

รายการอ้างอิง



ภาษาไทย

กรมพุทธศึกษาทหารบก. คู่มือราชการสนามว่าด้วยหลักนิยมการรบตามแบบและหลักการสงคราม.

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ภาคผนวก ก

ธรรมเนียมศาลทหารระหว่างประเทศ
ที่นูเรมเบิร์ก

ภาคผนวก ก

ธรรมนูญศาลทหารระหว่างประเทศ

ที่นูเรมเบิร์ก *

องค์ประกอบของศาลทหารระหว่างประเทศ

มาตรา 1 เพื่อปฏิบัติตามข้อตกลงลงนามในวันที่ 8 สิงหาคม ค.ศ. 1945 โดยรัฐบาลของราชอาณาจักรแห่งบริเตนใหญ่และไอร์แลนด์เหนือ รัฐบาลสหรัฐอเมริกา รัฐบาลชั่วคราวของสาธารณรัฐฝรั่งเศส และรัฐบาลสหภาพโซเวียต จะได้มีการจัดตั้งศาลทหารระหว่างประเทศ (ซึ่งต่อไปจะเรียกว่า "ศาล") เพื่อให้มีการพิจารณาและลงโทษอาชญากรรมสงครามคนสำคัญของประเทศอักษะในยุโรปอย่างยุติธรรมและรวดเร็ว

มาตรา 2 ศาลจะประกอบด้วยผู้พิพากษาสี่นาย แต่ละนายจะมีผู้พิพากษาสำรองนายหนึ่ง ภาติแต่ละประเทศจะแต่งตั้งผู้พิพากษาหนึ่งนายและผู้พิพากษาสำรองหนึ่งนาย ผู้พิพากษาสำรองจะปรากฏตัว ณ การพิจารณาคดีทุกครั้งของศาลเท่าที่สามารถ ในกรณีที่ผู้พิพากษาคคนใดป่วยหรือไม่สามารถปฏิบัติหน้าที่ได้โดยเหตุผลอื่นใด ผู้พิพากษาสำรองของเขาจะรับหน้าที่แทน

มาตรา 3 ศาล ผู้พิพากษา และผู้พิพากษาสำรองจะไม่ถูกกล่าวหาใด ๆ โดยอัยการจำเลยหรือทนายความของจำเลย ภาติแต่ละประเทศจะเปลี่ยนตัวผู้พิพากษาด้วยเหตุดังกล่าวในขณะที่มีการพิจารณาคดีไม่ได้ นอกจากเป็นการเปลี่ยนโดยผู้พิพากษาสำรองเข้าแทน

มาตรา 4

ก) องค์คณะผู้พิพากษาจะต้องประกอบด้วยผู้พิพากษาทั้งสี่นายของศาล หรือผู้พิพากษาสำรอง ในกรณีที่ผู้พิพากษาคคนใดมาร่วมมิได้

* คำแปลธรรมนูญศาลฉบับนี้แปลโดย สุเทพ อัดถากร ในหนังสือชื่อ "กฎหมายระหว่างประเทศกับการเมืองระหว่างประเทศ พุทธิกรรมและเอกสาร", เล่ม 2 (กรุงเทพฯ: ไทยวัฒนาพานิช จำกัด, 2516).

ข) ก่อนการพิจารณาคดีจะเริ่มต้น ผู้พิพากษาของศาลจะตกลงระหว่างกันที่จะเลือกผู้พิพากษาผู้ใดผู้หนึ่งเป็นประธาน ประธานจะดำรงตำแหน่งระหว่างการพิจารณาครั้งหนึ่ง หรือจะมีการตกลงเป็นอย่างอื่นก็ได้โดยคะแนนเสียงไม่น้อยกว่า 3 เสียง หลักการหมุนเวียนกันเป็นประธานสำหรับการพิจารณาคดีครั้งต่อไปเป็นที่ตกลงไว้บังคับ อย่างไรก็ตาม ถ้าการพิจารณาคดีของศาลมีขึ้นในดินแดนของภาคใดภาคหนึ่ง ให้ผู้แทนจากภาคนั้นจะเป็นประธานในศาล

ค) นอกจากที่กล่าวมาในวรรคต้น ศาลจะวินิจฉัยโดยใช้คะแนนเสียงข้างมากและในกรณีที่คะแนนเสียงเท่ากัน คะแนนเสียงของประธานจะตัดสิน สำหรับการตัดสินคดีและการลงโทษจะมีขึ้นได้ต้องได้คะแนนเสียงเห็นชอบด้วยอย่างน้อย 3 คะแนน

มาตรา 5 ในกรณีที่มีความต้องการและขึ้นกับจำนวนคดีที่จะต้องถูกพิจารณาอาจจัดตั้งศาลอื่น ๆ ขึ้นได้ ในการจัดตั้งแต่ละศาลจะต้องมีหน้าที่และวิธีการดำเนินการสอดคล้องกันและตามที่กำหนดไว้โดยธรรมนูญฉบับนี้

อำนาจศาลและหลักการทั่วไป

มาตรา 6 ศาลที่ตั้งขึ้นโดยข้อตกลงที่กล่าวถึง ในมาตรา 1 เพื่อการพิจารณาและลงโทษอาชญากรรมสงครามคนสำคัญของประเทศอักษะในยุโรป จะมีอำนาจพิจารณาคดีและลงโทษบุคคล ผู้ซึ่งกระทำการเพื่อผลประโยชน์ของประเทศอักษะในยุโรป ไม่ว่าจะกระทำโดยส่วนบุคคลหรือกระทำโดยเป็นสมาชิกขององค์การ ซึ่งอาชญากรรมอย่างใดอย่างหนึ่งดังต่อไปนี้

การกระทำต่อไปนี้ทั้งหมดหรือข้อใดข้อหนึ่งเป็นอาชญากรรมภายใต้อำนาจศาลนี้ ซึ่งจะต้องมีความรับผิดชอบส่วนบุคคล

ก) อาชญากรรมต่อสันติภาพ นั่นคือ การวางแผน เตรียมการ เริ่มกระทำสงคราม รุกรานหรือสงครามละเมิดสนธิสัญญา ข้อตกลงหรือคำประกัน หรือเริ่มในแผนการ หรือระดมเตรียม เพื่อให้ได้ผลตามจุดประสงค์ข้างต้นนั้น

ข) อาชญากรรมสงคราม นั่นคือ การละเมิดกฎหมายหรือจารีตประเพณีแห่งสงคราม การละเมิดจะไม่จำกัดเฉพาะแต่การฆาตกรรม ทารุณกรรม หรือขนย้ายประชาชนในดินแดนที่ถูกยึดครองไปใช้แรงงานทาส การฆาตกรรมหรือทารุณกรรมต่อเชลยศึกและบุคคลในทะเล การฆาตกรรมตัวประกัน การปล้นสะดมทรัพย์สินของรัฐหรือของเอกชน การทำลายเมืองหรือหมู่บ้านอย่างราบเรียบ หรือการทำลายอื่น ๆ ซึ่งไม่มีความจำเป็นทางการทหาร

ค) อาชญากรรมต่อมนุษยชาติ นั้นคือ การฆาตกรรม การจำกัดพันธุ์ การเอาตัวลง เป็นทาส การบังคับข่มขืนหรือการกระทำร้ายมนุษยชนผิด ๆ ต่อประชาชนพลเรือนก่อนหรือหลัง สงคราม หรือการทำลายล้างเนื่องจากเหตุผลทางการเมือง เชื้อชาติ หรือศาสนา โดยเกี่ยวพัน กับการกระทำอาชญากรรมใดที่อยู่ใต้อำนาจของศาลนี้ ไม่ว่าจะกระทำนั้นจะเป็นการละเมิด กฎหมายภายในของประเทศนั้น ๆ หรือไม่

ผู้นำ ผู้จัดการ ผู้บงการและผู้ร่วมงานซึ่งมีส่วนในการกำหนดหรือดำเนินแผนการร่วมกัน เพื่อกระทำอาชญากรรมใด ๆ ดังที่กล่าวมาข้างต้น จะต้องรับผิดชอบในการกระทำทุกอย่างที่กระทำ โดยบุคคลใด ๆ โดยการทำให้แผนการเกิดผล

มาตรา 7 ฐานะทางราชการของจำเลย ไม่ว่าจะ เป็นประมุขของรัฐหรือเป็น ข้าราชการผู้รับผิดชอบในกรมต่าง ๆ ของรัฐบาล จะไม่ได้รับการพิจารณาให้หลุดพ้นจากความ รับผิดชอบหรือลดหย่อนผ่อนโทษ

มาตรา 8 ความจริงที่ว่าจำเลยได้กระทำตามคำสั่งของรัฐบาลของเขา หรือผู้บังคับ บัญชา จะไม่ทำให้เขาพ้นจากความรับผิดชอบ แต่อาจได้รับการพิจารณาลดหย่อนผ่อนโทษได้ ถ้า ศาลเห็นว่าเพื่อความยุติธรรม

มาตรา 9 ในการพิจารณาคดีบุคคลใด ผู้ซึ่งเป็นสมาชิกของกลุ่มหรือองค์การใดศาล อาจประกาศ (โดยเกี่ยวพันกับการกระทำใด ๆ ซึ่งเอกชนนั้นอาจถูกพิจารณาว่ากระทำผิด) ว่ากลุ่ม หรือองค์การซึ่งเอกชนนั้นเป็นสมาชิก เป็นองค์การอาชญากรรม

หลังจากได้รับคำฟ้องแล้ว ศาลจะแจ้งให้ทราบตามที่ศาลเห็นสมควรว่า ข้อการปราศนาที่จะขอให้ศาลประกาศดังกล่าว และสมาชิกคนใดก็ตามขององค์การย่อมมีสิทธิที่จะ ขอให้การต่อศาลเกี่ยวกับปัญหาลักษณะความเป็นอาชญากรรมขององค์การนั้น ๆ ศาลมีอำนาจที่จะ อนุญาตหรือไม่อนุญาตให้มีการให้การ ในคำอนุญาตศาลอาจกำหนดว่า การให้การและการเป็น ตัวแทนขององค์การของผู้นั้นจะเป็นไปในวิธีใด

มาตรา 10 ในกรณีที่ศาลประกาศว่ากลุ่มหรือองค์การใดกระทำอาชญากรรม องค์การ ที่มีอำนาจแห่งชาติของภาคใด ๆ จะมีสิทธิที่จะนำบุคคลผู้ซึ่งเป็นสมาชิกของกลุ่มหรือองค์การดังกล่าว มาขึ้นศาลแห่งชาติ ศาลทหารหรือศาลแห่งดินแดนที่ถูกยึดครอง ในกรณีเช่นนี้ ลักษณะความเป็น อาชญากรรมของกลุ่มหรือองค์การดังกล่าวถือว่าได้รับการพิสูจน์แล้ว และจะตั้งปัญหาสงสัยอีกไม่ได้

มาตรา 11 บุคคลใดผู้ที่ศาลตัดสินว่าผิด อาจถูกฟ้องต่อศาลแห่งชาติ ศาลทหารหรือศาลแห่งดินแดนที่ถูกยึดครอง ตามที่กล่าวถึงในมาตรา 10 ของธรรมนูญนี้ได้อีก การกระทำอาชญากรรมอื่น นอกจากการเป็นสมาชิกของกลุ่ม หรือองค์การอาชญากรรม และศาลดังกล่าว หลังจากที่ได้ตัดสินว่าผิดจะกำหนดโทษเขาได้อย่างอิสระนอกเหนือไปจากโทษที่ได้กำหนดโดยศาลนี้ จากการที่เขาได้เข้าร่วมในการกระทำอาชญากรรมของกลุ่มหรือองค์การดังกล่าวก็ได้

มาตรา 12 ศาลจะมีสิทธิพิจารณาคดีบุคคลผู้ถูกกล่าวหาว่ากระทำการเป็นอาชญากรรมดังที่ระบุไว้ในมาตรา 6 ของธรรมนูญนี้ โดยไม่มีบุคคลนั้นในศาลก็ได้ ถ้าปรากฏว่าบุคคลนั้นหายสาบสูญหรือถ้าศาลเห็นเป็นการจำเป็นด้วยเหตุผลประการใดก็ตาม เพื่อความยุติธรรมในการที่จะกระทำการพิจารณาคดีโดยที่ไม่ปรากฏตัวในศาล

มาตรา 13 ศาลจะกำหนดระเบียบการพิจารณาของตน ระเบียบเหล่านี้จะขัดต่อบทบัญญัติของธรรมนูญนี้ไม่ได้

คณะกรรมการเพื่อการสืบสวนและฟ้องร้องอาชญากรรมสงครามคนสำคัญ

มาตรา 14 ภาวดีแต่ละประเทศจะแต่งตั้งหัวหน้าอัยการขึ้นคณะหนึ่ง เพื่อสืบสวนหาข้อหาและฟ้องอาชญากรรมสงครามคนสำคัญ

หัวหน้าอัยการจะกระทำการ เป็นคณะกรรมการเพื่อจุดประสงค์ดังต่อไปนี้

- ก) ตกลงกำหนดว่า อัยการแต่ละคนรวมทั้งเจ้าหน้าที่ของเขา มีงานใดบ้าง
- ข) ตกลงกำหนดตัวอาชญากรรมสงครามคนสำคัญที่จะถูกศาลพิจารณาคดีให้แน่นอน
- ค) รับรองคำฟ้องและเอกสารที่จะส่งพร้อมกับคำฟ้อง
- ง) ส่งคำฟ้องและเอกสารให้ศาล
- จ) ร่างระเบียบวิธีพิจารณาที่กำหนดในมาตรา 13 ของธรรมนูญนี้ และขอคำรับรองจากศาลว่าใช้ได้ ศาลจะมีอำนาจที่จะยอมรับโดยมีการแก้ไขเพิ่มเติมหรือไม่ก็ได้หรือไม่ยอมรับก็ได้

คณะกรรมการจะใช้เสียงข้างมากในการปฏิบัติการในเรื่องทั้งหมดที่กล่าวข้างต้นและจะแต่งตั้งประธานตามที่เหมาะสมและตามกฎการหมุนเวียน นอกจากนี้ถ้าเกิดการแบ่งคะแนนเสียงออกเท่า ๆ กันเกี่ยวกับการกำหนดตัวจำเลยผู้ใดผู้หนึ่งว่าจะให้ศาลพิจารณาหรือไม่ หรือการกำหนดข้อหาอาชญากรรมแก่เขา ในกรณีเช่นนี้ให้ถือว่าข้อเสนอที่ถือว่าใช้ได้ คือข้อเสนอโดยฝ่ายที่ให้มีการพิจารณาจำเลยผู้นั้นหรือฝ่ายที่กำหนดข้อหาอาชญากรรมที่เฉพาะมากขึ้นไป

มาตรา 15 หัวหน้าอัยการแต่ละคนหรือโดยร่วมมือกันมีหน้าที่ดำเนินการต่อไปนี้ด้วย

ก) สืบสวน รวบรวมและแสดงหลักฐาน พยานที่จำเป็นต่อหน้าหรือ ณ การพิจารณาคดี

ข) เตรียมคำฟ้องเพื่อการรับรองของคณะกรรมการตามวรรค (ค) ของมาตรา

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ค) สอบสวน เบื้องต้นต่อพยานที่จำเป็นทั้งหมดและจำเลย

ง) เป็นอัยการ ณ การพิจารณาคดี

จ) แต่งตั้งผู้แทนที่จะดำเนินการที่อาจได้รับมอบหมาย

ฉ) ดำเนินงานอื่นที่อาจปรากฏว่าจำเป็น เพื่อจุดประสงค์ในการเตรียมและดำเนินการพิจารณาคดี

เป็นที่เข้าใจว่าพยานหรือจำเลยที่ถูกจับกุมตัวโดยภาคีใด จะไม่ถูกนำตัวออกจากการจับกุมโดยไม่ได้รับความยินยอมจากภาคีนั้น

การพิจารณาคดีที่ยุติธรรมสำหรับจำเลย

มาตรา 16 เพื่อให้จะให้การพิจารณาคดีเป็นไปโดยเที่ยงธรรมสำหรับจำเลย จะต้องมีการปฏิบัติตามระเบียบเหล่านี้

