian;	
(h) taking civilians as hostages.	
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Violations of the laws or customs of war	
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41. The 1907 Hague Convention (IV) Respecting	the Laws and Customs of War on
- 12. The 1907 hadas convention (1775 hearesting	1 tale name and oupcome of har on
Land and the Regulations annexed thereto compr	rise a second important area of
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	crime under internation			tried
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customarv lav	v as evidenced by the I		of Justice in its Ad	visory
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	47. Crimes against humanity were first recognized in the Charter and Judgemer
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	of the Nürnberg Tribunal, as well as in Law No. 10 of the Control Council for
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<u>C. Compe</u>	etence ratione loci (territorial jurisdiction) and
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60. Pursuant to para	agraph 1 of resolution 808 (1993), the territorial and
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temporal jurisdiction	n of the International Tribunal extends to serious
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violations of interna	ational humanitarian law to the extent that they have been
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×5	66. According to the r	orinciple of non-bis-ii	n-idem, a person shall not be trie	ea
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<del></del>	twice for the same crim	me. In the present con	ntext, given the primacy of the	
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	subsequent trial before	a national court. Ho	owever, the principle of non-bis-i	.n
	subsequent trial before	e a national court. Ho	owever. the principle of non-bis-i	n
	subsequent trial before	e a national court. Ho		n
	subsequent trial before	e a national court. Ho	owever. the principle of non-bis-i	n
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· · ·	(b) the national court proceedings were not impartial or independent,
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-	responsibility, or the case was not diligently prosecuted.
229	Å <sub>p</sub> :
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~	3. In considering the penalty to be imposed on a person convicted of
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- -	a crime under the <u>present Statute, the International Tribunal shall take</u>
<u></u>	a crime under the present statute, the international irrounal sharr take
	into account the extent to which any penalty imposed by a national court on
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the same person for the same act has already been served.

73. The corresponding article of the statute would read as follows:

### Article 12

	Composition of the Chambers
	The Chambers shall be composed of eleven independent judges, no two of
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Lis-	
: 	whom may be nationals of the same State, who shall serve as follows:
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	this minutes abold some in the America Chambor
<u> </u>	(b) Five judges shall serve in the Appeals Chamber.
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	74. The judges of the International Tribunal should be persons of high moral
· · · · · · · · · · · · · · · · · · ·	character. impartiality and integrity who possess the qualifications required in

Assembly, would appoint a person meeting the qualifications of paragraph 74 above, for the remainder of the term of office concerned.

78. The corresponding article of the statute would read as follows:

	Article 13
	Qualifications and election of judges
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	<u> </u>
<u> </u>	1. The judges shall be persons of high moral character. impartiality
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	and integrity who possess the qualifications required in their respective
	countries for appointment to the highest judicial offices. In the overall
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*. <b>.</b>	composition of the Chambers due account shall be taken of the experience of
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	the judges in criminal law. international law. including international
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humanitarian law and human rights law.

2. The judges of the International Tribunal shall be elected by the

General Assembly from a list submitted by the Security Council, in the

	4. The judges shall be elected for a term of four years. The terms
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	and conditions of service shall be those of the Judges of the International Court of justice. Thev shall be eligible for re-election.
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	79. The judges would elect a President of the International Tribunal from among
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	their mem bers who would be a member of the Appeals Chamber and would preside over the appellate proceedings.
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# Article 15



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€	Interpolational Mulburgh We are she shall not sook as species instructions
	International Tribungl, He or she shall not seek or receive instructions
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	from any Government or from any other source.
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	3. The Office of the Prosecutor shall be composed of a Prosecutor
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	The Prosecutor shall be appointed by the Security Council on
	4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral
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	4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the
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	4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the
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	4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the

#### Article 17

## The Registry

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	an order or a warrant of the International	Tribunal, be informed of the contents	
	of the indictment and taken into custody.		=
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internationally recognized standards regarding the	
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of the International Covenant on Civil and Political	require contained in article 14  al Rights. 10/  require requi

### Rights of the accused

- 1. All persons shall be equal before the International Tribunal.
- 2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the

C. Protection of victims and witnesses 108. In the light of the particular nature of the crimes committed in the former



115. The corresponding articles of the statute would read as follows:
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Article 23
Judgement
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international humanitarian law.
2. The judgement shall be rendered by a majority of the judges of
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	proceedings before the Trial Chambers or the Appeals Chamber, and which coul
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decide the matter in accordance with the interests of justice and the general principles of law.  124. The corresponding article of the statute would read as follows:  Enforcement of sentences  Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such	principles of law.  124. The corresponding article of the statute would read as follows:  Enforcement of sentences  Enforcement of sentences  Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such	decide the matter in	accordance with the ir	nterests of justice and	the general
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violations of <u>international</u> humanitarian law.

