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datum 20 augustus 2001
onze ref. CB/MB/1566768
inzake Staat / Milosevic

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Edelachtbare Heer,

Ter zitting van 23 augustus 2001 in bovenvermelde zaak zullen mijn kantoorgenoot mr. G.J.H. Houtzagers en ik voor de Staat der Nederlanden pleiten. Met het oog daarop stuur ik u hierbij kopieën van stukken waarop wij ter zitting een beroep zullen doen. Het gaat om de volgende stukken:

1 Resolutie 827 van de Veiligheidsraad van 25 mei 1993;
2 Statuut van het Joegoslavië-Tribunaal;
3 Rules of procedure and evidence Joegoslavië-Tribunaal;
4 Vonnis President Rechtbank Den Haag 30 mei 1997.

Een kopie van deze brief met bijlagen stuur ik aan mr. N.M.P. Steijnen, die optreedt voor eiser.

Met de meeste hoogachting,

C.M. Bitter

PRODUCTIE 1

1 (1945) Nr. 39

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1993 Nr. 168

A. TITEL

Handvest van de Verenigde Naties;
San Francisco, 26 juni 1945

B. TEKST

De Engelse tekst van het handvest is bij Koninklijk besluit van 21 december 1945 bekendgemaakt in *Stb.* F 321
De Engelse en de Franse tekst, zoals gewijzigd, zijn geplaatst in *Trb.* 1979, 37.

C. VERTALING

Voor de vertaling in het Nederlands van het Handvest, zoals gewijzigd, zie *Trb.* 1987, 113.

D. PARLEMENT

Zie *Trb.* 1951, 44.

E. BEKRACHTIGING

Zie *Trb.* 1979, 37.

F. TOETREDING

Zie *Trb.* 1979, 37, *Trb.* 1980, 41, *Trb.* 1981, 174, *Trb.* 1985, 5, *Trb.* 1990, 119 en *Trb.* 1992, 79 en 101.

Behalve de aldaar genoemde zijn nog de volgende Staten op grond van artikel 4 van het Handvest tot het lidmaatschap van de Verenigde Naties toegelaten:

Georgië	31 juli 1992
Slowakije	19 januari 1993
de Tsjechische Republiek	19 januari 1993
De Voormalige Joegoslavische Republiek Macedonië	8 april 1993
Eritrea	28 mei 1993
Monaco	28 mei 1993
Andorra	28 juli 1993

G. INWERKINGTREDING

Zie *Trb.* 1964, 109.

I. OPZEGGING

Zie *Trb.* 1966, 138

J. GEGEVENS

Zie laatstelijk *Trb.* 1992, 101.

3. Resoluties

f. Joegoslavië-Tribunaal

Op 22 februari 1993 heeft de Veiligheidsraad van de Verenigde Naties tijdens haar 3175e bijeenkomst aangenomen resolutie 808, waarvan de Engelse tekst luidt:

Resolution 808 (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 their 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 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.

Op 25 mei 1993 heeft de Veiligheidsraad van de Verenigde Naties tijdens haar 3217e bijeenkomst resolutie 827 aangenomen, waarvan de Engelse tekst luidt:

Resolution 827 (1993)

The Security Council,

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

Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this sitution continues to constitute 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 as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the abovementioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

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),

Reaffirming in this regard its decision in resolution 808 (1993) 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,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274),

Acting under Chapter VII of the Charter of the United Nations,

1. Approves the report of the Secretary-General;

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.

De Engelse tekst van het Statuut van het ingevolge paragraaf 2 van resolutie 827 door de Veiligheidsraad van de Verenigde Naties ingestelde Internationaal Tribunaal voor de vervolging van personen verantwoordelijk voor ernstige schendingen van internationaal humanitair recht op het grondgebied van het voormalig Joegoslavië sinds 1991, luidt als volgt:

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 ground;
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 dertermines 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 Tribune and national court shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 Januari 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 humaitarian 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 Chambers;

b) The Prosecuter, and

c) A Registry, servicing both the Chambers and the Prosecutor.

Article 12

Compostion 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 invition 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 Presdient 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 name 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 consulation 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 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 assistence 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 expeditions and that proceedings are conducted in accordance with the rules

of procedures 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 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 provice 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 schall 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 Tribune 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 staf 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 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

Article 33

Working languages

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

Article 34

Annual 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.

Uitgegeven de *negende* december 1993

De Minister van Buitenlandse Zaken,

P. H. KOOIJMANS

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PRODUCTIE 2

STATUTE OF THE INTERNATIONAL TRIBUNAL

(ADOPTED 25 MAY 1993 by Resolution 827)
(AS AMENDED 13 MAY 1998 by Resolution 1166)
(AS AMENDED 30 NOVEMBER 2000 by Resolution 1329)

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 three 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

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of nine *ad litem* independent judges appointed in accordance with article 13 *ter*, paragraph 2, of the Statute, no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any one time of six *ad litem* judges shall be members of each Trial Chamber. Each Trial Chamber to which *ad litem* judges are assigned may be divided into sections of three judges each, composed of both permanent and *ad litem* judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules.

3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

Article 13
Qualifications of judges

The permanent and *ad litem* 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 and sections of the Trial 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.