ก) คำฟ้องจะต้องรวมแต่ละส่วนที่สมบูรณ์ กำหนดแน่ชัดโดยละเอียดถึงข้อกล่าวหาต่อจำเลยคำฟ้องและเอกสารเกี่ยวกับคำฟ้องที่แปลเป็นภาษาซึ่งจำเลยเข้าใจ จะต้องมอบให้จำเลยในระยะเวลาพอสมควรก่อนการพิจารณาคดี

ข) ระหว่างการสอบสวนเบื้องต้นหรือพิจารณาคดีของจำเลยผู้ใด จำเลยนั้นจะมีสิทธิที่จะขอคำอธิบายใด ๆ เกี่ยวกับข้อหาที่เขาถูกกล่าวหา

ค) การสอบสวนเบื้องต้นหรือการพิจารณาคดีจำเลยผู้ใด บ่อมจะกระทำในภาษาหรือแปลเป็นภาษาที่จำเลยเข้าใจ

ง) จำเลยจะมีสิทธิดำเนินการต่อสู้ด้วยตนเองต่อศาลหรือมีทนายช่วยเหลือ

จ) จำเลยจะมีสิทธิที่จะแสดงหลักฐานในการพิจารณาคดี เพื่อสนับสนุนข้อต่อสู้ของเขา และที่จะถามค้านพยานฝ่ายโจทก์โดยตัวเขาเองหรือผ่านทางทนาย

อำนาจของศาลและการดำเนินการพิจารณาคดี

มาตรา 17 ศาลจะมีอำนาจ

- ก) เรียกพยานมาขังการพิจารณาคดี และให้พยานแถลงต่อศาลและเพื่อให้ศาลถามคำถาม
- ข) ถามจำเลยไม่ว่าบุคคลใด
- ค) ให้มีการแสดงเอกสารและพยานหลักฐานอื่น ๆ
- ง) ให้พยานสาบาน
- จ) แต่งตั้งเจ้าหน้าที่ เพื่อดำเนินการใด ๆ ที่ศาลจะมอบหมาย รวมทั้งอำนาจให้มีเอกสารหลักฐาน

มาตรา 18 ศาลจะ

- ก) จำกัดให้การพิจารณาคดีอยู่ในขอบเขตที่จะเป็นไปรวดเร็วตามที่มิขอหาขึ้นมา
- ข) ใช้มาตรการอย่างเฉียบขาด เพื่อมิให้เกิดการกระทำที่จะก่อให้เกิดความชักช้าโดยไม่มีเหตุผล และขจัดเรื่อง และข้อความไม่ว่าชนิดใด ๆ ที่ไม่เกี่ยวข้องกับพิจารณาคดี
- ค) จัดการกับความไม่สงบใด ๆ ในศาล โดยการลงโทษที่เหมาะสมรวมทั้งการงดพิจารณาจำเลยหรือทนายต่อไป แต่จะต้องไม่กระทบกระเทือนถึงข้อกำหนดของข้อหา

มาตรา 19 ศาลจะไม่ถูกจำกัดโดยกฎเกณฑ์การสืบพยานที่ปฏิบัติกันมา ศาลจะรับและใช้วิธีการพิจารณาที่รวดเร็วไม่มีกฎเกณฑ์มากเท่าที่สามารถจะทำได้ และจะรับฟังพยานหลักฐานที่ศาลเห็นว่ามีความน่าเชื่อถือ

มาตรา 20 ศาลอาจขอทราบเกี่ยวกับลักษณะของพยานหลักฐานใด ก่อนที่จะมีการส่งพยานหลักฐานนั้นแก่ศาล ทั้งนี้ เพื่อที่ศาลจะได้วินิจฉัยว่าพยานหลักฐานนั้นเกี่ยวข้องกับคดีหรือเปล่า

มาตรา 21 ศาลจะไม่ต้องถูกเรียกร้องให้พิสูจน์ในเรื่องที่เป็นความรู้สามัญ แต่จะระบุให้เห็นเรื่องดังกล่าว ศาลจะระบุให้เห็นด้วยถึงเอกสารของรัฐบาลและรายงานของสหประชาชาติ รวมทั้งการกระทำและเอกสารของคณะกรรมการที่ตั้งขึ้นในประเทศพันธมิตรอื่น ๆ เพื่อสืบสวนอาชญากรรมสงคราม และรายงานประวัติ และข้อค้นพบของศาลทหารหรือศาลอื่น ๆ ของสหประชาชาติ

มาตรา 22 ศาลจะนั่งพิจารณาคดีในกรุงเบอร์ลิน การประชุมครั้งแรกซึ่งมีผู้พิพากษาศาลและอัยการจะมีขึ้นในกรุงเบอร์ลิน ณ ที่ที่คณะกรรมการควบคุมเยอรมันจะกำหนด การพิจารณาคดีครั้งแรกจะกระทำ ณ เมืองนูเรมเบิร์ก และการพิจารณาคดีครั้งต่อไปจะกระทำ ณ สถานที่ที่ศาลวินิจฉัย

มาตรา 23 หัวหน้าอัยการคนหนึ่งหรือมากกว่านั้น อาจมีส่วนร่วมในการดำเนินการพิจารณาคดีครั้งหนึ่ง ๆ หน้าที่ของหัวหน้าอัยการอาจจะกระทำไป โดยตัวหัวหน้าคนเดียวหรือโดยบุคคลอื่นใดที่ได้รับอำนาจเป็นพิเศษจากศาล

มาตรา 24 การดำเนินการพิจารณาคดีจะมีลำดับดังนี้

- ก) จะมีการอ่านคำฟ้องในศาล
- ข) ศาลจะถามจำเลยแต่ละคนว่าจะแถลงว่า "ผิด" หรือ "ไม่ผิด"
- ค) ฝ่ายอัยการจะเป็นผู้กล่าวก่อนในการเริ่มต้นพิจารณาคดี
- ง) ศาลจะถามฝ่ายอัยการและฝ่ายจำเลยถึงหลักฐาน (ถ้ามี) ที่ปรารถนาจะแสดงต่อศาลและศาลจะวินิจฉัยว่าจะรับหลักฐานนั้นหรือไม่
- จ) พยานฝ่ายอัยการจะถูกถามภายหลังพยานฝ่ายจำเลย หลังจากนั้นฝ่ายอัยการหรือฝ่ายจำเลยจะแสดงหลักฐานที่ศาลวินิจฉัยแล้วว่ายอมรับได้
- ฉ) ไม่ว่าในเวลาใด ศาลอาจตั้งคำถามแก่พยานหรือจำเลยไม่ว่าบุคคลใด
- ช) ฝ่ายอัยการและฝ่ายจำเลยจะตั้งคำถามและอาจถามค้านพยานใด ๆ และจำเลยผู้ซึ่งได้แถลงตัวเองเป็นพยานต่อศาล
- ซ) ฝ่ายจำเลยจะได้แถลงต่อศาล
- ฌ) จำเลยแต่ละคนอาจแถลงข้อความต่อศาล
- ฎ) ฝ่ายโจทก์จะได้แถลงต่อศาล
- ฏ) ศาลจะอ่านคำพิพากษาและประกาศโทษ

มาตรา 25 เอกสารทางราชการทุกระดับ และการดำเนินการพิจารณาคดีทุกครั้ง จะแสดงและกระทำในภาษาอังกฤษ ฝรั่งเศส รัสเซีย และภาษาของจำเลย บันทึกเหตุการณ์และบันทึกการดำเนินการพิจารณาคดีจะได้รับการแปลเป็นภาษาของประเทศซึ่งศาลนั่งพิจารณาเท่าที่ศาลวินิจฉัยว่าเห็นสมควรปรารถนาเพื่อความยุติธรรมและความสนใจของมติมหาชน

คำพิพากษาและโทษ

มาตรา 26 ในคำพิพากษาของศาลที่เกี่ยวกับความผิดและความบริสุทธิ์ของจำเลยคนใดจะต้องมีการให้เหตุผลซึ่งเป็นรากฐานของคำพิพากษานั้น และคำพิพากษาถือว่าเป็นสิ้นสุดจะโต้แย้งใด ๆ มิได้

มาตรา 27 ศาลมีสิทธิที่จะกำหนดโทษจำเลยผู้ถูกตัดสินว่าผิด ให้รับโทษประหารชีวิตหรือโทษอื่นใดตามที่ศาลเห็นว่ายุติธรรม

มาตรา 28 นอกจากการกำหนดโทษแล้ว ศาลจะมีสิทธิที่จะยึดทรัพย์สินสมบัติที่ปล้นสะดมมาของผู้ถูกตัดสินว่าผิด และสั่งให้มอบทรัพย์สินสมบัตินั้นแก่คณะกรรมการควบคุมสำหรับเบอร์มัน

มาตรา 29 ในกรณีที่ตัดสินว่าผิด จะมีการดำเนินการลงโทษตามคำสั่งของคณะกรรมการควบคุมเบอร์มัน ซึ่งไม่ว่าในเวลาใดอาจลดหรือเปลี่ยนแปลงโทษได้ แต่จะเพิ่มความรุนแรงของโทษมิได้ถ้าหลังจากที่จำเลยถูกพิพากษาว่าผิดและดำเนินการลงโทษไปแล้ว คณะกรรมการค้นพบหลักฐานใหม่ซึ่งตนเห็นว่ายอมทำให้เกิดข้อหาใหม่ต่อจำเลย คณะกรรมการจะแจ้งเรื่องนี้ให้คณะกรรมการที่จัดตั้งขึ้นมาตามมาตรา 14 ทราบเพื่อจะได้มีการดำเนินการตามที่คณะกรรมการเห็นสมควรโดยคำนึงถึงความยุติธรรม

ค่าใช้จ่าย

มาตรา 30 ภาตึจะกำหนดว่าค่าใช้จ่ายของศาลและของการพิจารณาคดีจากวงเงินที่ได้ให้ไว้เพื่อการดำเนินงานของคณะกรรมการควบคุม

ภาคผนวก ข.

ข้อมติของคณะกรรมการความมั่นคงแห่ง
สหประชาชาติที่ 808 (1993)



Security Council

Distr.
GENERALS/RES/808 (1993)
22 February 1993

RESOLUTION 808 (1993)

Adopted by the Security Council at its 3175th meeting,
on 22 February 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Recalling paragraph 10 of its resolution 764 (1992) of 13 July 1992, in which it reaffirmed that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches,

Recalling also its resolution 771 (1992) of 13 August 1992, in which, inter alia, it demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law,

Recalling further its resolution 780 (1992) of 6 October 1992, in which it requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission of Experts may obtain, with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia,

Having considered the interim report of the Commission of Experts established by resolution 780 (1992) (S/25274), in which the Commission observed that a decision to establish an ad hoc international tribunal in relation to events in the territory of the former Yugoslavia would be consistent with the direction of its work,

Expressing once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including reports of mass killings and the continuance of the practice of "ethnic cleansing",

Determining that this situation constitutes a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment of an international tribunal would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Noting also with grave concern the "report of the European Community investigative mission into the treatment of Muslim women in the former Yugoslavia" (S/25240, annex I),

Noting further the report of the committee of jurists submitted by France (S/25266), the report of the commission of jurists submitted by Italy (S/25300), and the report transmitted by the Permanent Representative of Sweden on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE) (S/25307),

1. Decides that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991;

2. Requests the Secretary-General to submit for consideration by the Council at the earliest possible date, and if possible no later than 60 days after the adoption of the present resolution, a report on all aspects of this matter, including specific proposals and where appropriate options for the effective and expeditious implementation of the decision contained in paragraph 1 above, taking into account suggestions put forward in this regard by Member States;

3. Decides to remain actively seized of the matter.

ภาคผนวก ค.

Statute of the International Tribunal for the Prosecution
of Persons Responsible for Serious Violation of
International Humanitarian Law Committed
in the Territory of the Former
Yugoslavia

UNITED
NATIONS



Security Council

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REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 2
OF SECURITY COUNCIL RESOLUTION 808 (1993)

Statute of the International Tribunal

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2

Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

/...

Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (a) killing members of the group;
 - (b) causing serious bodily or mental harm to members of the group;
 - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) imposing measures intended to prevent births within the group;
 - (e) forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
 - (a) genocide;
 - (b) conspiracy to commit genocide;

- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

Article 5

Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

Article 6

Personal jurisdiction

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

Article 7

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

/...



2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Article 8

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

Article 9

Concurrent jurisdiction

1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.

Article 10

Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:

(a) the act for which he or she was tried was characterized as an ordinary crime; or

(b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 11

Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

- (a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- (b) The Prosecutor, and
- (c) A Registry, servicing both the Chambers and the Prosecutor.

Article 12

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Five judges shall serve in the Appeals Chamber.

Article 13

Qualifications and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international 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 following manner:

(a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eleven judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

3. In the event of a vacancy in the Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 14

Officers and members of the Chambers

1. The judges of the International Tribunal shall elect a President.

2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.

3. After consultation with the judges of the International Tribunal, the President shall assign the judges to the Appeals Chamber and to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

4. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of the Trial Chamber as a whole.

Article 15

Rules of procedure and evidence

The judges of the International Tribunal shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

Article 16

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.
2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.
3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.
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 conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.
5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 17

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 18

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 19

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal, be taken into custody, immediately informed of the charges against him and transferred to the International Tribunal.
3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.
4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 21

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 Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(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;

(g) not to be compelled to testify against himself or to confess guilt.

Article 22

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 pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 24

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 25

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) an error on a question of law invalidating the decision; or
- (b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 26

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgement.

Article 27

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 imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Article 28

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal accordingly. The President of the International Tribunal, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

Article 29

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 shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:
 - (a) the identification and location of persons;
 - (b) the taking of testimony and the production of evidence;
 - (c) the service of documents;
 - (d) the arrest or detention of persons;
 - (e) the surrender or the transfer of the accused to the International Tribunal.

Article 30

The status, privileges and immunities of the International Tribunal

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.
2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.
4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

Article 32Expenses 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.

Article 33Working languages

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

Article 34Annual report

The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General Assembly.

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Rules of Procedure and Evidence

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

IT/32
14 March 1994

Original: English & French

Second session
The Hague,
The Netherlands
17 January - 11 February 1994

RULES OF PROCEDURE AND EVIDENCE

(ADOPTED ON 11 FEBRUARY 1994)

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Part One

GENERAL PROVISIONS

Rule 1

Entry into Force

These Rules of Procedure and Evidence, adopted pursuant to Article 15 of the Statute of the Tribunal, shall come into force on 14 March 1994.

Rule 2

Definitions

(A) In the Rules, unless the context otherwise requires, the following terms shall mean:

Rules: The Rules referred to in Rule 1;

Statute: The Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993;

Tribunal: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.

* * *

- Accused: A person against whom an indictment has been submitted in accordance with Rule 47;
- Arrest: The act of taking a suspect or an accused into custody by a national authority;
- Bureau: A body composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers;
- Investigation: All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence;
- Party: The Prosecutor or the accused;
- President: The President of the Tribunal;
- Prosecutor: The Prosecutor appointed pursuant to Article 16 of the Statute;
- Suspect: A person concerning whom the Prosecutor possesses information which tends to show that he may have committed a crime over which the Tribunal has jurisdiction;
- Victim: A person against whom a crime over which the Tribunal has jurisdiction has allegedly been committed.

(B) In the Rules, the masculine shall include the feminine and the singular the plural, and vice-versa.

Rule 3
Languages

- (A) The working languages of the Tribunal shall be English and French.
- (B) An accused shall have the right to use his own language.
- (C) Any other person appearing before the Tribunal may, subject to Sub-rule (D), use his own language if he does not have sufficient knowledge of either of the two working languages.
- (D) Counsel for an accused may apply to the Presiding Judge of a Chamber for leave to use a language other than the two working ones or the language of the accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Tribunal to the extent, if any, determined by the President, taking into account the rights of the defence and the interests of justice.
- (E) The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.

Rule 4
Meetings away from the Seat of the Tribunal

A Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorised by the President in the interests of justice.

Rule 5
Non-compliance with Rules

Any objection by a party to an act of another party on the ground of non-compliance with the Rules shall be raised at the earliest opportunity; it shall be upheld, and the act declared null, only if the act was inconsistent with the fundamental principles of fairness and has occasioned a miscarriage of justice.

Rule 6
Amendment of the Rules

- (A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than seven Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.
- (B) An amendment to the Rules may be otherwise adopted, provided it is unanimously approved by the Judges.
- (C) An amendment shall enter into force immediately, but shall not operate to prejudice the rights of the accused in any pending case.