2. States shall comply without undue delay with any request for

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International Tribunal shall be accorded such treatment as is necessary for

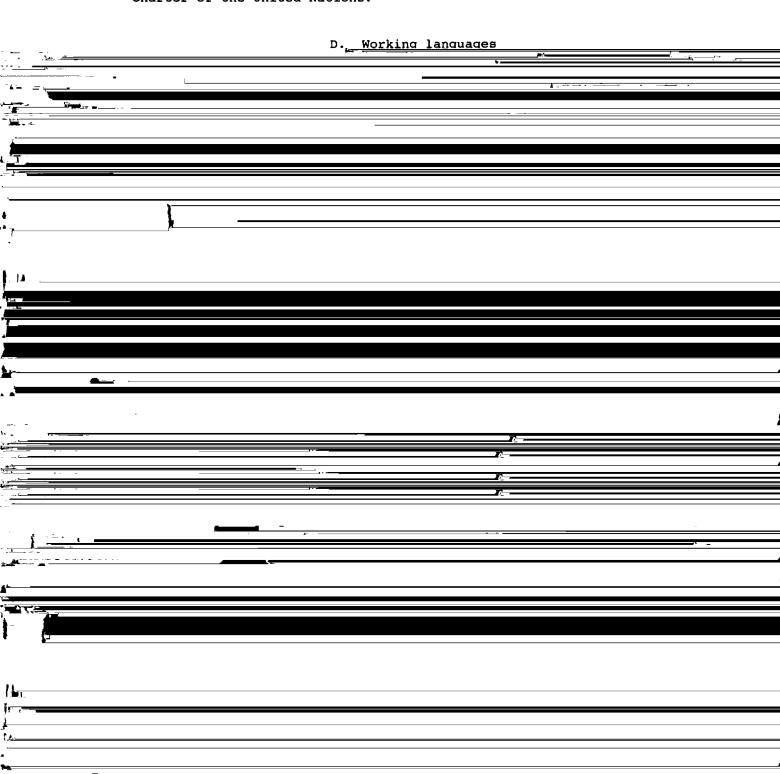
#### Article 32

## Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the

regular budget of the United Nations in accordance with Article 17 of the

Charter of the United Nations.



<u>Notes</u>	
1/ On 19 April 1993, the Secretary-General a	addressed a letter to the
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President of the Security Council informing him the	at the report would be mad
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available to the Security Council no later than 6 1	May 1993.
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established by General Assembly resolution 687 (VI	1) of 5 December 1952.
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3/ Convention for the Amelioration of the Co	ondition of the Wounded an
Sick in Armed Forces in the Field of 12 August 1949	
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### Annex





limited to:

(a) employment of poisonous weapons or other weapons calculated to cause

	(c) direct and pul	blic incitemen <u>t t</u> o o	commit genocide:	
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	criminal responsibility if he kn	new or had reason to	-r_	.e

2. A person, who has been tried by a national cou	rt for acts constituting
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by the International Tribunal only if:	
(a) the act for which he or she was tried was cha	racterized as an ordinary
crime; or	
(b) the national court proceedings were not impar-	tial or independent, were
(b) the national court proceedings were not impar	The state of the s
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designed to shield the accused from international crimi	nal responsibility, or

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2. The jud	does of the International Tribunal shall be elected by the
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(a) The Sec	cretary-General shall invite nominations for judges of the
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International Tri	ibunal from States Members of the United Nations and non-member
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General each State may nominate up to two candidates meeting the qualifications

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<del></del>	Article 18
	Investigation and preparation of indictment
	1. The Prosecutor shall initiate investigations ex-officio or on the
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	<u>basis of information obtained from any source. particularly from Governments,</u>
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	The Prosecutor shall assess the information received or obtained and decimie
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<u> </u>	Article 20
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	Commencement and conduct of trial proceedings
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. *	1. The Trial Chambers shall ensure that a trial is fair and expeditious
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conditions as witnesses against him;  (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;  (q) not to be compelled to testify against himself or to confess quilt.  Protection of victims and witnesses  The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.  Article 23  Judgement  1. The Trial Chambers shall progrounce judgements and imposs sentences and	(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same
conditions as witnesses against him;  (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;  (q) not to be compelled to testify against himself or to confess quilt.  Protection of victims and witnesses  The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.  Article 23  Judgement	
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#### Appellate proceedings

1. The Appeals Chamber shall hear appeals	from persons convicted by the
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Trial Chambers or from the Prosecutor on the fol	lowing grounds:
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(a) an error on a <u>question of law invalida</u>	ting the decision; or
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(b) an error of fact which has occasioned	a miggarriage of ingtice
to an error or fact which has occasioned	a miscarriage of justice.
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2. The Appeals Chamber may affirm, reverse	
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Article 26

Review proceedings

Cooperation and judicial assistance
1. States shall cooperate with the International Tribunal in the
investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States sha <u>ll comply without undue delay with any request for</u>
assistance or an order issued by a Trial Chamber, including, but not limited to:
(a) the identification and location of persons:
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(h) the taking of tegtimeny, and the production of evidence.
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(c) the service of documents;
(d) the arrest or detention of persons;
(e) the surrender or the transfer of the accused to the International
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<del></del>	Expenses of the International Tribunal
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	The expenses of the International Tribunal shall be borne by the regular
	budget of the United Nations in accordance with Article 17 of the Charter of the
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	Working languages
	The working languages of the International Tribunal shall be English and
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	Article 34
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	Annual report
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	The President of the International Tribunal shall submit an annual report
	of the International Tribunal to the Security Council and to the General
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