Article 13 *bis*
Election of permanent judges

1. Fourteen of the permanent 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 article 13 of the Statute, no two of whom

shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "The International Tribunal for Rwanda") in accordance with article 12 of the Statute of that Tribunal.
(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-eight and not more than forty-two 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 fourteen permanent 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.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, 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 article 13 of the Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article 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 13 *ter*
Election and appointment of *ad litem* judges

1. The *ad litem* 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 *ad litem* 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 four candidates meeting the qualifications set out in article 13 of the Statute, taking into account the importance of a fair representation of female and male candidates.
(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 fifty-four candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution.
(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 twenty-seven *ad litem* 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.
(e) The *ad litem* judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, *ad litem* judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular *ad litem* judge, the President of the International Tribunal shall bear in mind the criteria set out in article 13 of the Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the *ad litem* judge received in the General Assembly.

Article 13 *quater*
Status of *ad litem* judges

1. During the period in which they are appointed to serve in the International Tribunal, *ad litem* judges shall:

(a) benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal;
(b) enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal;
(c) enjoy the privileges and immunities, exemptions and facilities of a judge of the International

Tribunal.

2. During the period in which they are appointed to serve in the International Tribunal, *ad litem* judges shall not:

(a) be eligible for election as, or to vote in the election of, the President of the Tribunal or the Presiding Judge of a Trial Chamber pursuant to article 14 of the Statute;
(b) have power:

(i) to adopt rules of procedure and evidence pursuant to article 15 of the Statute. They shall, however, be consulted before the adoption of those rules;
(ii) to review an indictment pursuant to article 19 of the Statute;
(iii) to consult with the President in relation to the assignment of judges pursuant to article 14 of the Statute or in relation to a pardon or commutation of sentence pursuant to article 28 of the Statute;
(iv) to adjudicate in pre-trial proceedings.

Article 14
Officers and members of the Chambers

1. The permanent judges of the International Tribunal shall elect a President from amongst their number.

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 permanent judges of the International Tribunal, the President shall assign four of the permanent judges elected or appointed in accordance with Article 13 *bis* of the Statute to the Appeals Chamber and nine to the Trial Chambers.

4. Two of the judges elected or appointed in accordance with article 12 of the Statute of the International Tribunal for Rwanda shall be assigned by the President of that Tribunal, in consultation with the President of the International Tribunal, to be members of the Appeals Chamber and permanent judges of the International Tribunal.

5. After consultation with the permanent judges of the International Tribunal, the President shall assign such *ad litem* judges as may from time to time be appointed to serve in the International Tribunal to the Trial Chambers.

6. A judge shall serve only in the Chamber to which he or she was assigned.

7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work 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 organisations. 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
Co-operation and judicial assistance

1. States shall co-operate 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 32
Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

Article 33
Working languages

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

Article 34
Annual 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.

PRODUCTIE 3

RULES OF PROCEDURE AND EVIDENCE

(ADOPTED 11 FEBRUARY 1994)
(AS AMENDED 5 MAY 1994)
(AS FURTHER AMENDED 4 OCTOBER 1994)
(AS AMENDED 30 JANUARY 1995)
(AS AMENDED 3 MAY 1995)
(AS FURTHER AMENDED 15 JUNE 1995)
(AS AMENDED 6 OCTOBER 1995)
(AS FURTHER AMENDED 18 JANUARY 1996)
(AS AMENDED 23 APRIL 1996)
(AS AMENDED 25 JUNE AND 5 JULY 1996)
(AS AMENDED 3 DECEMBER 1996)
(AS FURTHER AMENDED 25 JULY 1997)
(AS REVISED 20 OCTOBER AND 12 NOVEMBER 1997)
(AS AMENDED 9 & 10 JULY 1998)
(AS AMENDED 4 DECEMBER 1998)
(AS AMENDED 23 FEBRUARY 1999)
(AS AMENDED 2 JULY 1999)
(AS AMENDED 17 NOVEMBER 1999)
(AS AMENDED 14 JULY 2000)
(AS AMENDED 1 AND 13 DECEMBER 2000)
(AS AMENDED 12 APRIL 2001)

(IT/32/REV.19)

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(ADOPTED 11 FEBRUARY 1994)
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(AS AMENDED 1 AND 13 DECEMBER 2000)
(AS AMENDED 12 APRIL 2001)

(IT/32/REV.20)

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 of Procedure and Evidence in force;

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 one or more counts in an indictment have been confirmed in accordance with Rule 47;

Ad litem Judge:
A Judge appointed pursuant to Article 13 *ter* of the Statute;

Arrest:
The act of taking a suspect or an accused into custody pursuant to a warrant of arrest or under Rule 40;

Bureau:
A body composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers;

Defence:
The accused, and/or the accused's counsel;

Investigation:
All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence, whether before or after an indictment is confirmed;

Parties:
The Prosecutor and the Defence;

Permanent Judge:
A Judge elected or appointed pursuant to Article 13 *bis* of the Statute;

President:
The President of the Tribunal;

Prosecutor:
The Prosecutor appointed pursuant to Article 16 of the Statute;

Regulations:
The provisions framed by the Prosecutor pursuant to Sub-rule 37 (A) for the purpose of directing the functions of the Office of the Prosecutor;

State:
A State Member or non-Member of the United Nations or a self-proclaimed entity de facto exercising governmental functions, whether recognised as a State or not;

Suspect:
A person concerning whom the Prosecutor possesses reliable information which tends to show that the person may have committed a crime over which the Tribunal has jurisdiction;

Transaction:
A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;

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 or her own language.

(C) Other persons appearing before the Tribunal, other than as counsel, who do not have sufficient knowledge of either of the two working languages, may use their own language.

(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.