Rule 7
Authentic Texts

The English and French texts of the Rules shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute and the Rules shall prevail.

Part Two

PRIMACY OF THE TRIBUNAL

Rule 8

Request for Information

Where it appears to the Prosecutor that a crime within the jurisdiction of the Tribunal is or has been the subject of investigations or criminal proceedings instituted in the national courts of any State, he may request the State to forward to him all relevant information in that respect, and the State shall transmit to him such information forthwith in accordance with Article 29(1) of the Statute.

Rule 9

Prosecutor's Request for Deferral

Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the national courts of any State:

- (i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;
- (ii) there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or
- (iii) what is in issue is closely related to, or otherwise

involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made that the national court defer to the competence of the Tribunal.

Rule 10

Formal Request for Deferral

- (A) If it appears to the Trial Chamber seised of a proposal for deferral that, on any of the grounds specified in Rule 9, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its national court defer to the competence of the Tribunal.
- (B) A request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.
- (C) Where deferral to the Tribunal has been requested by a Trial Chamber, any subsequent proceedings shall be held before the other Trial Chamber.

Rule 11

Non-compliance with a Request for Deferral

If, within sixty days after a request for deferral has been notified by the Registrar to the State under whose jurisdiction the investigations or criminal proceedings have been instituted, the State fails to file a response which satisfies the Trial

Chamber that the State has taken or is taking adequate steps to comply with the order, the Trial Chamber may request the President to report the matter to the Security Council.

Rule 12

Determinations of National Courts

Subject to Article 10(2) of the Statute, determinations of national courts are not binding on the Tribunal.

Rule 13

Non Bis in Idem

When the President receives reliable information to show that criminal proceedings have been instituted against a person before a national court for a crime for which that person has already been tried by the Tribunal, a Trial Chamber shall, following *mutatis mutandis* the procedure provided in Rule 10, issue a reasoned order requesting the national court permanently to discontinue its proceedings. If the national court fails to do so, the President may report the matter to the Security Council.

Part Three

ORGANIZATION OF THE TRIBUNAL

Section 1 The Judges

Rule 14

Solemn Declaration

- (A) Before taking up his duties each Judge shall make the following solemn declaration:

"I solemnly declare that I will perform my duties and exercise my powers as a Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 honourably, faithfully, impartially and conscientiously".

- (B) The declaration, signed by the Judge and witnessed by the Secretary-General of the United Nations or his representative, shall be kept in the records of the Tribunal.

Rule 15

Disqualification of Judges

- (A) A Judge may not sit on a trial or appeal in any case in which he has a personal interest or concerning which he has or has had any association which might affect his impartiality. He shall in any such circumstance withdraw,

and the President shall assign another Judge to sit in his place.

- (B) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial upon the above grounds. The Presiding Judge shall confer with the Judge in question, and if necessary the Bureau shall determine the matter. If the Bureau upholds the application, the President shall assign another Judge to sit in place of the disqualified Judge.
- (C) The Judge of the Trial Chamber who reviews an indictment against an accused, pursuant to Article 19 of the Statute and Rule 47, shall not sit as a member of the Trial Chamber for the trial of that accused.
- (D) No member of the Appeals Chamber shall sit on any appeal in a case in which he sat as a member of the Trial Chamber.
- (E) If a Judge is, for any reason, unable to continue sitting in a part-heard case, the Presiding Judge may, if that inability seems likely to be of short duration, adjourn the proceedings; otherwise he shall report to the President who may assign another Judge to the case and order either a rehearing or, with the consent of the accused, continuation of the proceedings from that point.

Rule 16 Resignation

A Judge who decides to resign shall communicate his resignation in writing to the President who shall transmit it to the Secretary-General of the United Nations.

Rule 17
Precedence

- (A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.
- (B) The Presiding Judges of the Trial Chambers shall take precedence according to age after the President and the Vice-President.
- (C) Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.
- (D) In case of re-election, the total period of service as a Judge of the Tribunal shall be taken into account.

Section 2 The Presidency

Rule 18

Election of the President

- (A) The President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his term of office as a Judge. He may be re-elected once.
- (B) If the President ceases to be a member of the Tribunal or resigns his office before the expiration of his term, the Judges shall elect from among their number a successor for the remainder of the term.
- (C) The President shall be elected by a majority of the votes of the Judges composing the Tribunal. If no Judge obtains such a majority, the second ballot shall be limited to the two Judges who obtained the greatest number of votes on the first ballot. In the case of equality of votes on the second ballot, the Judge who takes precedence in accordance with Rule 17 shall be declared elected.

Rule 19

Functions of the President

The President shall preside at all plenary meetings of the Tribunal; he shall coordinate the work of the Chambers and supervise the activities of the Registry as well as exercise all the other functions conferred on him by the Statute and the Rules.

Rule 20
The Vice-President

- (A) The Vice-President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his term of office as a Judge. He may be re-elected once.
- (B) The Vice-President may sit as a member of a Trial Chamber or of the Appeals Chamber.
- (C) Sub-rules 18(B) and (C) shall apply *mutatis mutandis* to the Vice-President.

Rule 21
Functions of the Vice-President

Subject to Sub-rule 22(B), the Vice-President shall exercise the functions of the President in case of his absence or inability to act.

Rule 22
Replacements

- (A) If neither the President nor the Vice-President can carry out the functions of the President, these shall be assumed by the senior Judge, determined in accordance with Rule 17.
- (B) If the President is unable to exercise his functions as Presiding Judge of the Appeals Chamber, that Chamber shall elect a Presiding Judge from among its number.

Section 3 Internal Functioning of the Tribunal

Rule 23

The Bureau

- (A) The Bureau shall be composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers.
- (B) The President shall consult the other members of the Bureau on all major questions relating to the functioning of the Tribunal.
- (C) A Judge may draw the attention of any member of the Bureau to issues that in his opinion ought to be discussed by the Bureau or submitted to a plenary meeting of the Tribunal.

Rule 24

Plenary Meetings of the Tribunal

The Judges shall meet in plenary to:

- (i) elect the President and Vice-President;
- (ii) adopt and amend the Rules;
- (iii) adopt the Annual Report provided for in Article 34 of the Statute;
- (iv) decide upon matters relating to the internal functioning of the Chambers and the Tribunal;
- (v) determine or supervise the conditions of detention;

- (vi) exercise any other functions provided for in the Statute or in the Rules.

Rule 25

Dates of Plenary Sessions

- (A) The dates of the plenary sessions of the Tribunal shall normally be agreed upon in July of each year for the following calendar year.
- (B) Other plenary meetings shall be convened by the President if so requested by at least six Judges, and may be convened whenever the exercise of his functions under the Statute or the Rules so requires.

Rule 26

Quorum and Vote

- (A) The quorum for each plenary meeting of the Tribunal shall be seven Judges.
- (B) Subject to Sub-rules 6(A) and (B) and Sub-rule 18(C), the decisions of the plenary meetings of the Tribunal shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge who acts in his place shall have a casting vote.

Section 4 The Chambers

Rule 27

Rotation

- (A) Judges shall rotate on a regular basis between the Trial Chambers and the Appeals Chamber. Rotation shall take into account the efficient disposal of cases.
- (B) The Judges shall take their places in their new Chamber as soon as the President thinks it convenient, having regard to the disposal of part-heard cases.
- (C) The President may at any time temporarily assign a member of a Trial Chamber or of the Appeals Chamber to another Chamber.

Rule 28

Assignment to Review Indictments

The President shall, in July of each year and after consultation with the Judges, assign for each month of the next calendar year a Judge of a Trial Chamber as the Judge to whom indictments shall be transmitted for review under Rule 47, and shall publish the list of assignments.

Rule 29

Deliberations

The deliberations of the Chambers shall take place in private and remain secret.

Section 5 The Registry

Rule 30

Appointment of the Registrar

The President shall seek the opinion of the Judges on the candidates for the post of Registrar, before consulting with the Secretary-General of the United Nations pursuant to Article 17(3) of the Statute.

Rule 31

Appointment of the Deputy Registrar and Registry Staff

The Registrar, after consultation with the Bureau, shall make his recommendations to the Secretary-General of the United Nations for the appointment of the Deputy Registrar and other Registry staff.

Rule 32

Solemn Declaration

- (A) Before taking up his duties, the Registrar shall make the following declaration before the President:

"I solemnly declare that I will perform the duties incumbent upon me as Registrar of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the

Statute and the Rules of Procedure and Evidence of the Tribunal".

- (B) Before taking up his duties, the Deputy Registrar shall make a similar declaration before the President.
- (C) Every staff member of the Registry shall make a similar declaration before the Registrar.

Rule 33

Functions of the Registrar

The Registrar shall assist the Chambers, the plenary meetings of the Tribunal, the Judges and the Prosecutor in the performance of their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication.

Rule 34

Victims and Witnesses Unit

- (A) There shall be set up under the authority of the Registrar a Victims and Witnesses Unit consisting of qualified staff to:
 - (i) recommend protective measures for victims and witnesses in accordance with Article 22 of the Statute; and
 - (ii) provide counselling and support for them, in particular in cases of rape and sexual assault.

- (B) Due consideration shall be given, in the appointment of staff, to the employment of qualified women.

Rule 35

Minutes

Except where a full record is made under Rule 81, the Registrar, or Registry staff designated by him, shall take minutes of the plenary meetings of the Tribunal and of the sittings of the Chambers, other than private deliberations.

Rule 36

Record Book

The Registrar shall keep a Record Book which shall list all the particulars of each case brought before the Tribunal. The Record Book shall be open to the public.

Section 6 The Prosecutor

Rule 37 Functions

- (A) The Prosecutor shall exercise all the functions provided by the Statute in accordance with the Rules and such Regulations as may be framed by him.
- (B) His powers under Parts Four to Eight of the Rules may be exercised by staff members of the Office of the Prosecutor authorised by him, or by any person acting under his direction.

Rule 38 Deputy Prosecutor

- (A) The Prosecutor shall make his recommendations to the Secretary-General of the United Nations for the appointment of a Deputy Prosecutor.
- (B) The Deputy Prosecutor shall exercise the functions of the Prosecutor in the event of his absence or inability to act or upon the Prosecutor's express instructions.

Part Four

INVESTIGATIONS AND RIGHTS OF SUSPECTS

Section 1 Investigations

Rule 39

Conduct of Investigations

In the conduct of an investigation, the Prosecutor may:

- (i) summon and question suspects, victims and witnesses and record their statements, collect evidence and conduct on-site investigations;
- (ii) undertake such other matters as may appear necessary for completing the investigation and the preparation and conduct of the prosecution at the trial;
- (iii) seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL); and
- (iv) request such orders as may be necessary from a Trial Chamber or a Judge.

Rule 40
Provisional Measures

In case of urgency, the Prosecutor may request any State:

- (i) to arrest a suspect provisionally;
- (ii) to seize physical evidence;
- (iii) to take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.

Rule 41
Retention of Information

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of his investigations.

Rule 42
Rights of Suspects during Investigation

- (A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which he shall be informed by the Prosecutor prior to questioning, in a language he speaks and understands:
- (i) the right to be assisted by counsel of his choice or to have legal assistance assigned to him without payment if he does not have sufficient means to pay for it; and

- (ii) the right to have the free assistance of an interpreter if he cannot understand or speak the language to be used for questioning.
- (B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43

Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning shall be tape-recorded or video-recorded, in accordance with the following procedure:

- (i) the suspect shall be informed in a language he speaks and understands that the questioning is being tape-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before tape-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything he has said, and to add anything he may wish, and the time of conclusion shall be recorded;
- (iv) the tape shall then be transcribed and a copy of the transcript supplied to the suspect, together with a

copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes; and

- (v) after a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

Section 2 Of Counsel

Rule 44

Appointment and Qualifications of Counsel

Counsel engaged by a suspect or an accused shall file his power of attorney with the Registrar at the earliest opportunity. A counsel shall be considered qualified to represent a suspect or accused if he satisfies the Registrar that he is admitted to the practice of law in a State, or is a University professor of law.

Rule 45

Assignment of Counsel

- (A) A list of counsel who speak one or both of the working languages of the Tribunal, meet the requirements of Rule 44 and have indicated their willingness to be assigned by the Tribunal to indigent suspects or accused, shall be kept by the Registrar.
- (B) The criteria for determination of indigency shall be established by the Registrar and approved by the Judges.
- (C) In assigning counsel to an indigent suspect or accused, the following procedure shall be observed:
 - (i) a request for assignment of counsel shall be made to the Registrar;
 - (ii) the Registrar shall enquire into the means of the suspect or accused and determine whether the criteria of indigency are met;

- (iii) if he decides that the criteria are met, he shall assign counsel from the list; if he decides to the contrary, he shall inform the suspect or accused that the request is refused.
- (D) If a request is refused, a further request may be made by a suspect or an accused to the Registrar upon showing a change in circumstances.
- (E) The Registrar shall assign counsel to a suspect or an accused who fails to obtain counsel or to request assignment of counsel, unless the suspect or the accused elects in writing to conduct his own defence.
- (F) The Registrar shall, in consultation with the Judges, establish the criteria for the payment of fees to assigned counsel.

Rule 46

Misconduct of Counsel

- (A) A Chamber may, after a warning, refuse audience to counsel if, in its opinion, his conduct is offensive, abusive or otherwise obstructs the proper conduct of the proceedings.
- (B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of his University.

Part Five

PRE-TRIAL PROCEEDINGS

Section 1 Indictments

Rule 47

Submission of Indictment by the Prosecutor

- (A) If in the course of an investigation the Prosecutor is satisfied that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal, he shall prepare and forward to the Registrar an indictment for confirmation by a Judge, together with supporting material.
- (B) The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.
- (C) The Registrar shall forward the indictment and accompanying material to the Judge currently assigned under Rule 28, who will inform the Prosecutor of the date fixed for review of the indictment.
- (D) On reviewing the indictment, the Judge shall hear the Prosecutor, who may present additional material in support of any count. The Judge may confirm or dismiss each count or may adjourn the review.
- (E) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing a new

indictment based on the acts underlying that count if supported by additional evidence.

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.

Rule 49
Joinder of Crimes

Two or more crimes may be joined in one indictment if the series of acts committed together form the same transaction, and the said crimes were committed by the same accused.

Rule 50
Amendment of Indictment

The Prosecutor may amend an indictment, without leave, at any time before its confirmation, but thereafter only with leave of the Judge who confirmed it or, if at trial, with leave of the Trial Chamber. If leave to amend is granted, the amended indictment shall be transmitted to the accused and to his counsel and where necessary the date for trial shall be postponed to ensure adequate time for the preparation of the defence.

Rule 51**Withdrawal of Indictment**

- (A) The Prosecutor may withdraw an indictment, without leave, at any time before its confirmation, but thereafter only with leave of the Judge who confirmed it or, if at trial, only with leave of the Trial Chamber.
- (B) The withdrawal of the indictment shall be promptly notified to the suspect or the accused and to his counsel.

Rule 52**Public Character of Indictment**

Subject to Rule 53, upon confirmation by a Judge of a Trial Chamber, the indictment shall be made public.

Rule 53**Non-disclosure of Indictment**

- (A) When confirming an indictment the Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.
- (B) A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no public disclosure of an indictment, or part thereof, or of any particular document or information, if satisfied that the making of such an order is in the interests of justice.

Section 2 Orders and Warrants

Rule 54 General Rule

At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses and warrants as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 55 Execution of Arrest Warrants

- (A) A warrant of arrest shall be signed by a Judge and shall bear the seal of the Tribunal. It shall be accompanied by a copy of the indictment, and a statement of the rights of the accused. These rights include those set forth in Article 21 of the Statute, and in Rules 42 and 43 *mutatis mutandis*, together with the right of the accused to remain silent, and to be cautioned that any statement he makes shall be recorded and may be used in evidence.
- (B) A warrant for the arrest of the accused and his surrender to the Tribunal shall be transmitted by the Registrar to the national authorities of the State in whose territory or under whose jurisdiction or control the accused resides, or was last known to be, together with instructions that at the time of arrest the indictment and the statement of the rights of the accused be read to him in a language he understands and that he be cautioned in that language.
- (C) When an arrest warrant issued by the Tribunal is executed, a member of the Prosecutor's Office may be present as from the time of arrest.

Rule 56
Cooperation of States

The State to which a warrant of arrest is transmitted shall act promptly and with all due diligence to ensure proper and effective execution thereof, in accordance with Article 29 of the Statute.

Rule 57
Procedure after Arrest

Upon the arrest of the accused, the State concerned shall detain him, and shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal shall be arranged between the State authorities concerned and the Registrar.

Rule 58
National Extradition Provisions

The obligations laid down in Article 29 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused to the Tribunal which may exist under the national law or extradition treaties of the State concerned.

Rule 59
Failure to Execute a Warrant

- (A) Where the State to which a warrant of arrest has been transmitted has been unable to execute the warrant, it shall report forthwith its inability to the Registrar, and the reasons therefor.

- (B) If, within a reasonable time after the warrant of arrest has been transmitted to the State, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest and the Tribunal, through the President, may notify the Security Council accordingly.

Rule 60

Advertisement of Indictment

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States in whose territory the Prosecutor has reason to believe that the accused may be found, for publication in newspapers having wide circulation in that territory, intimating to the accused that service of an indictment against him is sought.

Rule 61

Procedure in Case of Failure to Execute a Warrant

- (A) If a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, and the Prosecutor satisfies a Judge of a Trial Chamber that:
- (i) he has taken all reasonable steps to effect personal service, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to him to be; and
 - (ii) he has otherwise tried to inform the accused of the existence of the indictment by seeking publication of newspaper advertisements pursuant to Rule 60,

the Judge shall order that the indictment be submitted by the Prosecutor to the Trial Chamber.

- (B) Upon obtaining such an order the Prosecutor shall submit the indictment to the Trial Chamber in open court, together with all the evidence that was before the Judge who initially confirmed the indictment.
- (C) If the Trial Chamber is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, it shall so determine. The Trial Chamber shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in Sub-rule (A) above.
- (D) The Trial Chamber shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States.
- (E) If the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with Article 29 of the Statute, the Trial Chamber shall so certify, in which event the President shall notify the Security Council.

Rule 62

Initial Appearance of Accused

Upon his transfer to the seat of the Tribunal, the accused shall be brought before a Trial Chamber without delay, and shall be formally charged. The Trial Chamber shall:

- (i) satisfy itself that the right of the accused to counsel is respected;
- (ii) read or have the indictment read to the accused in a language he speaks and understands, and satisfy itself that the accused understands the indictment;
- (iii) call upon the accused to enter a plea of guilty or not guilty; should the accused fail to do so, enter a plea of not guilty on his behalf;
- (iv) instruct the Registrar to set a date for trial.

Rule 63

Questioning of Accused

After the initial appearance of the accused the Prosecutor shall not question him unless his counsel is present and the questioning is tape-recorded or video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused that he is not obliged to say anything unless he wishes to do so but that whatever he says may be given in evidence.

Rule 64
Detention on Remand

Upon his transfer to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. The President may, on the application of a party, request modification of the conditions of detention of an accused.

Rule 65
Provisional Release

- (A) Once detained, an accused may not be released except upon an order of a Trial Chamber.
- (B) Release may be ordered by a Trial Chamber only in exceptional circumstances, and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.
- (C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure his presence for trial and the protection of others.
- (D) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been released or is for any other reason at liberty.

Section 3 Production of Evidence

Rule 66

Disclosure by the Prosecutor

- (A) The Prosecutor shall make available to the defence, as soon as practicable after the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought.

- (B) The Prosecutor shall on request permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

Rule 67

Reciprocal Disclosure

- (A) As early as reasonably practicable and in any event prior to the commencement of the trial:
 - (i) the Prosecutor shall notify the defence of the names of the witnesses that he intends to call in proof of the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with Sub-rule (ii) below;

 - (ii) the defence shall notify the Prosecutor of its intent to offer:
 - (a) the defence of 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 crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

- (b) any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.
- (B) Failure of the defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences.
- (C) If the defence makes a request pursuant to Sub-rule 66(B), the Prosecutor shall be entitled to inspect any books, documents, photographs and tangible objects, which are within the custody or control of the defence and which it intends to use as evidence at the trial.
- (D) If either party discovers additional evidence or material which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or material.

Rule 68

Disclosure of Exculpatory Evidence

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor

which in any way tends to suggest the innocence or mitigate the guilt of the accused of a crime charged in the indictment.

Rule 69

Protection of Victims and Witnesses

- (A) In exceptional circumstances, the Prosecutor may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.
- (B) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

Rule 70

Matters not Subject to Disclosure

Notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under those Rules.

Section 4 Depositions

Rule 71 Depositions

- (A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer.
- (B) The motion for the taking of a deposition shall be in writing and shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the exceptional circumstances justifying the taking of the deposition.
- (C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the person whose deposition is being taken.
- (D) Deposition evidence may also be given by means of a video-conference.
- (E) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. He shall transmit the record to the Trial Chamber.

Section 5 Preliminary Motions

Rule 72

General Provisions

- (A) After the initial appearance of the accused, either party may move before a Trial Chamber for appropriate relief or ruling. Such motions may be written or oral, at the discretion of the Trial Chamber.
- (B) The Trial Chamber shall dispose of preliminary motions in *limine litis*.

Rule 73

Preliminary Motions by Accused

- (A) Preliminary motions by the accused shall include:
 - (i) objections based on lack of jurisdiction;
 - (ii) objections based on defects in the form of the indictment;
 - (iii) applications for the exclusion of evidence obtained from the accused or having belonged to him;
 - (iv) applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Sub-rule 82(B);
 - (v) objections based on the denial of request for assignment of counsel.
- (B) Any of the motions by the accused referred to in Sub-rule (A) shall be brought within sixty days after his initial

appearance, and in any case before the hearing on the merits.

- (C) Failure to apply within the time-limit prescribed shall constitute a waiver of the right. Upon a showing of good cause, the Trial Chamber may grant relief from the waiver.

Part Six

PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1 General Provisions

Rule 74

Amicus Curiae

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

Rule 75

Protection of Victims and Witnesses

- (A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.
- (B) A Chamber may hold an *ex parte* (*non-contradictoire*) proceeding to determine whether to order:
- (i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:

- (a) expunging names and identifying information from the Chamber's public records;
 - (b) non-disclosure to the public of any records identifying the victim;
 - (c) giving of testimony through image- or voice-altering devices or closed circuit television; and
 - (d) assignment of a pseudonym;
- (ii) closed sessions, in accordance with Rule 79;
- (iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.
- (C) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.

Rule 76

Solemn Declaration by Interpreters and Translators

Before performing any duties, an interpreter or a translator shall solemnly declare to do so faithfully, independently, impartially and with full respect for the duty of confidentiality.

Rule 77

Contempt of Court

- (A) Subject to the provisions of Sub-rule 90(D), a witness who refuses or fails contumaciously to answer a question relevant to the issue before a Chamber may be found in contempt of the Tribunal. The Chamber may impose a fine

not exceeding US\$10,000 or a term of imprisonment not exceeding six months.

- (B) The Chamber may, however, relieve the witness of the duty to answer, for reasons which it deems appropriate.
- (C) Payment of a fine shall be made to the Registrar to be held in a separate account.

Rule 78

Open Sessions

All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

Rule 79

Closed Sessions

- (A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:
 - (i) public order or morality;
 - (ii) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
 - (iii) the protection of the interests of justice.
- (B) The Trial Chamber shall make public the reasons for its order.

Rule 80
Control of Proceedings

- (A) The Trial Chamber may exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.
- (B) The Trial Chamber may order the removal of an accused from the courtroom and continue the proceedings in his absence if he has persisted in disruptive conduct following a warning that he may be removed.

Rule 81
Records of Proceedings and Evidence

- (A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.
- (B) The Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.
- (C) The Registrar shall retain and preserve all physical evidence offered during the proceedings.
- (D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registry, may be authorised at the discretion of the Trial Chamber.



Section 2 Case Presentation

Rule 82

Joint and Separate Trials

- (A) In joint trials, each accused shall be accorded the same rights as if he were being tried separately.
- (B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 83

Instruments of Restraint

Instruments of restraint, such as handcuffs, shall not be used except as a precaution against escape during transfer or for security reasons, and shall be removed when the accused appears before a Chamber.

Rule 84

Opening Statements

Before presentation of evidence by the Prosecutor, each party may make an opening statement. The defence may however elect to make its statement after the Prosecutor has concluded his presentation of evidence and before the presentation of evidence for the defence.

Rule 85
Presentation of Evidence

- (A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:
- (i) evidence for the prosecution;
 - (ii) evidence for the defence;
 - (iii) prosecution evidence in rebuttal;
 - (iv) defence evidence in rejoinder;
 - (v) evidence ordered by the Trial Chamber pursuant to Rule 98.
- (B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge may at any stage put any question to the witness.
- (C) The accused may, if he so desires, appear as a witness in his own defence.

Rule 86
Closing Arguments

After the presentation of all the evidence, the Prosecutor may present an initial argument, to which the defence may reply. The Prosecutor may, if he wishes, present a rebuttal argument, to which the defence may present a rejoinder.

Rule 87
Deliberations

- (A) When both parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.

- (B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together under Rule 48, separate findings shall be made as to each accused.

Rule 88
Judgement

- (A) The judgement shall be pronounced in public and in the presence of the accused, on a date of which notice shall have been given to the parties and counsel.

- (B) If the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its judgement. The Trial Chamber may order restitution as provided in Rule 105.

- (C) A Judge of the Trial Chamber may append a separate or dissenting opinion to the judgement.

Section 3 Rules of Evidence

Rule 89

General Provisions

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence which it deems to have probative value.
- (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
- (E) A Chamber may request verification of the authenticity of evidence obtained out of court.

Rule 90

Testimony of Witnesses

- (A) Witnesses shall, in principle, be heard directly by the Chambers. In cases, however, where it is not possible to secure the presence of a witness, a Chamber may order that the witness be heard by means of a deposition as provided for in Rule 71.

- (B) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth".
- (C) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.
- (D) A witness may decline to make any statement which might tend to incriminate him.

Rule 91

False Testimony under Solemn Declaration

- (A) A Chamber, on its own initiative or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.
- (B) If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.
- (C) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.
- (D) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.

- (E) The maximum penalty for false testimony under solemn declaration shall be a fine of US\$10,000 or a term of imprisonment of twelve months, or both. The payment of any fine imposed shall be made to the Registrar to be held in the account referred to in Sub-rule 77(C).

Rule 92
Confessions

A confession by the accused given during questioning by the Prosecutor shall, provided the requirements of Rule 63 were strictly complied with, be presumed to have been free and voluntary unless the contrary is proved.

Rule 93
Evidence of Consistent Pattern of Conduct

Evidence of a consistent pattern of conduct may be admissible in the interests of justice.

Rule 94
Judicial Notice

A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

Rule 95
Evidence Obtained by Means Contrary to Internationally
Protected Human Rights

Evidence obtained directly or indirectly by means which constitute a serious violation of internationally protected human rights shall not be admissible.

Rule 96
Evidence in Cases of Sexual Assault

In cases of sexual assault:

- (i) no corroboration of the victim's testimony shall be required;
- (ii) consent shall not be allowed as a defence;
- (iii) prior sexual conduct of the victim shall not be admitted in evidence.

Rule 97
Lawyer-Client Privilege

All communications between lawyer and client shall be regarded as privileged, and consequently not subject to disclosure at trial, unless:

- (i) the client consents to such disclosure; or
- (ii) the client has voluntarily disclosed the content of

the communication to a third party, and that third party then gives evidence of that disclosure.

Rule 98

Power of Chambers to Order Production of Additional Evidence

A Trial Chamber may order either party to produce additional evidence. It may itself summon witnesses and order their attendance.

Section 4 Sentencing Procedure

Rule 99

Status of the Acquitted Person

- (A) In case of acquittal, the accused shall be released immediately.
- (B) If, at the time the judgement is pronounced, the Prosecutor advises the Trial Chamber in open court of his intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, at the request of the Prosecutor, issue a warrant for the arrest of the accused to take effect immediately.

Rule 100

Pre-sentencing Procedure

If a Trial Chamber finds the accused guilty of a crime, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

Rule 101

Penalties

- (A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life.
- (B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24(2) of the

Statute, as well as such factors as:

- (i) any aggravating circumstances;
 - (ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;
 - (iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;
 - (iv) the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial;
 - (v) the extent to which any penalty imposed by a national court on the convicted person for the same act has already been served, as referred to in Article 10(3) of the Statute.
- (C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
- (D) The sentence shall be pronounced in public and in the presence of the convicted person, subject to Sub-rule 102(B).

Rule 102

Status of the Convicted Person

- (A) The sentence shall begin to run from the day it is pronounced under Sub-rule 101(D). However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64.

- (B) If, by a previous decision of the Trial Chamber, the convicted person has been released, or is for any other reason at liberty, and he is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed.

Rule 103

Place of Imprisonment

- (A) Imprisonment shall be served in a State designated by the Tribunal from a list of States which have indicated their willingness to accept convicted persons.
- (B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.

Rule 104

Supervision of Imprisonment

All sentences of imprisonment shall be supervised by the Tribunal or a body designated by it.

Part Seven

APPELLATE PROCEEDINGS

Rule 107

General Provision

The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Rule 108

Notice of Appeal

A party seeking to appeal a judgement shall, not more than thirty days from the date on which the judgement was pronounced, file with the Registrar and serve upon the other party a written notice of appeal, setting forth the grounds.

Rule 109

Record on Appeal

- (A) The record on appeal shall consist of the parts of the trial record, as certified by the Registrar, designated by the parties.
- (B) The parties, within thirty days of the certification of the trial record by the Registrar, may by agreement designate the parts of that record which, in their opinion, are necessary for the decision on the appeal.

Rule 106

Compensation to Victims

- (A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.
- (B) Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation.
- (C) For the purposes of a claim made under Sub-rule (B) the judgement of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury.

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- (A) The record on appeal shall consist of the parts of the trial record, as certified by the Registrar, designated by the parties.
- (B) The parties, within thirty days of the certification of the trial record by the Registrar, may by agreement designate the parts of that record which, in their opinion, are necessary for the decision on the appeal.

- (C) Should the parties fail so to agree within that time, the Appellant and the Respondent shall each designate to the Registrar, within sixty days of the certification, the parts of the trial record which he considers necessary for the decision on the appeal.
- (D) The Appeals Chamber shall remain free to call for the whole of the trial record.

Rule 110
Copies of Record

The Registrar shall make a sufficient number of copies of the record on appeal for the use of the Judges of the Appeals Chamber and of the parties.

Rule 111
Appellant's Brief

An Appellant's brief of argument and authorities shall be served on the other party and filed with the Registrar within ninety days of the certification of the record.

Rule 112
Respondent's Brief

A Respondent's brief of argument and authorities shall be served on the other party and filed with the Registrar within thirty days of the filing of the Appellant's brief.

Rule 113
Brief in Reply

An Appellant may file a brief in reply within fifteen days after the filing of the Respondent's brief.

Rule 114
Date of Hearing

After the expiry of the time-limits for filing the briefs provided for in Rules 111, 112 and 113, the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the parties.

Rule 115
Additional Evidence

- (A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion must be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing.
- (B) The Appeals Chamber shall authorise the presentation of such evidence if it considers that the interests of justice so require.

Rule 116
Extension of Time-limits

The Appeals Chamber may grant a motion to extend a time-limit upon a showing of good cause.

Rule 117
Judgement

- (A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal together with such additional evidence as has been presented to it.
- (B) The judgement shall be pronounced in public, and in the presence of the accused, on a date of which notice shall have been given to the parties and counsel.

Rule 118
Status of the Accused Following Appeal

- (A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.
- (B) Where the accused is not present when the judgement is due to be delivered, either as having been acquitted on all charges or as a result of an order issued pursuant to Rule 65, or for any other reason, the Appeals Chamber may deliver its judgement in the absence of the accused and shall, unless it pronounces his acquittal, order his arrest or surrender to the Tribunal.

Part Eight

REVIEW PROCEEDINGS

Rule 119

Request for Review

Where a new fact has been discovered which was not known to the moving party at the time of the proceedings before a Trial Chamber or the Appeals Chamber, and could not have been discovered through the exercise of due diligence, the defence or, within one year after the final judgement has been pronounced, the Prosecutor, may make a motion to that Chamber for review of the judgement.