(F) If:

(i) a party is required to take any action within a specified time after the filing or service of a document by another party; and

(ii) pursuant to the Rules, that document is filed in a language other than one of the working languages of the Tribunal,

time shall not run until the party required to take action has received from the Registrar a translation of the document into one of the working languages of the Tribunal.

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

(A) Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber shall grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to that party.

(B) Where such an objection is raised otherwise than at the earliest opportunity, the Trial Chamber may in its discretion grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to the objecting party.

(C) The relief granted by a Trial Chamber under this Rule shall be such remedy as the Trial Chamber considers appropriate to ensure consistency with the fundamental principles of fairness.

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 ten permanent 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 permanent Judges.

(C) Proposals for amendment of the Rules may otherwise be made in accordance with the Practice Direction issued by the President.

(D) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, but shall not operate to prejudice the rights of the accused or of a convicted or acquitted person 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 7 *bis*
Non-compliance with Obligations

(A) In addition to cases to which Rule 11, Rule 13, Rule 59 or Rule 61 applies, where a Trial Chamber or a permanent Judge is satisfied that a State has failed to comply with an obligation under Article 29 of the Statute which relates to any proceedings before that Chamber or Judge, the Chamber or Judge may advise the President, who shall report the matter to the Security Council.

(B) If the Prosecutor satisfies the President that a State has failed to comply with an obligation under Article 29 of the Statute in respect of a request by the Prosecutor under Rule 8, Rule 39 or Rule 40, the President shall notify the Security Council thereof.

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 courts of any State, the Prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 29 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 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 such 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 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 trial shall be held before another 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 request, the Trial Chamber may request the President to report the matter to the Security Council.

Rule 11 *bis*
Suspension of Indictment in case of Proceedings before National Courts

(A) Where, on application by the Prosecutor or *proprio motu,* it appears to the Trial Chamber that

(i) the authorities of the State in which an accused was arrested are prepared to prosecute the accused in their own courts; and

(ii) it is appropriate in the circumstances for the courts of that State to exercise jurisdiction over the accused,

the Trial Chamber, after affording the opportunity to an accused already in the custody of the Tribunal to be heard, may order that the indictment against the accused be suspended, pending the proceedings before the national courts.

(B) If an order is made under this Rule:

(i) the accused, if in the custody of the Tribunal, shall be transferred to the authorities of the State concerned;

(ii) the Prosecutor may transmit to the authorities of the State concerned such information relating to the case as the Prosecutor considers appropriate;

(iii) the Prosecutor may direct trial observers to monitor proceedings before the national courts on the Prosecutor's behalf.

(C) At any time after the making of an order under this Rule and before the accused is convicted

or acquitted by a national court, the Trial Chamber may, upon the Prosecutor's application and after affording an opportunity to the authorities of the State concerned to be heard, rescind the order and issue a formal request for deferral under Rule 10.

(D) If an order under this Rule is rescinded by the Trial Chamber, the Trial Chamber may formally request the State concerned to transfer the accused to the seat of the Tribunal, and the State shall comply without undue delay in accordance with Article 29 of the Statute. The Trial Chamber or a Judge may also issue a warrant for the arrest of the accused.

Rule 12
Determinations of Courts of any State

Subject to Article 10, paragraph 2, of the Statute, determinations of courts of any State 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 court of any State 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 that court permanently to discontinue its proceedings. If that 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 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 shall be signed by the Judge and witnessed by, or by a representative of, the Secretary-General of the United Nations. The declaration shall be kept in the records of the Tribunal.

(C) A Judge whose service continues without interruption after expiry of a previous period of service shall not make a new declaration.

Rule 15
Disqualification of Judges

(A) A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

(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 or appeal 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 Rules 47 or 61, shall not be disqualified for sitting as a member of the Trial Chamber for the trial of that accused. Such a Judge shall also not be disqualified for sitting as a member of the Appeals Chamber, or as a member of a bench of three Judges appointed pursuant to Rules 65 (D), 72 (B)(ii) or 73 (B), to hear any appeal in that case.

(D) (i) No Judge shall sit on any appeal or as a member of a bench of three Judges appointed pursuant to Rules 65 (D), 72 (B)(ii), 73 (B) or 77 (J) in a case in which that Judge sat as a member of the Trial Chamber.
(ii) No Judge shall sit on any State Request for Review pursuant to Rule 108 *bis* in a matter in which that Judge sat as a member of the Trial Chamber whose decision is to be reviewed.

Rule 15 *bis*
Absence of a Judge

(A) If

(i) a Judge is, for illness or other urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
(ii) the remaining Judges of the Chamber are satisfied that it is in the interests of justice to do so,

those remaining Judges of the Chamber may order that the hearing of the case continue in the absence of that Judge for a period of not more than three days.

(B) If

(i) a Judge is, for illness or urgent personal reasons, or for reasons of authorised Tribunal business, unable to continue sitting in a part-heard case for a period which is likely to be of short duration, and
(ii) the remaining Judges of the Chamber are not satisfied that it is in the interests of justice to order that the hearing of the case continue in the absence of that Judge, then

(a) those remaining Judges of the Chamber may nevertheless conduct those matters which they are satisfied it is in the interests of justice that they be disposed of notwithstanding the absence of that Judge, and
(b) the Presiding Judge may adjourn the proceedings.

(C) If a Judge is, for any reason, unable to continue sitting in a part-heard case for a period which is likely to be longer than of a short duration, the Presiding Judge shall report to the President who may assign another Judge to the case and order either a rehearing or continuation of the proceedings from that point. However, after the opening statements provided for in Rule 84, or the beginning of the presentation of evidence pursuant to Rule 85, the continuation of the proceedings can only be ordered with the consent of the accused.

(D) In case of illness or an unfilled vacancy or in any other similar circumstances, the President may, if satisfied that it is in the interests of justice to do so, authorise a Chamber to conduct routine matters, such as the delivery of decisions, in the absence of one or more of its members.

Rule 16
Resignation

A Judge who decides to resign shall communicate the 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) Permanent 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.

(E) *Ad litem* Judges shall take precedence after the permanent Judges according to the dates of their appointment. *Ad litem* Judges appointed on the same date shall take precedence according to age.

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 or her term of office as a Judge. The President may be re-elected once.

(B) If the President ceases to be a member of the Tribunal or resigns from office before the expiration of his or her term, the permanent 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 permanent 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

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

(B) The President may from time to time, and in consultation with the Bureau, the Registrar and the Prosecutor, issue Practice Directions, consistent with the Statute and the Rules, addressing detailed aspects of the conduct of proceedings before the Tribunal.

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 or her term of office as a permanent Judge. The Vice President may be re-elected once.

(B) The Vice-President may sit as a member of a Trial Chamber or of the Appeals Chamber.

(C) 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 the latter's 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 permanent Judge, determined in accordance with Rule 17.

(B) If the President is unable to exercise the functions of 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) The President may consult with the *ad litem* Judges on matters to be discussed in the Bureau and may invite a representative of the *ad litem* Judges to attend Bureau meetings.

(D) A Judge may draw the attention of any member of the Bureau to issues that the Judge considers ought to be discussed by the Bureau or submitted to a plenary meeting of the Tribunal.

(E) If any member of the Bureau is unable to carry out any of the functions of the Bureau, these shall be assumed by the senior available Judge determined in accordance with Rule 17.

Rule 23 *bis*
The Coordination Council

(A) The Coordination Council shall be composed of the President, the Prosecutor and the Registrar.

(B) In order to achieve the mission of the Tribunal, as defined in the Statute, the Coordination Council ensures, having due regard for the responsibilities and the independence of any member, the coordination of the activities of the three organs of the Tribunal.

(C) The Coordination Council shall meet once a month at the initiative of the President. A member may at any time request that additional meetings be held. The President shall chair the meetings.

(D) The Vice-President, the Deputy Prosecutor and the Deputy Registrar may *ex officio* represent respectively, the President, the Prosecutor and the Registrar.

Rule 23 *ter*

The Management Committee

(A) The Management Committee shall be composed of the President, the Vice-President, a Judge elected by the Judges in plenary session for a one year renewable mandate, the Registrar, the Deputy Registrar and the Chief of Administration.

(B) The Management Committee shall assist the President with respect to the functions set forth in Rules 19 and 33, concerning in particular, all Registry activities relating to the administrative and judicial support provided to the Chambers and to the Judges. To this end, the Management Committee shall coordinate the preparation and implementation of the budget of the Tribunal with the exception of budgetary lines specific to the activities of the Office of the Prosecutor.

(C) The Management Committee shall meet twice a month at the initiative of the President. Two members may at any time request that additional meetings be held. The President shall chair the meetings.

(D) In the performance of its functions, the Management Committee may call on the services of one or several advisers or experts.

Rule 24
Plenary Meetings of the Tribunal

Subject to the restrictions on the voting rights of *ad litem* Judges set out in Article 13 *quater* of the Statute, 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 eight Judges, and may be convened whenever the exercise of the President's 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 ten permanent Judges.

(B) Subject to Rules 6 (A), (B) and 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 acting in the place of the President shall have a casting vote.

Section 4 : The Chambers

Rule 27
Rotation

(A) Permanent 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
Reviewing and Duty Judges

(A) On receipt of an indictment for review from the Prosecutor, the Registrar shall consult with the President who shall designate one of the permanent Trial Chamber Judges for the review.

(B) The President, in consultation with the Judges, shall maintain a roster designating one permanent Judge as duty Judge for the assigned period of seven days. The duty Judge shall be available at all times, including out of normal Registry hours, for dealing with applications pursuant to paragraphs (C) and (D) but may refuse to deal with any application out of normal Registry hours if not satisfied as to its urgency. The roster of duty Judges shall be published by the Registrar.

(C) All applications in a case not otherwise assigned to a Chamber, other than the review of indictments, shall be transmitted to the duty Judge. Where accused are jointly indicted, a submission relating only to an accused who is not in the custody of the Tribunal shall be transmitted to the duty Judge, notwithstanding that the case has already been assigned to a Chamber in respect of some or all of the co-accused of that accused. The duty Judge shall act pursuant to Rule 54 in dealing with applications under this Rule.

(D) The duty Judge may, in his or her discretion, if satisfied as to the urgency of the matter, deal with an application in a case already assigned to a Chamber out of normal Registry hours as an emergency application. In such case, the Registry shall also serve copies of the application and of any order or decision issued by the duty Judge in connection therewith on the Chamber to which the matter is assigned.

(E) During periods of court recess, regardless of the Chamber to which he or she is assigned, the duty Judge may:

(i) take decisions on provisional detention pursuant to Rule 40 *bis*;

(ii) conduct the initial appearance of an accused pursuant to Rule 62. The Registry shall serve a copy of all orders or decisions issued by the duty Judge in connection therewith on the Chamber to which the matter is assigned.