Rule 120

Preliminary Examination

If a majority of Judges of the Chamber that pronounced the judgement agree that the new fact, if proved, could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement after hearing the parties.

Rule 121

Appeals

The judgement of a Trial Chamber on review may be appealed in accordance with the provisions of Part Seven.

Rule 122

Return of Case to Trial Chamber

If the judgement to be reviewed is under appeal at the time the motion for review is filed, the Appeals Chamber may return the case to the Trial Chamber for disposition of the motion.

Part Nine

PARDON AND COMMUTATION OF SENTENCE

Rule 123

Notification by States

If, according to the law of the State in which a convicted person is imprisoned, he is eligible for pardon or commutation of sentence, the State shall, in accordance with Article 28 of the Statute, notify the Tribunal of such eligibility.

Rule 124

Determination by the President

The President shall, upon such notice, determine, in consultation with the Judges, whether pardon or commutation is appropriate.

Rule 125

General Standards for Granting Pardon or Commutation

In determining whether pardon or commutation is appropriate, the President shall take into account, *inter alia*, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly-situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.

ภาคผนวก จ.

Rules Governing the Detention of Persons Awaiting
Trial or Appeal before the Tribunal or
otherwise Detained on the Authority
of the Tribunal

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

IT/38/Rev.3

10 May 1994

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Third Session
The Hague,
The Netherlands
25 April - 5 May 1994

RULES GOVERNING THE DETENTION OF PERSONS AWAITING TRIAL OR
APPEAL BEFORE THE TRIBUNAL OR OTHERWISE DETAINED ON THE
AUTHORITY OF THE TRIBUNAL

(ADOPTED ON 5 MAY 1994)

(i)

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RULES GOVERNING THE DETENTION OF PERSONS AWAITING TRIAL OR
APPEAL BEFORE THE TRIBUNAL OR OTHERWISE DETAINED ON THE
AUTHORITY OF THE TRIBUNAL

("RULES OF DETENTION")

PREAMBLE

The purpose of these Rules of Detention is to govern the administration of the detention unit for detainees awaiting trial or appeal at the Tribunal or any other person detained on the authority of the Tribunal and to ensure the continued application and protection of their individual rights while in detention. The primary principles on which these Rules of Detention rest reflect the overriding requirements of humanity, respect for human dignity and the presumption of innocence.

In particular, these Rules of Detention are intended to regulate, in general terms, the rights and obligations of detainees at all stages from reception to release, and to provide the basic criteria for management of the detention unit.

DEFINITIONS

(i) In these Rules of Detention the following terms shall mean:

- Bureau: the body comprised of the President, the Vice-President and the Presiding Judges of the Trial Chambers established pursuant to Rule 23 of the Rules of Procedure and Evidence;
- Commanding Officer: the official of the United Nations appointed as the head of the staff responsible for the administration of the detention unit;
- Detainee: any person detained awaiting trial or appeal before the Tribunal, or being held pending transfer to another institution, and any other person detained on the authority of the Tribunal;
- Detention unit: the unit for detainees erected within the grounds of the host prison;
- General Director: the head of the host prison appointed by the authorities of the Host State;
- Host prison: the penitentiary complex maintained by the authorities of the Host State and located at The Hague;
- Host State: the Kingdom of the Netherlands;

- Medical officer:** the medical officer for the time being appointed by agreement between the Registrar and the General Director of the host prison;
- Prosecutor:** the Prosecutor appointed pursuant to Article 18 of the Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993, or any person authorized by him or acting under his direction;
- Registrar:** the Registrar of the Tribunal appointed pursuant to Article 17(3) of the Statute of the Tribunal, or any person authorized by him or acting under his direction;
- Rules of Procedure and Evidence:** the Rules of Procedure and Evidence of the Tribunal as adopted on 11 February 1994 or as subsequently amended;
- Staff of the detention unit:** the staff employed by the United Nations to run the detention unit;
- Tribunal:** the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.

(ii) In these Rules of Detention, the masculine shall include the feminine and the singular the plural and vice-versa.

(iii) These Rules of Detention shall enter into force as of 1 August 1994.

BASIC PRINCIPLES

1. These Rules of Detention are to be applied in conjunction with the relevant provisions of the Headquarters Agreement entered into between the Host State and the United Nations and, in particular, the Annex on matters relating to security and order.
2. The United Nations shall retain the ultimate responsibility and liability for all aspects of detention pursuant to these Rules of Detention. All detainees shall be subject to the sole jurisdiction of the Tribunal at all times that they are so detained, even though physically absent from the detention unit, until final release or transfer to another institution. Subject to the overriding jurisdiction of the Tribunal, the Commanding Officer shall have sole responsibility for all aspects of the day-to-day management of the detention unit, including security and order, and may make all decisions relating thereto, except where otherwise provided in these Rules of Detention.
3. These Rules of Detention shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, economic or other status.

4. A detainee is entitled to observe the religious beliefs and moral precepts of the group to which he belongs and that right shall be respected at all times.
5. All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.
6. The Bureau may, at any time, appoint a judge of the Tribunal to inspect the detention unit and to report to the Tribunal on the general conditions of implementation of these Rules of Detention or of any particular aspect thereof. In addition, there shall be regular and unannounced inspections of the detention unit and its services by qualified and experienced inspectors appointed by the Tribunal. Their task shall be to ensure that the detention unit is administered in accordance with the requirements of these Rules of Detention and to protect the individual rights of detainees with special regard to the legality of the detention measures adopted in the detention unit and to report to the Tribunal thereon. The Bureau shall act upon all such reports as it sees fit, in consultation with the relevant authorities of the Host State where necessary.
7. These Rules of Detention and any regulations made hereunder shall be made readily available to the staff of the detention unit in the working languages of the Tribunal and that of the host State.
8. These Rules of Detention and any regulations made hereunder shall be made readily available to each detainee in those languages and in the language of the detainee.

MANAGEMENT OF THE DETENTION UNIT

Reception

9. No person shall be received in the detention unit without a warrant of arrest duly issued by a judge or a Chamber of the Tribunal.
10. A complete, secure and current record shall be kept concerning each detainee received. It shall include:
 - a. information concerning the identity of the detainee and his next of kin;
 - b. the date of issue of the indictment against the detainee and of the warrant of arrest;
 - c. the date and time of admission;
 - d. the name of counsel, if known;
 - e. the date, time and reason for all absences from the detention unit, whether to attend at the Tribunal, for medical or other approved reasons, or on final release or transfer to another institution.
11. All information concerning detainees shall be treated as confidential and made accessible only to the detainee, his counsel and persons authorized by the Registrar. The detainee shall be informed of this fact upon his arrival at the detention unit.

12. As soon as practicable after admission, each detainee shall be provided with information concerning legal, diplomatic and consular representation available to him. The detainee shall be given the opportunity at this time to notify, within reason, his family, his counsel, the appropriate diplomatic or consular representative and, at the discretion of the Commanding Officer, any other person, of his whereabouts, at the expense of the Tribunal. The detainee shall be asked at this time to name a person or authority to be notified of special events affecting him.

13. On arrival at the detention unit, the Commanding Officer shall order that a detainee's body and clothes may be searched for articles that may constitute a danger to the security and proper running of the detention unit, or which may constitute a danger to the detainee, any other detainee or any member of the staff of the detention unit and shall remove any such items.

14. An inventory shall be made of all money, valuables, clothing and other effects belonging to a detainee which, under these Rules of Detention or the rules of the host prison, he is not permitted to retain. The inventory shall be signed by the detainee. All such items shall be placed in safe custody or, at the request and expense of the detainee, sent to an address provided by him. If the items are retained within the detention unit, all reasonable steps shall be taken by the staff of the detention unit to keep them in good condition. If it is found necessary to destroy an item, this shall be recorded and the detainee informed.

15. Each detainee shall be examined by the medical officer or his deputy on the day of admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures for medical treatment and the segregation of detainees suspected of infectious or contagious conditions.

Accommodation

16. Each detainee shall occupy a cell unit by himself except in exceptional circumstances or in cases where the Commanding Officer, with the approval of the Registrar, considers that there are advantages in sharing accommodation.

17. Each detainee shall be provided with a separate bed and with appropriate bedding which shall be kept in good order and changed on a regular basis so as to ensure its cleanliness.

18. The detention unit shall, at all times, meet all requirements of health and hygiene, due regard being paid to climatic conditions, lighting, heating and ventilation.

19. Each detainee shall be permitted unrestricted access to the sanitary, hygiene and drinking water arrangements in his cell unit.

20. All parts of the detention unit shall be properly maintained and kept clean at all times. In particular, each detainee shall be expected to keep his cell unit clean and tidy at all times.

Personal hygiene

21. Detainees shall be required to keep themselves clean, and shall be provided with such toilet articles as are necessary for health and cleanliness.
22. Facilities shall be provided by the host prison for the proper care of the hair and beard, and male detainees shall be enabled to shave regularly.

Clothing

23. Detainees may wear their own civilian clothing if, in the opinion of the Commanding Officer, it is clean and suitable. An indigent detainee shall be provided with suitable and sufficient civilian clothing at the cost of the Tribunal.
24. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene, in accordance with the regime of the host prison.

Food

25. The host prison shall provide each detainee at the normal hours with food which is suitably prepared and presented, and which satisfies in quality and quantity the standards of dietetics and modern hygiene and takes into account the age, health, religious and, as far as possible, cultural requirements of the detainee.

Physical exercise and sport

26. Each detainee shall be allowed at least one hour of walking or other suitable exercise in the open air daily, if the weather permits. Where possible, arrangements may be made with the General Director for use by detainees of indoor and outdoor sporting facilities outside the detention unit but within the host prison.
27. A properly organized programme of physical education, sport and other recreational activities shall be arranged by the Commanding Officer to ensure physical fitness, adequate exercise and recreational opportunities.
28. The Commanding Officer, acting on the advice of the medical officer, shall ensure that any detainee who participates in such a programme is physically fit to do so. Special arrangements shall be made, under medical direction, for remedial or therapeutic treatment for any detainee who is unable to participate in the regular programme.

Medical services

29. The medical services of the host prison, including psychiatric and dental care, shall be fully available to detainees, subject to any practical arrangements made with the General Director. A person capable of providing first-aid shall be present at the detention unit at all times.

30. Detainees may be visited by, and consult with, a doctor or dentist of their choice at their own expense. All such visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63. The Commanding Officer shall not refuse a request for such a visit without reasonable grounds. Any treatment or medication recommended by such a doctor or dentist shall be administered solely by the medical officer or his deputy. The medical officer may, in his sole discretion, refuse to administer any such treatment or medication.
31. Detainees who require specialist or in-patient treatment shall be treated within the host prison to the fullest extent possible or transferred to a civil hospital.
32. The Registrar shall be informed immediately upon the death or serious illness or injury of a detainee. The Registrar shall immediately inform the spouse or nearest relative of the detainee and shall, in any event, inform any other person previously designated by the detainee. In the event of the death of a detainee, an inquest will be conducted in accordance with the legal requirements of the Host State. The President may also order an inquiry into the circumstances surrounding the death or serious injury of any detainee.
33. The medical officer shall have the care of the physical and mental health of the detainees and shall see, on a daily basis or more often if necessary, all sick detainees, all who complain of illness and any detainee to whom his attention is specially directed.
34. The medical officer shall report to the Commanding Officer whenever he considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention. The Commanding Officer shall immediately submit the report to the Registrar who, after consultation with the President, shall take all necessary action.
35. A competent authority appointed by the Tribunal pursuant to Rule 6 shall regularly inspect the detention unit and advise the Commanding Officer and the Registrar upon:
- a. the quantity, quality, preparation and serving of food;
 - b. the hygiene and cleanliness of the detention unit and of the detainees;
 - c. the sanitation, heating, lighting and ventilation of the detention unit;
 - d. the suitability and cleanliness of the detainees' clothing and bedding.
36. The Registrar shall, if he concurs with the recommendations made, take immediate steps to give effect to those recommendations; if he does not concur with them, he shall immediately submit both a personal report and a copy of the recommendations to the Tribunal.

Discipline

37. Discipline and order shall be maintained by the staff of the detention unit in the interests of safe custody and the well-ordered running of the detention unit.
38. The Commanding Officer, in consultation with the Registrar, shall issue regulations:
- a. defining conduct constituting a disciplinary offence;
 - b. regulating the type of punishment that can be imposed;
 - c. specifying the authority that can impose such punishment;
 - d. providing for a right of appeal to the President.

39. The disciplinary regulations shall provide a detainee with the right to be heard on the subject of any offence which he is alleged to have committed.

Segregation

40. The Registrar, acting on the request of the Prosecutor, or on his own initiative, and after seeking medical advice, may order that a detainee be segregated from all or some of the other detainees so as to avoid any potential conflict within the detention unit, or danger to the detainee in question.

41. At any time, the Commanding Officer may also order that a detainee be segregated from some or all of the other detainees for the preservation of security and good order in the detention unit or for the protection of the detainee in question. The Commanding Officer shall report all incidents of segregation to the medical officer who shall confirm the physical and mental fitness of the detainee for such segregation. Segregation is not to be used as a disciplinary measure.

42. A detainee may ask to be segregated from all or some of the other detainees. Upon receipt of such a request, the Commanding Officer shall consult the medical officer to determine whether such segregation is medically acceptable. A request for segregation will be granted unless, in the opinion of the medical officer, such segregation would be injurious to the mental or physical health of the detainee.

43. The Commanding Officer shall review all cases of individual segregation of detainees at least once a week and report to the Registrar thereon.

44. The Commanding Officer may organize the use of communal areas of the detention unit so as to segregate certain groups of detainees from others in the interests of the safety of the detainees and the proper conduct and operation of the detention unit. If such segregation is put into practice, care shall be taken to ensure that all such groupings are treated on an equal basis, having regard to the number of detainees falling within each group. All such segregations must be reported to the Tribunal, which may vary the nature, basis or conditions of such segregation.

Isolation unit

45. A detainee may be confined to the isolation unit only in the following circumstances:
- a. by order of the Registrar, acting in consultation with the President; such an order may be based upon a request from any interested person, including the Prosecutor;
 - b. by order of the Commanding Officer in order to prevent the detainee from inflicting injury on other detainees or to preserve the security and good order of the detention unit;
 - c. as a punishment pursuant to Rule 38.

A record shall be kept of all events concerning a detainee confined to the isolation unit.

46. All cases of use of the isolation unit shall be reported to the medical officer who shall confirm the physical and mental fitness of the detainee for such isolation. A detainee who has been confined to the isolation unit shall be visited by the medical officer or his deputy as often as the medical officer deems necessary.

47. A detainee who has been confined to the isolation unit may at any time request a visit from the medical officer, such visit to be made as soon as possible and, in any event, within twenty-four hours of the request.

48. All cases of use of the isolation unit shall be reported to the Registrar immediately, who shall report the matter to the President. The President may order the release of a detainee from the isolation unit at any time.

49. In principle, no detainee may be kept in the isolation unit for more than seven consecutive days. If further isolation is necessary, the Commanding Officer shall report the matter to the Registrar before the end of the seven-day period and the medical officer shall confirm the physical and mental fitness of the detainee to continue such isolation for a further period not to exceed seven days. Each and every extension of use of the isolation unit shall be subject to the same procedure.

Instruments of restraint and the use of force

50. Instruments of restraint, such as handcuffs, shall only be used in the following exceptional circumstances:

- a. as a precaution against escape during transfer from the detention unit to any other place, including access to the premises of the host prison for any reason;
- b. on medical grounds by direction and under the supervision of the medical officer;
- c. to prevent a detainee from self-injury, injury to others or to prevent serious damage to property.

In all incidents involving the use of instruments of restraint, the Commanding Officer shall consult the medical officer and report to the Registrar, who may report the matter to the President.

51. Instruments of restraint shall be removed at the earliest possible opportunity.

52. If the use of any instrument of restraint is required under Rule 50, the restrained detainee shall be kept under constant and adequate supervision.

53. The staff of the detention unit shall not use force against a detainee except in self-defence or in cases of attempted escape or active or passive resistance to an order based upon these Rules of Detention or any regulations issued hereunder. Staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the Commanding Officer, who shall provide a report on the matter to the Registrar.