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 permanent Judges on the candidates for the post of Registrar, before consulting with the Secretary-General of the United Nations pursuant to Article 17, paragraph 3, of the Statute.

Rule 31
Appointment of the Deputy Registrar and Registry Staff

The Registrar, after consultation with the Bureau, shall make 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 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 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

(A) 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, the Registrar shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication.

(B) The Registrar, in the execution of his or her functions, may make oral and written representations to the President or Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.

(C) The Registrar shall report regularly on his or her activities to the Judges meeting in plenary and to the Prosecutor.

Rule 33 *bis*
Functions of the Deputy Registrar

(A) The Deputy Registrar shall exercise the functions of the Registrar in the event of the latter's absence from duty or inability to act or upon the Registrar's delegation.

(B) The Deputy Registrar, in consultation with the President, shall in particular:

(i) direct and administer the Chambers Legal Support Section; in particular, in conjunction with the administrative services of the Registry, the Deputy Registrar shall oversee the assignment of appropriate resources to the Chambers with a view to enabling them to accomplish their mission;

(ii) take all appropriate measures so that the decisions rendered by the Chambers and Judges are executed, especially sentences and penalties;

(iii) make recommendations regarding the missions of the Registry which affect the judicial activity of the Tribunal.

Rule 34
Victims and Witnesses Unit

(A) There shall be set up under the authority of the Registrar a Victims and Witnesses Section 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 the Registrar, 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, subject to any Practice Direction under Rule 19 or any order of a Judge or Chamber providing for the non-disclosure of any document or information, 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 of the Prosecutor

(A) The Prosecutor shall perform all the functions provided by the Statute in accordance with the Rules and such Regulations, consistent with the Statute and the Rules, as may be framed by the Prosecutor. Any alleged inconsistency in the Regulations shall be brought to the attention of the Bureau to whose opinion the Prosecutor shall defer.

(B) The Prosecutor's powers and duties under the Rules may be exercised by staff members of the Office of the Prosecutor authorised by the Prosecutor, or by any person acting under the Prosecutor's direction.

Rule 38
Deputy Prosecutor

(A) The Prosecutor shall make 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 the latter's absence from duty 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, including the taking of special measures to provide for the safety of potential witnesses and informants;

(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 or an accused 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.

The State concerned shall comply forthwith, in accordance with Article 29 of the Statute.

Rule 40 *bis*
Transfer and Provisional Detention of Suspects

(A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by a Judge assigned pursuant to Rule 28, a request for the transfer to and provisional detention of a suspect in the premises of the detention unit of the Tribunal. This request shall indicate the

grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a summary of the material upon which the Prosecutor relies.

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

(i) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 40, or the suspect is otherwise detained by State authorities;

(ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction; and

(iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.

(C) The order for the transfer and provisional detention of the suspect shall be signed by the Judge and bear the seal of the Tribunal. The order shall set forth the basis of the application made by the Prosecutor under paragraph (A), including the provisional charge, and shall state the Judge's grounds for making the order, having regard to paragraph (B). The order shall also specify the initial time-limit for the provisional detention of the suspect, and be accompanied by a statement of the rights of a suspect, as specified in this Rule and in Rules 42 and 43.

(D) The provisional detention of a suspect shall be ordered for a period not exceeding thirty days from the date of the transfer of the suspect to the seat of the Tribunal. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another permanent Judge of the same Trial Chamber, may decide, subsequent to an inter partes hearing of the Prosecutor and the suspect assisted by counsel, to extend the detention for a period not exceeding thirty days, if warranted by the needs of the investigation. At the end of that extension, at the Prosecutor's request, the Judge who made the order, or another permanent Judge of the same Trial Chamber, may decide, subsequent to an inter partes hearing of the Prosecutor and the suspect assisted by counsel, to extend the detention for a further period not exceeding thirty days, if warranted by special circumstances. The total period of detention shall in no case exceed ninety days, at the end of which, in the event the indictment has not been confirmed and an arrest warrant signed, the suspect shall be released or, if appropriate, be delivered to the authorities of the requested State.

(E) The provisions in Rules 55 (B) to 59 bis shall apply *mutatis mutandis* to the execution of the transfer order and the provisional detention order relative to a suspect.

(F) After being transferred to the seat of the Tribunal, the suspect, assisted by counsel, shall be brought, without delay, before the Judge who made the order, or another permanent Judge of the same Trial Chamber, who shall ensure that the rights of the suspect are respected.

(G) During detention, the Prosecutor and the suspect or the suspect's counsel may submit to the Trial Chamber of which the Judge who made the order is a member, all applications relative to the propriety of provisional detention or to the suspect's release.

(H) Without prejudice to paragraph (D), the Rules relating to the detention on remand of accused persons shall apply *mutatis mutandis* to the provisional detention of persons under this Rule.

Rule 41
Retention of Information

Subject to Rule 81, the Prosecutor shall be responsible for the retention, storage and security of information and physical material obtained in the course of the Prosecutor's investigations until formally tendered into evidence.

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 the Prosecutor shall inform the suspect prior to questioning, in a language the suspect speaks and understands:

(i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;

(ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and

(iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the 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 audio-recorded or video-recorded, in accordance with the following procedure:

(i) the suspect shall be informed in a language the suspect speaks and understands that the questioning is being audio-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 audio-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 the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;

(iv) the tape shall then be transcribed as soon as practicable after the conclusion of questioning 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, Qualifications and Duties of Counsel

(A) Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. A counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Registrar that the counsel is admitted to the practice of law in a State, or is a University professor of law, and speaks one of the two working languages of the Tribunal.

(B) At the request of the suspect or accused and where the interests of justice so demand, the Registrar may admit a counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate. A suspect or accused may appeal a decision of the Registrar to the President.

(C) In the performance of their duties counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Tribunal, the Host Country Agreement, the Code of Professional Conduct for Defence Counsel and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel.

(D) An Advisory Panel shall be established to assist the President and the Registrar in all matters relating to defence counsel. The Panel members shall be selected from representatives of professional associations and from counsel who have appeared before the Tribunal. They shall have recognised professional legal experience. The composition of the Advisory Panel shall be representative of the different legal systems. A Directive of the Registrar shall set out the structure and areas of responsibility of the Advisory Panel.

Rule 45
Assignment of Counsel

(A) Whenever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel. Such assignments shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the permanent Judges.

(B) A list of counsel who, in addition to fulfilling the requirements of Rule 44, have shown that they possess reasonable experience in criminal and/or international law and have indicated their willingness to be assigned by the Tribunal to any person detained under the authority of the Tribunal lacking the means to remunerate counsel, shall be kept by the Registrar.

(C) In particular circumstances, upon the request of a person lacking the means to remunerate counsel, the Registrar may assign counsel whose name does not appear on the list but who otherwise fulfils the requirements of Rule 44.

(D) If a request is refused, a further request may be made by a suspect or an accused to the Registrar.

(E) The Registrar shall, in consultation with the permanent Judges, establish the criteria for the payment of fees to assigned counsel.

(F) Where a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may make an order of contribution to recover the cost of providing counsel.

(G) A suspect or an accused electing to conduct his or her own defence shall so notify the Registrar in writing at the first opportunity.

Rule 45 *bis*
Detained Persons

Rules 44 and 45 shall apply to any person detained under the authority of the Tribunal.

Rule 46
Misconduct of Counsel

(A) A Chamber may, after a warning, refuse audience to counsel if, in its opinion, the conduct of that counsel 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 the counsel's State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of that counsel's University.

(C) Under the supervision of the President, the Registrar shall publish and oversee the implementation of a Code of Professional Conduct for defence counsel.

PART FIVE

PRE-TRIAL PROCEEDINGS

Section 1 : Indictments

Rule 47
Submission of Indictment by the Prosecutor

(A) An indictment, submitted in accordance with the following procedure, shall be reviewed by a Judge designated in accordance with Rule 28 for this purpose.

(B) The Prosecutor, if satisfied in the course of an investigation that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal, shall prepare and forward to the Registrar an indictment for confirmation by a Judge, together with supporting material.

(C) 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.

(D) The Registrar shall forward the indictment and accompanying material to the designated Judge, who will inform the Prosecutor of the date fixed for review of the indictment.

(E) The reviewing Judge shall examine each of the counts in the indictment, and any supporting materials the Prosecutor may provide, to determine, applying the standard set forth in Article 19, paragraph 1, of the Statute, whether a case exists against the suspect.

(F) The reviewing Judge may:

(i) request the Prosecutor to present additional material in support of any or all counts, or to take any further measures which appear appropriate;

(ii) confirm each count;

(iii) dismiss each count; or

(iv) adjourn the review so as to give the Prosecutor the opportunity to modify the indictment.

(G) The indictment as confirmed by the Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal. If the accused does not understand either of the official languages of the Tribunal and if the language understood is known to the Registrar, a translation of the indictment in that language shall also be prepared, and shall be included as part of each certified copy of the indictment.

(H) Upon confirmation of any or all counts in the indictment,

(i) the Judge may issue an arrest warrant, in accordance with Sub-rule 55 (A), and any orders as provided in Article 19 of the Statute, and

(ii) the suspect shall have the status of an accused.

(I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing an amended 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

(A) (i) The Prosecutor may amend an indictment:

(a) at any time before its confirmation, without leave;

(b) between its confirmation and the assignment of the case to a Trial Chamber, with the leave of the Judge who confirmed the indictment, or a Judge assigned by the President; and

(c) after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties.

(ii) After the assignment of the case to a Trial Chamber it shall not be necessary for the amended indictment to be confirmed.

(iii) Rule 47 (G) and Rule 53 *bis* apply *mutatis mutandis* to the amended indictment.

(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may 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, until the initial appearance of the accused before a Trial Chamber pursuant to Rule 62, only with leave of the Judge who confirmed it. At or after such initial appearance an indictment may only be withdrawn by motion before that Trial Chamber pursuant to Rule 73.

(B) The withdrawal of the indictment shall be promptly notified to the suspect or the accused and to the counsel of the suspect or accused.

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

(A) In exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.

(B) 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.

(C) A Judge or Trial Chamber may, in consultation with the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

(D) Notwithstanding Sub-rules (A), (B) and (C), the Prosecutor may disclose an indictment or part thereof to the authorities of a State or an appropriate authority or international body where the Prosecutor deems it necessary to prevent an opportunity for securing the possible arrest of an accused from being lost.

Rule 53 *bis*
Service of Indictment

(A) Service of the indictment shall be effected personally on the accused at the time the accused is taken into custody or as soon as reasonably practicable thereafter.

(B) Personal service of an indictment on the accused is effected by giving the accused a copy of the indictment certified in accordance with Rule 47 (G).