54. A detainee against whom force has been used shall have the right to be examined immediately and treated, if necessary, by the medical officer. The medical examination shall be conducted in private and in the absence of any non-medical staff. The results of the examination, including any relevant statement by the detainee and the medical officer's opinion, shall be formally recorded and made available to the detainee, in a language accessible to him, to the Commanding Officer, to the President and to the Prosecutor.

55. A record shall be kept of every instance of the use of force against a detainee.

Disturbances

56. If, in the opinion of the Commanding Officer, a situation exists or is developing which threatens the security and good order of the detention unit, the Commanding Officer shall contact the General Director who will request the immediate assistance of the authorities of the Host State to maintain control within the detention unit. All such requests must be reported to the Registrar and the President immediately.

Suspension of the Rules of Detention

57. If there is serious danger of disturbances occurring within the detention unit or the host prison, the Commanding Officer or the General Director, as appropriate, may temporarily suspend the operation of all or part of these Rules of Detention for a maximum of two days. Any such suspension must be reported to the Registrar immediately. Thereupon, the President, acting in consultation with the Bureau, shall consult with the relevant authorities of the Host State and take such action in connection therewith as may be seen fit at the time.

Information to detainees

58. In addition to the copies of these Rules of Detention and any regulations to be provided to each detainee pursuant to Rule 8, each detainee shall on admission be provided with written information in the working languages of the Tribunal or in his own language concerning the rights and treatment of detainees, the disciplinary requirements of the detention unit, the authorized methods of seeking information and making complaints, and all other matters necessary to enable him to understand both his rights and obligations and to adapt himself to the routine of the detention unit.

59. At any time at which there is a detainee in the detention unit who speaks and understands neither of the working languages of the Tribunal nor that spoken by any of the staff of the detention unit, arrangements shall be made for an interpreter to be available on reasonable notice and, in any event, in cases of emergency, to permit the detainee to communicate freely with the staff and administration of the detention unit.

RIGHTS OF DETAINEES

Communications and visits

60. Subject to the provisions of Rule 66, detainees shall be entitled, under such conditions of supervision and time-restraints as the Commanding Officer deems necessary, to communicate with their families and other persons with whom it is in their legitimate interest to correspond by letter and by telephone at their own expense. In the case of an indigent detainee, the Registrar may agree that the Tribunal will bear such expenses within reason.

61. All correspondence and mail, including packages, shall be inspected for explosives or other irregular material. The Commanding Officer, in consultation with the Registrar, shall lay down conditions as to the inspection of correspondence, mail and packages in the interests of maintaining order in the detention unit and to obviate the danger of escape.

62. A detainee shall be informed at once of the death or serious illness of any near relative.
63. Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rule 66 and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and supervision must be necessary in the interests of the administration of justice or the security and good order of the host prison and the detention unit. All visitors must also comply with the separate requirements of the visiting regime of the host prison. These restrictions may include personal searches of clothing and X-ray examination of possessions on entry to either or both of the detention unit and the host prison. Any person, including defence counsel for a detainee or a diplomatic or consular representative accredited to the Host State, who refuses to comply with such requirements, whether of the detention unit or of the host prison, may be refused access.
64. A detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.
65. Detainees shall be allowed to communicate with and receive visits from the diplomatic and consular representative accredited to the Host State of the State to which they belong or, in the case of detainees who are without diplomatic or consular representation in the Host State and refugees or stateless persons, with the diplomatic representative accredited to the Host State of the State which takes charge of their interests or of a national or international authority whose task it is to serve the interests of such persons.
66. The Prosecutor may request the Registrar or, in cases of emergency, the Commanding Officer, to prohibit contact between a detainee and any other person if he has reasonable grounds for believing that such contact is for the purposes of attempting to arrange the escape of the detainee from the detention unit, or could prejudice or otherwise affect the outcome of the proceedings against the detainee, or of any other investigation, or that such contact could be harmful to the detainee or any other person. If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request. A detainee may at any time request the President to deny or reverse such a request for prohibition of contact.

Legal assistance

67. Each detainee shall be entitled to communicate fully and without restraint with his defence counsel, with the assistance of an interpreter where necessary. Unless such counsel and interpreter have been provided by the Tribunal on the basis of the indigency of the detainee, all such communications shall be at the expense of the detainee. All such correspondence and communications shall be privileged. All visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63. The Commanding Officer shall not refuse a request for such a visit without reasonable grounds. Interviews with legal counsel and interpreters shall be conducted in the sight but not within the hearing, either direct or indirect, of the staff of the detention unit.

Spiritual welfare

68. Every detainee shall be entitled to indicate, on arrival at the detention unit or thereafter, whether he wishes to establish contact with any of the ministers or spiritual advisers of the host prison.

69. A qualified representative of each religion or system of beliefs held by any detainee shall be appointed and approved by the Bureau. Such representative shall be permitted to hold regular services and activities within the detention unit and to pay pastoral visits to any detainee of his religion, subject to the same considerations of the security and good order of the detention unit and of the host prison as apply to other visits.

70. Access to a representative of any religion shall not be refused to any detainee, subject only to the same restrictions and conditions provided for in Rule 63. A detainee may refuse to see any such religious representative.

71. So far as is practicable, every detainee shall be allowed to satisfy the needs of his religious, spiritual and moral life by attending services or meetings held in the detention unit and having in his possession any necessary books or literature. By arrangement with the General Director, a detainee may, on request, be permitted to visit any religious facility within the grounds of the host prison.

Work programme

72. The Commanding Officer, after consultation with the General Director, and as far as is practicable, shall institute a work programme to be performed by detainees either in the individual cell units or in the communal areas of the detention unit.

73. Detainees shall be offered the opportunity to enrol in such work programme but shall not be required to work. A detainee who chooses to work shall be paid for his work at rates to be established by the Commanding Officer in consultation with the Registrar and may use part of his earnings to purchase articles for his own use pursuant to Rule 82. The balance of any monies earned shall be held to his account in accordance with Rule 14.

Recreational activities

74. Detainees shall be allowed to procure at their own expense books, newspapers, reading and writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the detention unit and of the host prison.

75. In particular, detainees shall be entitled to keep themselves regularly informed of the news by reading newspapers, periodicals and other publications and by radio and television broadcasts, all necessary equipment to be provided at their own expense. The Commanding Officer may refuse the installation of any such equipment which he considers to be a potential risk to the safety and good order of the detention unit or to any of the detainees.

76. If, in the opinion of the Prosecutor, the interests of justice would not be served by allowing a particular detainee unrestricted access to the news, or that such unrestricted access could prejudice the outcome of the proceedings against the detainee or of any other

investigation, the Prosecutor may request the Registrar, or in cases of urgency, the Commanding Officer to restrict such access. If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request. A detainee may at any time request the President to deny or reverse such a request for restriction of access.

77. By arrangement with the General Director, detainees may use the library and such vocational or other facilities of the host prison as may be made available.

Personal possessions of detainees

78. A detainee may keep in his possession all clothing and personal items for his own use or consumption unless, in the opinion of the Commanding Officer or the General Director, such items constitute a threat to the security or good order of the detention unit or the host prison, or to the health or safety of any person therein. All items so removed shall be retained by the staff of the detention unit as provided for in Rule 14.

79. Any item received from outside, including any item introduced by any visitor to a detainee, shall be subject to separate security controls by both the detention unit and the host prison and may be transported through the host prison to the detention unit by staff of either the detention unit or of the host prison. The General Director may refuse access to the host prison of any item intended for consumption by detainees.

80. As far as practicable, any item received for a detainee from outside shall be treated as provided for in Rule 14 unless intended and permitted under these Rules of Detention and the rules of the host prison for use during imprisonment.

81. The possession and use of any medication shall be subject to the control and supervision of the medical officer. Detainees may possess cigarettes and smoke them at such times and places as the Commanding Officer permits. The possession or consumption of alcohol is not permitted.

82. Each detainee shall be authorized to spend his own money to purchase items of a personal nature from the store operated by the host prison. In the case of an indigent detainee, the Registrar may authorize the purchase of such items, within reason, for the account of the Tribunal. Detainees shall have the right to purchase such items within seven days of arrival and at least once a week thereafter.

83. On release of the detainee from the detention unit, or transfer to another institution, all articles and money retained within the detention unit shall be returned to the detainee except in so far as he has been authorized to spend money or send such property out of the detention unit, or it has been found necessary on hygienic grounds to destroy any article of clothing. The detainee shall sign a receipt for the articles and money returned to him.

Complaints

84. Each detainee may make a complaint to the Commanding Officer or his representative at any time.

85. A detainee, if not satisfied with the response from the Commanding Officer, has the right to make a written complaint, without censorship, to the Registrar, who shall forward it to the President or to the authority competent to carry out inspections pursuant to Rule 6.

86. Each detainee may make a complaint to the competent inspecting authority during an inspection of the detention unit. The detainee shall have the opportunity to talk to the inspector in the sight but not within sound of the staff of the detention unit.

87. The right of complaint shall include confidential access to the relevant authority pursuant to Rules 85 and 86.

88. Every complaint made to the Registrar shall be acknowledged within twenty-four hours. Each complaint shall be dealt with promptly and replied to without delay and, in any event, no later than two weeks of receipt.

REMOVAL AND TRANSPORT OF DETAINEES

89. When detainees are being removed to or from the detention unit, they shall be exposed to public view as little as possible and all proper safeguards shall be adopted to protect them from insult, injury, curiosity and publicity in any form.

90. Detainees shall at all times be transported in vehicles with adequate ventilation and light and in such a way as will not subject them to unnecessary physical hardship or indignity.

91. The transport of detainees through the host prison shall be conducted jointly by personnel of the detention unit and of the host prison.

AMENDMENT OF THE RULES OF DETENTION

92. Proposals for amendment of the Rules of Detention may be made by a judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than seven judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all judges. An amendment to the Rules of Detention may be otherwise adopted, provided it is unanimously approved by the judges. Any such amendment shall enter into force immediately unless the Tribunal decides otherwise.

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Draft Statute for an International
Criminal Court

Draft Statute for
an International
Criminal Court

The States parties to this Statute,

Desiring to further international cooperation to enhance the effective prosecution and suppression of crimes of international concern, and for that purpose to establish an international criminal court;

Emphasizing that such a court is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole;

Emphasizing further that such a court is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective;

PART 1: ESTABLISHMENT OF THE COURT

Article 1

The Court

There is established an International Criminal Court ("the Court"), whose jurisdiction and functioning shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court to the United Nations

The President, with the approval of the States parties to this Statute ("States parties"), may conclude an agreement establishing an appropriate relationship between the Court and the United Nations.

Article 3Seat of the Court

1. The seat of the Court shall be established at ... in ... ("the host State").
2. The President, with the approval of the States parties, may conclude an agreement with the host State establishing the relationship between that State and the Court.
3. The Court may exercise its powers and functions on the territory of any State party and, by special agreement, on the territory of any other State.

Article 4Status and legal capacity

1. The Court is a permanent institution open to States parties in accordance with this Statute. It shall act when required to consider a case submitted to it.
2. The Court shall enjoy in the territory of each State party such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

PART 2: COMPOSITION AND ADMINISTRATION OF THE COURT

Article 5Organs of the Court

The Court consists of the following organs:

- (a) a Presidency, as provided in article 8;
- (b) an Appeals Chamber, Trial Chambers and other chambers, as provided in article 9;
- (c) a Procuracy, as provided in article 12; and
- (d) a Registry, as provided in article 13.



Article 6

Qualification and election of judges

1. The judges of the Court shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices, and have, in addition:
 - (a) criminal trial experience;
 - (b) recognized competence in international law.
2. Each State party may nominate for election not more than two persons, of different nationality, who possess the qualification referred to in paragraph 1 (a) or that referred to in paragraph 1 (b), and who are willing to serve as may be required on the Court.
3. Eighteen judges shall be elected by an absolute majority vote of the States parties by secret ballot. Ten judges shall first be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (a). Eight judges shall then be elected, from among the persons nominated as having the qualification referred to in paragraph 1 (b).
4. No two judges may be nationals of the same State.
5. States parties should bear in mind in the election of the judges that the representation of the principal legal systems of the world should be assured.
6. Judges hold office for a term of nine years and, subject to paragraph 7 and article 7 (2), are not eligible for re-election. A judge shall, however, continue in office in order to complete any case the hearing of which has commenced.
7. At the first election, six judges chosen by lot shall serve for a term of three years and are eligible for re-election; six judges chosen by lot shall serve for a term of six years; and the remainder shall serve for a term of nine years.
8. Judges nominated as having the qualification referred to in paragraph 1 (a) or 1 (b), as the case may be, shall be replaced by persons nominated as having the same qualification.

Article 7

Judicial vacancies

1. In the event of a vacancy, a replacement judge shall be elected in accordance with article 6.
2. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term, and if that period is less than five years is eligible for re-election for a further term.

Article 8

The Presidency

1. The President, the first and second Vice-Presidents and two alternate Vice-Presidents shall be elected by an absolute majority of the judges. They shall serve for a term of three years or until the end of their term of office as judges, whichever is earlier.
2. The first or second Vice-President, as the case may be, may act in place of the President in the event that the President is unavailable or disqualified. An alternate Vice-President may act in place of either Vice-President as required.
3. The President and the Vice-Presidents shall constitute the Presidency which shall be responsible for:
 - (a) the due administration of the Court; and
 - (b) the other functions conferred on it by this Statute.
4. Unless otherwise indicated, pre-trial and other procedural functions conferred under this Statute on the Court may be exercised by the Presidency in any case where a chamber of the Court is not seized of the matter.
5. The Presidency may, in accordance with the Rules, delegate to one or more judges the exercise of a power vested in it under articles 26 (3), 27 (5), 28, 29 or 30 (3) in relation to a case, during the period before a Trial Chamber is established for that case.

Article 9

Chambers

1. As soon as possible after each election of judges to the Court, the Presidency shall in accordance with the Rules constitute an Appeals Chamber consisting of the President and six other judges, of whom at least three shall be judges elected from among the persons nominated as having the qualification referred to in article 6 (1) (b). The President shall preside over the Appeals Chamber.
2. The Appeals Chamber shall be constituted for a term of three years. Members of the Appeals Chamber shall, however, continue to sit on the Chamber in order to complete any case the hearing of which has commenced.
3. Judges may be renewed as members of the Appeals Chamber for a second or subsequent term.
4. Judges not members of the Appeals Chamber shall be available to serve on Trial Chambers and other chambers required by this Statute, and to act as substitute members of the Appeals Chamber in the event that a member of that Chamber is unavailable or disqualified.

5. The Presidency shall nominate in accordance with the Rules five such judges to be members of the Trial Chamber for a given case. A Trial Chamber shall include at least three judges elected from among the persons nominated as having the qualification referred to in article 6 (1) (a).

6. The Rules may provide for alternate judges to be nominated to attend a trial and to act as members of the Trial Chamber in the event that a judge dies or becomes unavailable during the course of the trial.

7. No judge who is a national of a complainant State or of a State of which the accused is a national shall be a member of a chamber dealing with the case.

Article 10

Independence of the judges

1. In performing their functions, the judges shall be independent.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence. In particular, they shall not while holding the office of judge be a member of the legislative or executive branches of the Government of a State, or of a body responsible for the investigation or prosecution of crimes.

3. Any question as to the application of paragraph 2 shall be decided by the Presidency.

4. On the recommendation of the Presidency, the States parties may by a two-thirds majority decide that the work-load of the Court requires that the judges should serve on a full-time basis. In that case:

(a) existing judges who elect to serve on a full-time basis shall not hold any other office or employment; and

(b) judges subsequently elected shall not hold any other office or employment.

Article 11

Excusing and disqualification of judges

1. The Presidency at the request of a judge may excuse that judge from the exercise of a function under this Statute.
2. Judges shall not participate in any case in which they have previously been involved in any capacity or in which their impartiality might reasonably be doubted on any ground, including an actual, apparent or potential conflict of interest.
3. The Prosecutor or the accused may request the disqualification of a judge under paragraph 2.
4. Any question as to the disqualification of a judge shall be decided by an absolute majority of the members of the Chamber concerned. The challenged judge shall not take part in the decision.