Section 2 : Orders & 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, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Rule 54 *bis*
Orders Directed to States for the Production of Documents

(A) A party requesting an order under Rule 54 that a State produce documents or information shall apply in writing to the relevant Judge or Trial Chamber and shall:

(i) identify as far as possible the documents or information to which the application relates;
(ii) indicate how they are relevant to any matter in issue before the Judge or Trial Chamber and necessary for a fair determination of that matter; and
(iii) explain the steps that have been taken by the applicant to secure the State's assistance.

(B) The Judge or Trial Chamber may reject an application under Sub-rule (A) *in limine* if satisfied that:

(i) the documents or information are not relevant to any matter in issue in the proceedings before them or are not necessary for a fair determination of any such matter; or
(ii) no reasonable steps have been taken by the applicant to obtain the documents or information from the State.

(C) A decision by a Judge or a Trial Chamber under Sub-rule (B) to reject an application shall be subject to appeal pursuant to Rule 116 *bis*.

(D) Except in cases where a decision has been taken pursuant to Sub-rule (B) or Sub-rule (E), the State concerned shall be given notice of the application, and not less than fifteen days' notice of the hearing of the application, at which the State shall have an opportunity to be heard.

(E) If, having regard to all circumstances, the Judge or Trial Chamber has good reasons for so doing, the Judge or Trial Chamber may make an order to which this Rule applies without giving the State concerned notice or the opportunity to be heard under Sub-rule (D), and the following provisions shall apply to such an order:

(i) the order shall be served on the State concerned;
(ii) subject to paragraph (iv), the order shall not have effect until fifteen days after such service;
(iii) a State may, within fifteen days of service of the order, apply by notice to the Judge or Trial Chamber to have the order set aside, on the grounds that disclosure would prejudice national security interests. Sub-rule (F) shall apply to such a notice as it does to a notice of objection;
(iv) where notice is given under paragraph (iii), the order shall thereupon be stayed until the decision on the application;
(v) Sub-rules (F) and (G) shall apply to the determination of an application made pursuant to paragraph (iii) as they do to the determination of an application of which notice is given pursuant to Sub-rule (D);
(vi) the State and the party who applied for the order shall, subject to any special measures made pursuant to a request under Sub-rules (F) or (G), have an opportunity to be heard at the hearing of an application made pursuant to paragraph (iii) of this Sub-rule.

(F) The State, if it raises an objection pursuant to Sub-rule (D), on the grounds that disclosure would prejudice its national security interests, shall file a notice of objection not less than five days before the date fixed for the hearing, specifying the grounds of objection. In its notice of objection the State:

(i) shall identify, as far as possible, the basis upon which it claims that its national

security interests will be prejudiced; and
(ii) may request the Judge or Trial Chamber to direct that appropriate protective measures be made for the hearing of the objection, including in particular:

(a) hearing the objection in camera and *ex parte*;
(b) allowing documents to be submitted in redacted form, accompanied by an affidavit signed by a senior State official explaining the reasons for the redaction;
(c) ordering that no transcripts be made of the hearing and that documents not further required by the Tribunal be returned directly to the State without being filed with the Registry or otherwise retained.

(G) With regard to the procedure under Sub-rule (F) above, the Judge or Trial Chamber may order the following protective measures for the hearing of the objection:

(i) the designation of a single Judge from a Chamber to examine the documents or hear submissions; and/or
(ii) that the State be allowed to provide its own interpreters for the hearing and its own translations of sensitive documents.

(H) Rejection of an application made under this Rule shall not preclude a subsequent application by the requesting party in respect of the same documents or information if new circumstances arise.

(I) An order under this Rule may provide for the documents or information in question to be produced by the State under appropriate arrangements to protect its interests, which may include those arrangements specified in Sub-rules (F)(ii) or (G).

Rule 55
Execution of Arrest Warrants

(A) A warrant of arrest shall be signed by a permanent Judge. It shall include an order for the prompt transfer of the accused to the Tribunal upon the arrest of the accused.

(B) The original warrant shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal.

(C) Each certified copy shall be accompanied by a copy of the indictment certified in accordance with Rule 47 (G) and a statement of the rights of the accused set forth in Article 21 of the Statute, and in Rules 42 and 43 *mutatis mutandis*. If the accused does not understand either of the official languages of the Tribunal and if the language understood by the accused is known to the Registrar, each certified copy of the warrant of arrest shall also be accompanied by a translation of the statement of the rights of the accused in that language.

(D) Subject to any order of a Judge or Chamber, the Registrar may transmit a certified copy of a warrant of arrest to the person or authorities to which it is addressed, including the national authorities of a State in whose territory or under whose jurisdiction the accused resides, or was last known to be, or is believed by the Registrar to be likely to be found.

(E) The Registrar shall instruct the person or authorities to which a warrant is transmitted that at the time of arrest the indictment and the statement of the rights of the accused be read to the accused in a language that he or she understands and that the accused be cautioned in that language that the accused has the right to remain silent, and that any statement he or she makes shall be recorded and may be used in evidence.

(F) Notwithstanding paragraph (E), if at the time of arrest the accused is served with, or with a translation of, the indictment and the statement of rights of the accused in a language that the accused understands and is able to read, these need not be read to the accused at the time of

arrest.

(G) When an arrest warrant issued by the Tribunal is executed by the authorities of a State, or an appropriate authority or international body, a member of the Office of the Prosecutor may be present as from the time of the arrest.

Rule 56
Cooperation of States

The State to which a warrant of arrest or a transfer order for a witness 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 arrest, the accused shall be detained by the State concerned which shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal shall be arranged between the State authorities concerned, the authorities of the host country 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 or of a witness to the Tribunal which may exist under the national law or extradition treaties of the State concerned.