Article 12

The Procuracy

1. The Procuracy is an independent organ of the Court responsible for the investigation of complaints brought in accordance with this Statute and for the conduct of prosecutions. A member of the Procuracy shall not seek or act on instructions from any external source.
2. The Procuracy shall be headed by the Prosecutor, assisted by one or more Deputy Prosecutors, who may act in place of the Prosecutor in

Article 13

The Registry

1. On the proposal of the Presidency, the judges by an absolute majority by secret ballot shall elect a Registrar, who shall be the principal administrative officer of the Court. They may in the same manner elect a Deputy Registrar.
2. The Registrar shall hold office for a term of five years, is eligible for re-election and shall be available on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided on, and may be elected on the basis that the Deputy Registrar is willing to serve as required.
3. The Presidency may appoint or authorize the Registrar to appoint such other staff of the Registry as may be necessary.
4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar.

the event that the Prosecutor is unavailable. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. The Prosecutor may appoint such other qualified staff as may be required.

3. The Prosecutor and Deputy Prosecutors shall be persons of high moral character and have high competence and experience in the prosecution of criminal cases. They shall be elected by secret ballot by an absolute majority of the States parties, from among candidates nominated by States parties. Unless a shorter term is otherwise decided on at the time of their election, they shall hold office for a term of five years and are eligible for re-election.
4. The States parties may elect the Prosecutor and Deputy Prosecutors on the basis that they are willing to serve as required.
5. The Prosecutor and Deputy Prosecutors shall not act in relation to a complaint involving a person of their own nationality.
6. The Presidency may excuse the Prosecutor or a Deputy Prosecutor at their request from acting in a particular case, and shall decide any question raised in a particular case as to the disqualification of the Prosecutor or a Deputy Prosecutor.
7. The staff of the Procuracy shall be subject to Staff Regulations drawn up by the Prosecutor.

Article 14

Solemn undertaking

Before first exercising their functions under this Statute, judges and other officers of the Court shall make a public and solemn undertaking to do so impartially and conscientiously.

Article 15

Loss of office

1. A judge, the Prosecutor or other officer of the Court who is found to have committed misconduct or a serious breach of this Statute, or to be unable to exercise the functions required by this Statute because of long-term illness or disability, shall cease to hold office.
2. A decision as to the loss of office under paragraph 1 shall be made by secret ballot:
 - (a) in the case of the Prosecutor or a Deputy Prosecutor, by an absolute majority of the States parties;
 - (b) in any other case, by a two-thirds majority of the judges.
3. The judge, the Prosecutor or any other officer whose conduct or fitness for office is impugned shall have full opportunity to present evidence and to make submissions but shall not otherwise participate in the discussion of the question.

Article 16

Privileges and immunities

1. The judges, the Prosecutor, the Deputy Prosecutors and the staff of the Procuracy, the Registrar and the Deputy Registrar shall enjoy the privileges, immunities and facilities of a diplomatic agent within the meaning of the Vienna Convention on Diplomatic Relations of 16 April 1961.
2. The staff of the Registry shall enjoy the privileges, immunities and facilities necessary to the performance of their functions.
3. Counsel, experts and witnesses before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.
4. The judges may by an absolute majority decide to revoke a privilege or waive an immunity conferred by this article, other than an immunity of a judge, the Prosecutor or Registrar as such. In the case of other officers and staff of the Procuracy or Registry, they may do so only on the recommendation of the Prosecutor or Registrar, as the case may be.

Article 17

Allowances and expenses

1. The President shall receive an annual allowance.
2. The Vice-Presidents shall receive a special allowance for each day they exercise the functions of the President.
3. Subject to paragraph 4, the judges shall receive a daily allowance during the period in which they exercise their functions. They may continue to receive a salary payable in respect of another position occupied by them consistently with article 10.
4. If it is decided under article 10 (4) that judges shall thereafter serve on a full-time basis, existing judges who elect to serve on a full-time basis, and all judges subsequently elected, shall be paid a salary.

Article 18

Working languages

The working languages of the Court shall be English and French.

Article 19

Rules of the Court

1. Subject to paragraphs 2 and 3, the judges may by an absolute majority make rules for the functioning of the Court in accordance with this Statute, including rules regulating:
 - (a) the conduct of investigations;
 - (b) the procedure to be followed and the rules of evidence to be applied;
 - (c) any other matter which is necessary for the implementation of this Statute.
2. The initial Rules of the Court shall be drafted by the judges within six months of the first elections for the Court, and submitted to a conference of States parties for approval. The judges may decide that a rule subsequently made under paragraph 1 should also be submitted to a conference of States parties for approval.
3. In any case to which paragraph 2 does not apply, rules made under paragraph 1 shall be transmitted to States parties and may be confirmed by the Presidency unless, within six months after transmission, a majority of States parties have communicated in writing their objections.
4. A rule may provide for its provisional application in the period prior to its approval or confirmation. A rule not approved or confirmed shall lapse.

PART 3: JURISDICTION OF THE COURT

Article 20

Crimes within the jurisdiction of the Court

The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) the crime of genocide;
- (b) the crime of aggression;
- (c) serious violations of the laws and customs applicable in armed conflict;
- (d) crimes against humanity;
- (e) crimes, established under or pursuant to the treaty provisions listed in the Annex, which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern.

Article 21

Prerequisites to the exercise of jurisdiction

1. The Court may exercise its jurisdiction over a person with respect to a crime referred to in article 20 if:

(a) in a case of genocide, a complaint is brought under article 25 (1);

(b) in any other case, a complaint is brought under article 25 (2) and the jurisdiction of the Court with respect to the crime is accepted under article 22:

(i) by the State which has custody of the suspect with respect to the crime ("the custodial State"); and

(ii) by the State on the territory of which the act or omission in question occurred.

2. If, with respect to a crime to which paragraph 1 (b) applies, the custodial State has received, under an international agreement, a request from another State to surrender a suspect for the purposes of prosecution, then, unless the request is rejected, the acceptance by the requesting State of the Court's jurisdiction with respect to the crime is also required.

Article 22

Acceptance of the jurisdiction of the Court for the purposes of article 21

1. A State party to this Statute may:

(a) at the time it expresses its consent to be bound by the Statute, by declaration lodged with the depositary; or

(b) at a later time, by declaration lodged with the Registrar;

accept the jurisdiction of the Court with respect to such of the crimes referred to in article 20 as it specifies in the declaration.

2. A declaration may be of general application, or may be limited to particular conduct or to conduct committed during a particular period of time.

3. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving six months' notice of withdrawal to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

4. If under article 21 the acceptance of a State which is not a party to this Statute is required, that State may, by declaration lodged with the Registrar, consent to the Court exercising jurisdiction with respect to the crime.

Action by the Security Council

1. Notwithstanding article 21, the Court has jurisdiction in accordance with this Statute with respect to crimes referred to in article 20 as a consequence of the referral of a matter to the Court by the Security Council acting under Chapter VII of the Charter of the United Nations.
2. A complaint of or directly related to an act of aggression may not be brought under this Statute unless the Security Council has first determined that a State has committed the act of aggression which is the subject of the complaint.
3. No prosecution may be commenced under this Statute arising from a situation which is being dealt with by the Security Council as a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter, unless the Security Council otherwise decides.

Article 24

Duty of the Court as to jurisdiction

The Court shall satisfy itself that it has jurisdiction in any case brought before it.

Commentary

This article is intended to spell out the duty of the Court (and of each of its organs, as appropriate) to satisfy itself that it has jurisdiction in a given case. Detailed provisions relating to challenges to jurisdiction are contained in article 34. But even in the absence of a challenge there is an ex officio responsibility on the Court in matters of jurisdiction.

PART 4. INVESTIGATION AND PROSECUTION

Article 25

Complaint

1. A State party which is also a Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 may lodge a complaint with the Prosecutor alleging that a crime of genocide appears to have been committed.
2. A State party which accepts the jurisdiction of the Court under article 22 with respect to a crime may lodge a complaint with the Prosecutor alleging that such a crime appears to have been committed.
3. As far as possible a complaint shall specify the circumstances of the alleged crime and the identity and whereabouts of any suspect, and be accompanied by such supporting documentation as is available to the complainant State.
4. In a case to which article 23 (1) applies, a complaint is not required for the initiation of an investigation.

Investigation of alleged crimes

1. On receiving a complaint or upon notification of a decision of the Security Council referred to in article 23 (1), the Prosecutor shall initiate an investigation unless the prosecutor concludes that there is no possible basis for a prosecution under this Statute and decides not to initiate an investigation, in which case the Prosecutor shall so inform the Presidency.

2. The Prosecutor may:

(a) request the presence of and question suspects, victims and witnesses;

(b) collect documentary and other evidence;

(c) conduct on-site investigations;

(d) take necessary measures to ensure the confidentiality of information or the protection of any person;

(e) as appropriate, seek the cooperation of any State or of the United Nations.

3. The Presidency may, at the request of the Prosecutor, issue such subpoenas and warrants as may be required for the purposes of an investigation, including a warrant under article 28 (1) for the provisional arrest of a suspect.

4. If, upon investigation and having regard, inter alia, to the matters referred to in article 35, the Prosecutor concludes that there is no sufficient basis for a prosecution under this Statute and decides not to file an indictment, the Prosecutor shall so inform the Presidency giving details of the nature and basis of the complaint and of the reasons for not filing an indictment.

5. At the request of a complainant State or, in a case to which article 23 (1) applies, at the request of the Security Council, the Presidency shall review a decision of the Prosecutor not to initiate an investigation or not to file an indictment, and may request the Prosecutor to reconsider the decision.

6. A person suspected of a crime under this Statute shall:

(a) prior to being questioned, be informed that the person is a suspect and of the rights:

(i) to remain silent, without such silence being a consideration in the determination of guilt or innocence; and

(ii) to have the assistance of counsel of the suspect's choice or, if the suspect lacks the means to retain counsel, to have legal assistance assigned by the Court;

- (b) not be compelled to testify or to confess guilt; and
- (c) if questioned in a language other than a language the suspect understands and speaks, be provided with competent interpretation services and with a translation of any document on which the suspect is to be questioned.

Article 27

Commencement of prosecution

1. If upon investigation the Prosecutor concludes that there is a prima facie case, the Prosecutor shall file with the Registrar an indictment containing a concise statement of the allegations of fact and of the crime or crimes with which the suspect is charged.
2. The Presidency shall examine the indictment and any supporting material and determine:
 - (a) whether a prima facie case exists with respect to a crime within the jurisdiction of the Court; and
 - (b) whether, having regard, inter alia, to the matters referred to in article 35, the case should on the information available be heard by the Court.

If so, it shall confirm the indictment and establish a trial chamber in accordance with article 9.
3. If, after any adjournment that may be necessary to allow additional material to be produced, the Presidency decides not to confirm the indictment, it shall so inform the complainant State or, in a case to which article 23 (1) applies, the Security Council.
4. The Presidency may at the request of the Prosecutor amend the indictment, in which case it shall make any necessary orders to ensure that the accused is notified of the amendment and has adequate time to prepare a defence.
5. The Presidency may make any further orders required for the conduct of the trial, including an order:
 - (a) determining the language or languages to be used during the trial;
 - (b) requiring the disclosure to the defence, within a sufficient time before the trial to enable the preparation of the defence, of documentary or other evidence available to the Prosecutor, whether or not the Prosecutor intends to rely on that evidence;
 - (c) providing for the exchange of information between the Prosecutor and the defence, so that both parties are sufficiently aware of the issues to be decided at the trial;
 - (d) providing for the protection of the accused, victims and witnesses and of confidential information.

Article 28Arrest

1. At any time after an investigation has been initiated, the Presidency may at the request of the Prosecutor issue a warrant for the provisional arrest of a suspect if:

(a) there is probable cause to believe that the suspect may have committed a crime within the jurisdiction of the Court; and

(b) the suspect may not be available to stand trial unless provisionally arrested.

2. A suspect who has been provisionally arrested is entitled to release from arrest if the indictment has not been confirmed within 90 days of the arrest, or such longer time as the Presidency may allow.

3. As soon as practicable after the confirmation of the indictment, the Prosecutor shall seek from the Presidency a warrant for the arrest and transfer of the accused. The Presidency shall issue such a warrant unless it is satisfied that:

(a) the accused will voluntarily appear for trial; or

(b) there are special circumstances making it unnecessary for the time being to issue the warrant.

4. A person arrested shall be informed at the time of arrest of the reasons for the arrest and shall be promptly informed of any charges.

Article 29Pre-trial detention or release

1. A person arrested shall be brought promptly before a judicial officer of the State where the arrest occurred. The judicial officer shall determine, in accordance with the procedures applicable in that State, that the warrant has been duly served and that the rights of the accused have been respected.

2. A person arrested may apply to the Presidency for release pending trial. The Presidency may release the person unconditionally or on bail if it is satisfied that the accused will appear at the trial.

3. A person arrested may apply to the Presidency for a determination of the lawfulness under this Statute of the arrest or detention. If the Presidency decides that the arrest or detention was unlawful, it shall order the release of the accused, and may award compensation.

4. A person arrested shall be held, pending trial or release on bail, in an appropriate place of detention in the arresting State, in the State in which the trial is to be held or if necessary, in the host State.

Article 30Notification of the indictment

1. The Prosecutor shall ensure that a person who has been arrested is personally served, as soon as possible after being taken into custody, with certified copies of the following documents, in a language understood by that person:

(a) in the case of a suspect provisionally arrested, a statement of the grounds for the arrest;

(b) in any other case, the confirmed indictment;

(c) a statement of the accused's rights under this Statute.

2. In any case to which paragraph (1) (a) applies, the indictment shall be served on the accused as soon as possible after it has been confirmed.

3. If, 60 days after the indictment has been confirmed, the accused is not in custody pursuant to a warrant issued under article 28 (3), or for some reason the requirements of paragraph 1 cannot be complied with, the Presidency may on the application of the Prosecutor prescribe some other manner of bringing the indictment to the attention of the accused.

Article 31Persons made available to assist in a prosecution

1. The Prosecutor may request a State party to make persons available to assist in a prosecution in accordance with paragraph 2.

2. Such persons should be available for the duration of the prosecution, unless otherwise agreed. They shall serve at the direction of the Prosecutor, and shall not seek or receive instructions from any Government or source other than the Prosecutor in relation to their exercise of functions under this article.

3. The terms and conditions on which persons may be made available under this article shall be approved by the Presidency on the recommendation of the Prosecutor.

PART 5. THE TRIAL

Article 32Place of trial

Unless otherwise decided by the Presidency, the place of the trial will be the seat of the Court.

Article 33Applicable law

The Court shall apply:

- (a) this Statute;
- (b) applicable treaties and the principles and rules of general international law; and
- (c) to the extent applicable, any rule of national law.

Article 34Challenges to jurisdiction

Challenges to the jurisdiction of the Court may be made, in accordance with the Rules:

- (a) prior to or at the commencement of the hearing, by an accused or any interested State; and
- (b) at any later stage of the trial, by an accused.

Article 35Issues of admissibility

The Court may, on application by the accused or at the request of an interested State at any time prior to the commencement of the trial, or of its own motion, decide, having regard to the purposes of this Statute set out in the preamble, that a case before it is inadmissible on the ground that the crime in question:

- (a) has been duly investigated by a State with jurisdiction over it, and the decision of that State not to proceed to a prosecution is apparently well-founded;
- (b) is under investigation by a State which has or may have jurisdiction over it, and there is no reason for the Court to take any further action for the time being with respect to the crime; or
- (c) is not of such gravity to justify further action by the Court.

Article 36Procedure under articles 34 and 35

1. In proceedings under articles 34 and 35, the accused and the complainant State have the right to be heard.
2. Proceedings under articles 34 and 35 shall be decided by the Trial Chamber, unless it considers, having regard to the importance of the issues involved, that the matter should be referred to the Appeals Chamber.

Article 37Trial in the presence of the accused

1. As a general rule, the accused should be present during the trial.
2. The Trial Chamber may order that the trial proceed in the absence of the accused if:
 - (a) the accused is in custody, or has been released pending trial, and for reasons of security or the ill-health of the accused it is undesirable for the accused to be present;
 - (b) the accused is continuing to disrupt the trial; or
 - (c) the accused has escaped from lawful custody under this Statute or has broken bail.
3. The Chamber shall, if it makes an order under paragraph 2, ensure that the rights of the accused under this Statute are respected, and in particular:
 - (a) that all reasonable steps have been taken to inform the accused of the charge; and
 - (b) that the accused is legally represented, if necessary by a lawyer appointed by the Court.
4. In cases where a trial cannot be held because of the deliberate absence of an accused, the Court may establish, in accordance with the Rules, an Indictment Chamber for the purpose of:
 - (a) recording the evidence;
 - (b) considering whether the evidence establishes a prima facie case of a crime within the jurisdiction of the Court; and
 - (c) issuing and publishing a warrant of arrest in respect of an accused against whom a prima facie case is established.
5. If the accused is subsequently tried under this Statute:
 - (a) the record of evidence before the Indictment Chamber shall be admissible;
 - (b) any judge who was a member of the Indictment Chamber may not be a member of the Trial Chamber.

Article 38Functions and powers of the Trial Chamber

1. At the commencement of the trial, the Trial Chamber shall:
 - (a) have the indictment read;
 - (b) ensure that articles 27 (5) (b) and 30 have been complied with sufficiently in advance of the trial to enable adequate preparation of the defence;
 - (c) satisfy itself that the other rights of the accused under this Statute have been respected; and
 - (d) allow the accused to enter a plea of guilty or not guilty.
2. The Chamber shall ensure that a trial is fair and expeditious and is conducted in accordance with this Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
3. The Chamber may, subject to the Rules, hear charges against more than one accused arising out of the same factual situation.
4. The trial shall be held in public, unless the Chamber determines that certain proceedings be in closed session in accordance with article 43, or for the purpose of protecting confidential or sensitive information which is to be given in evidence.
5. The Chamber shall, subject to this Statute and the Rules have, inter alia, the power on the application of a party or of its own motion, to:
 - (a) issue a warrant for the arrest and transfer of an accused who is not already in the custody of the Court;
 - (b) require the attendance and testimony of witnesses;
 - (c) require the production of documentary and other evidentiary materials;
 - (d) rule on the admissibility or relevance of evidence;
 - (e) protect confidential information; and
 - (f) maintain order in the course of a hearing.
6. The Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is maintained and preserved by the Registrar.

Article 39Principle of legality (nullum crimen sine lege):

An accused shall not be held guilty:

(a) in the case of a prosecution with respect to a crime referred to in article 20 (a) to (d), unless the act or omission in question constituted a crime under international law;

(b) in the case of a prosecution with respect to a crime referred to in article 20 (e), unless the treaty in question was applicable to the conduct of the accused;

at the time the act or omission occurred.

Article 40Presumption of innocence

An accused shall be presumed innocent until proved guilty in accordance with law. The onus is on the Prosecutor to establish the guilt of the accused beyond reasonable doubt.

Article 41Rights of the accused

1. In the determination of any charge under this Statute, the accused is entitled to a fair and public hearing, subject to article 43, and to the following minimum guarantees:

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

(b) to have adequate time and facilities for the preparation of the defence, and to communicate with counsel of the accused's choosing;

(c) to be tried without undue delay;

(d) subject to article 37 (2), to be present at the trial, to conduct the defence in person or through legal assistance of the

accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court, without payment if the accused lacks sufficient means to pay for such assistance;

(e) to examine, or have examined, the prosecution witnesses and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;

(f) if any of the proceedings or documents presented to the Court are not in a language the accused understands and speaks, to have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness;

(g) not to be compelled to testify or to confess guilt.

2. Exculpatory evidence that becomes available to the Procuracy prior to the conclusion of the trial shall be made available to the defence. In case of doubt as to the application of this paragraph or as to the admissibility of the evidence, the Trial Chamber shall decide.

Article 42

Non bis in idem

1. No person shall be tried before any other court for acts constituting a crime of the kind referred to in article 20 for which that person has already been tried by the Court.

2. A person who has been tried by another court for acts constituting a crime of the kind referred to in article 20 may be tried under this Statute only if:

(a) the acts in question were characterized by that court as an ordinary crime and not as a crime which is within the jurisdiction of the Court; or

(b) the proceedings in the other court were not impartial or independent or were designed to shield the accused from international criminal responsibility or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted under this Statute, the Court shall take into account the extent to which a penalty imposed by another court on the same person for the same act has already been served.

Article 43

Protection of the accused, victims and witnesses

The Court shall take necessary measures available to it to protect the accused, victims and witnesses and may to that end conduct closed proceedings or allow the presentation of evidence by electronic or other special means.

Article 44

Evidence

1. Before testifying, each witness shall, in accordance with the Rules, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. States parties shall extend their laws of perjury to cover evidence given under this Statute by their nationals, and shall cooperate with the Court in investigating and where appropriate prosecuting any case of suspected perjury.
3. The Court may require to be informed of the nature of any evidence before it is offered so that it may rule on its relevance or admissibility.
4. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
5. Evidence obtained by means of a serious violation of this Statute or of other rules of international law shall not be admissible.

Article 45

Quorum and judgment

1. At least four members of the Trial Chamber must be present at each stage of the trial.
2. The decisions of the Trial Chamber shall be taken by a majority of the judges. At least three judges must concur in a decision as to conviction or acquittal and as to the sentence to be imposed.
3. If after sufficient time for deliberation a Chamber which has been reduced to four judges is unable to agree on a decision, it may order a new trial.
4. The deliberations of the Court shall be and remain secret.
5. The judgment shall be in writing and shall contain a full and reasoned statement of the findings and conclusions. It shall be the sole judgment issued, and shall be delivered in open court.

Article 46

Sentencing

1. In the event of a conviction, the Trial Chamber shall hold a further hearing to hear any evidence relevant to sentence, to allow the Prosecutor and the defence to make submissions and to consider the appropriate sentence to be imposed.
2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

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2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the crime and the individual circumstances of the convicted person.

Article 47Applicable penalties

1. The Court may impose on a person convicted of a crime under this Statute one or more of the following penalties:
 - (a) a term of life imprisonment, or of imprisonment for a specified number of years;
 - (b) a fine.
2. In determining the length of a term of imprisonment or the amount of a fine to be imposed, the Court may have regard to the penalties provided for by the law of:
 - (a) the State of which the convicted person is a national;
 - (b) the State where the crime was committed; and
 - (c) the State which had custody of and jurisdiction over the accused.
3. Fines paid may be transferred, by order of the Court, to one or more of the following:
 - (a) the Registrar, to defray the costs of the trial;
 - (b) a State the nationals of which were the victims of the crime;
 - (c) a trust fund established by the Secretary-General of the United Nations for the benefit of victims of crime.

PART 6. APPEAL AND REVIEW

Article 48Appeal against judgment or sentence

1. The Prosecutor and the convicted person may, in accordance with the Rules, appeal against a decision under articles 45 or 47 on grounds of procedural error, error of fact or of law, or disproportion between the crime and the sentence.
2. Unless the Trial Chamber otherwise orders, a convicted person shall remain in custody pending an appeal.

Article 49Proceedings on appeal

1. The Appeals Chamber has all the powers of the Trial Chamber.
2. If the Appeals Chamber finds that the proceedings appealed from were unfair or that the decision is vitiated by error of fact or law, it may:

(a) if the appeal is brought by the convicted person, reverse or amend the decision, or, if necessary, order a new trial;

(b) if the appeal is brought by the Prosecutor against an acquittal, order a new trial.

3. If in an appeal against sentence the Chamber finds that the sentence is manifestly disproportionate to the crime, it may vary the sentence in accordance with article 47.

4. The decision of the Chamber shall be taken by a majority of the judges, and shall be delivered in open court. Six judges constitute a quorum.

5. Subject to article 50, the decision of the Chamber shall be final.

Article 50

Revision

1. The convicted person or the Prosecutor may, in accordance with the Rules, apply to the Presidency for revision of a conviction on the ground that evidence has been discovered which was not available to the applicant at the time the conviction was pronounced or affirmed and which could have been a decisive factor in the conviction.

2. The Presidency shall request the Prosecutor or the convicted person, as the case may be, to present written observations on whether the application should be accepted.

3. If the Presidency is of the view that the new evidence could lead to the revision of the conviction, it may:

- (a) reconvene the Trial Chamber;
- (b) constitute a new Trial Chamber; or
- (c) refer the matter to the Appeals Chamber;

with a view to the Chamber determining, after hearing the parties, whether the new evidence should lead to a revision of the conviction.

PART 7. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

Article 51

Cooperation and judicial assistance

1. States parties shall cooperate with the Court in connection with criminal investigations and proceedings under this Statute.

2. The Registrar may transmit to any State a request for cooperation and judicial assistance with respect to a crime, including, but not limited to:

- (a) the identification and location of persons;

- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons; and
- (e) any other request which may facilitate the administration of justice, including provisional measures as required.

3. Upon receipt of a request under paragraph 2:

- (a) in a case covered by article 21 (1) (a), all States parties;
- (b) in any other case, States parties which have accepted the jurisdiction of the Court with respect to the crime in question;

shall respond without undue delay to the request.

Article 52

Provisional measures

1. In case of need, the Court may request a State to take necessary provisional measures, including the following:

- (a) to provisionally arrest a suspect;
- (b) to seize documents or other evidence; or
- (c) to prevent injury to or the intimidation of a witness or the destruction of evidence.

2. The Court shall follow up a request under paragraph 1 by providing, as soon as possible and in any case within 28 days, a formal request for assistance complying with article 57.

Article 53

Transfer of an accused to the Court

1. The Registrar shall transmit to any State on the territory of which the accused may be found a warrant for the arrest and transfer of an accused issued under article 28, and shall request the cooperation of that State in the arrest and transfer of the accused.

2. Upon receipt of a request under paragraph 1:

- (a) all States parties:
 - (i) in a case covered by article 21 (1) (a), or
 - (ii) which have accepted the jurisdiction of the Court with respect to the crime in question;

shall, subject to paragraphs 5 and 6, take immediate steps to arrest and transfer the accused to the Court;

(b) in the case of a crime to which article 20 (e) applies, a State party which is a party to the treaty in question but which has not accepted the Court's jurisdiction with respect to that crime shall, if it decides not to transfer the accused to the Court, forthwith take all necessary steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution;

(c) in any other case, a State party shall consider whether it can, in accordance with its legal procedures, take steps to arrest and transfer the accused to the Court, or whether it should take steps to extradite the accused to a requesting State or refer the case to its competent authorities for the purpose of prosecution.

3. The transfer of an accused to the Court constitutes, as between States parties which accept the jurisdiction of the Court with respect to the crime, sufficient compliance with a provision of any treaty requiring that a suspect be extradited or the case referred to the competent authorities of the requested State for the purpose of prosecution.

4. A State party which accepts the jurisdiction of the Court with respect to the crime shall, as far as possible, give priority to a request under paragraph 1 over requests for extradition from other States.

5. A State party may delay complying with paragraph 2 if the accused is in its custody or control and is being proceeded against for a serious crime, or serving a sentence imposed by a court for a crime. It shall within 45 days of receiving the request inform the Registrar of the reasons for the delay. In such cases, the requested State:

(a) may agree to the temporary transfer of the accused for the purpose of standing trial under this Statute; or

(c) shall comply with paragraph 2 after the prosecution has been completed or abandoned or the sentence has been served, as the case may be.

6. A State party may, within 45 days of receiving a request under paragraph 1, file a written application with the Registrar requesting the Court to set aside the request on specified grounds. Pending a decision of the Court on the application, the State concerned may delay complying with paragraph 2 but shall take any provisional measures necessary to ensure that the accused remains in its custody or control.

Article 54

Obligation to extradite or prosecute

In a case of a crime referred to in article 20 (e), a custodial State party to this Statute which is a party to the treaty in question but which has not accepted the Court's jurisdiction with respect to the crime for the purposes of article 21 (1) (b) (i) shall either take all necessary steps to extradite the suspect to a requesting State for the purpose of prosecution or refer the case to its competent authorities for that purpose.

Article 55Rule of speciality

1. A person transferred to the Court under article 53 shall not be subject to prosecution or punishment for any crime other than that for which the person was transferred.
2. Evidence provided under this Part shall not, if the State when providing it so requests, be used as evidence for any purpose other than that for which it was provided, unless this is necessary to preserve the right of an accused under article 41 (2).
3. The Court may request the State concerned to waive the requirements of paragraphs 1 or 2, for the reasons and purposes specified in the request.

Article 56Cooperation with States not parties to this Statute

States not parties to this Statute may assist in relation to the matters referred to in this Part on the basis of comity, a unilateral declaration, an ad hoc arrangement or other agreement with the Court.

Article 57Communications and documentation

1. Requests under this Part shall be in writing, or be forthwith reduced to writing, and shall be between the competent national authority and the Registrar. States parties shall inform the Registrar of the name and address of their national authority for this purpose.
2. When appropriate, communications may also be made through the International Criminal Police Organization.
3. A request under this Part shall include the following, as applicable:
 - (a) a brief statement of the purpose of the request and of the assistance sought, including the legal basis and grounds for the request;
 - (b) information concerning the person who is the subject of the request on the evidence sought, in sufficient detail to enable identification;
 - (c) a brief description of the essential facts underlying the request; and
 - (d) information concerning the complaint or charge to which the request relates and of the basis for the Court's jurisdiction.
4. A requested State which considers the information provided insufficient to enable the request to be complied with may seek further particulars.

Article 58Recognition of judgments

States parties undertake to recognize the judgments of the Court.

Article 59Enforcement of sentences

1. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.
2. If no State is designated under paragraph 1, the sentence of imprisonment shall be served in a prison facility made available by the host State.
3. A sentence of imprisonment shall be subject to the supervision of the Court in accordance with the Rules.

Article 60Pardon, parole and commutation of sentences

1. If, under a generally applicable law of the State of imprisonment, a person in the same circumstances who had been convicted for the same conduct by a court of that State would be eligible for pardon, parole or commutation of sentence, the State shall so notify the Court.
2. If a notification has been given under paragraph 1, the prisoner may apply to the Court in accordance with the Rules, seeking an order for pardon, parole or commutation of the sentence.
3. If the Presidency decides that an application under paragraph 2 is apparently well-founded, it shall convene a Chamber of five judges to consider and decide whether in the interests of justice the person convicted should be pardoned or paroled or the sentence commuted, and on what basis.
4. When imposing a sentence of imprisonment, a Chamber may stipulate that the sentence is to be served in accordance with specified laws as to pardon, parole or commutation of sentence of the State of imprisonment. The consent of the Court is not required to subsequent action by that State in conformity with those laws, but the Court shall be given at least 45 days' notice of any decision which might materially affect the terms or extent of the imprisonment.
5. Except as provided in paragraphs 3 and 4, a person serving a sentence imposed by the Court is not to be released before the expiry of the sentence.

AnnexCrimes pursuant to Treaties (see art. 20 (a))

1. Grave breaches of:
 - (i) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, as defined by Article 50 of that Convention;
 - (ii) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, as defined by Article 51 of that Convention;
 - (iii) the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, as defined by Article 130 of that Convention;
 - (iv) the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, as defined by Article 147 of that Convention;
 - (v) Protocol I Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, as defined by Article 85 of that Protocol.
2. The unlawful seizure of aircraft as defined by Article 1 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970.
3. The crimes defined by Article 1 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971.
4. Apartheid and related crimes as defined by Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973.
5. The crimes defined by Article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973.
6. Hostage-taking and related crimes as defined by Article 1 of the International Convention against the Taking of Hostages of 17 December 1979.
7. The crime of torture made punishable pursuant to Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.
8. The crimes defined by Article 3 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 10 March 1988 and by Article 2 of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf of 10 March 1988.

9. Crimes involving illicit traffic in narcotic drugs and psychotropic substances as envisaged by Article 3 (1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20-December 1988 which, having regard to Article 2 of the Convention, are crimes with an international dimension.



ประวัติผู้เขียน

นางสาวกนกวรรณ ภิบาลชนม์ เกิดที่กรุงเทพฯ เมื่อวันที่ 31 มีนาคม พ.ศ. 2512 สำเร็จการศึกษาจากโรงเรียนเขมะสิริอนุสสรณ์ และเข้าศึกษาต่อที่คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ เมื่อปี พ.ศ. 2529 ได้รับปริญญานิติศาสตร์บัณฑิต (น.บ.) เมื่อ พ.ศ. 2532 หลังจากนั้นได้ศึกษาต่อระดับมหาบัณฑิตที่คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อพ.ศ. 2533 ปัจจุบันรับราชการอยู่ที่กรมสนธิสัญญาและกฎหมาย กระทรวงการต่างประเทศ