Rule 59
Failure to Execute a Warrant or Transfer Order

(A) Where the State to which a warrant of arrest or transfer order 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 or transfer order 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 or transfer order and the Tribunal, through the President, may notify the Security Council accordingly.

Rule 59 *bis*
Transmission of Arrest Warrants

(A) Notwithstanding Rules 55 to 59, on the order of a permanent Judge, the Registrar shall transmit to an appropriate authority or international body or the Prosecutor a copy of a warrant for the arrest of an accused, on such terms as the Judge may determine, together with an order for the prompt transfer of the accused to the Tribunal in the event that the accused be taken into custody by that authority or international body or the Prosecutor.

(B) At the time of being taken into custody an accused shall be informed immediately, in a language the accused understands, of the charges against him or her and of the fact that he or she is being transferred to the Tribunal. Upon such transfer, the indictment and a statement of the rights of the accused shall be read to the accused and the accused shall be cautioned in such a language.

(C) Notwithstanding paragraph (B), the indictment and statement of rights of the accused need not be read to the accused if the accused is served with these, or with a translation of these, in a language the accused understands and is able to read.

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, for publication in newspapers or for broadcast via radio and television, notifying publicly the existence of an indictment and calling upon the accused to surrender to the Tribunal and inviting any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.

Rule 61
Procedure in Case of Failure to Execute a Warrant

(A) If, within a reasonable time, a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, the Judge who confirmed the indictment shall invite the Prosecutor to report on the measures taken. When the Judge is satisfied that:

(i) the Registrar and the Prosecutor have taken all reasonable steps to secure the arrest of the accused, 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 them to be; and

(ii) if the whereabouts of the accused are unknown, the Prosecutor and the Registrar have taken all reasonable steps to ascertain those whereabouts, including by seeking publication of advertisements pursuant to Rule 60,

the Judge shall order that the indictment be submitted by the Prosecutor to the Trial Chamber of which the Judge is a member.

(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. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge. In addition, the Trial Chamber may request the Prosecutor to call any other witness whose statement has been submitted to the confirming Judge.

(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. Upon request by the Prosecutor or *proprio motu*, after having heard the Prosecutor, the Trial Chamber may order a State or States to adopt provisional measures to freeze the assets of the accused, without prejudice to the rights of third parties.

(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. After consulting the Presiding Judges of the Chambers, the President shall notify the Security Council thereof in such manner as the President thinks fit.

Section 3 : Preliminary Proceedings

Rule 62
Initial Appearance of Accused

Upon transfer of an accused to the seat of the Tribunal, the President shall forthwith assign the case to a Trial Chamber. The accused shall be brought before that Trial Chamber or a permanent Judge thereof without delay, and shall be formally charged. The Trial Chamber or the Judge shall:

(i) satisfy itself, himself or herself that the right of the accused to counsel is respected;

(ii) read or have the indictment read to the accused in a language the accused speaks and understands, and satisfy itself, himself or herself that the accused understands the indictment;

(iii) inform the accused that, within thirty days of the initial appearance, he or she will be called upon to enter a plea of guilty or not guilty on each count but that, should the accused so request, he or she may immediately enter a plea of guilty or not guilty on one or more count;

(iv) if the accused fails to enter a plea at the initial or any further appearance, enter a plea of not guilty on the accused's behalf; (v) in case of a plea of not guilty, instruct the Registrar to set a date for trial;

(vi) in case of a plea of guilty:

(a) if before the Trial Chamber, act in accordance with Rule 62 *bis*, or

(b) if before a Judge, refer the plea to the Trial Chamber so that it may act in accordance with Rule 62 *bis*;

(vii) instruct the Registrar to set such other dates as appropriate.

Rule 62 *bis*

Guilty Pleas

If an accused pleads guilty in accordance with Rule 62 (vi), or requests to change his or her plea to guilty and the Trial Chamber is satisfied that:

(i) the guilty plea has been made voluntarily;

(ii) the guilty plea is informed;

(iii) the guilty plea is not equivocal; and

(iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case,

the Trial Chamber may enter a finding of guilt and instruct the Registrar to set a date for the sentencing hearing.

Rule 63
Questioning of Accused

(A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.

(B) The questioning, including any waiver of the right to counsel, shall be audio-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 in accordance with Rule 42 (A)(iii).

Rule 64
Detention on Remand

Upon being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside of the host 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 Chamber.

(B) Release may be ordered by a Trial Chamber only after hearing the host country 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 the presence of the accused for trial and the protection of others.

(D) Any decision rendered under this Rule by a Trial Chamber shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown. Subject to paragraph (F) below, applications for leave to appeal shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, the application shall be filed within seven days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.

(E) The Prosecutor may apply for a stay of a decision by the Trial Chamber to release an accused on the basis that the Prosecutor intends to appeal the decision, and shall make such an application at the time of filing his or her response to the initial application for provisional release by the accused.

(F) Where the Trial Chamber grants a stay of its decision to release an accused, the Prosecutor shall file his or her appeal not later than one day from the rendering of that decision.

(G) Where the Trial Chamber orders a stay of its decision to release the accused pending an appeal by the Prosecutor, the accused shall not be released until either:

(i) the time-limit for the filing of an application for leave to appeal by the Prosecutor has expired, and no such application is filed;

(ii) a bench of three Judges of the Appeals Chamber rejects the application for leave to appeal;

(iii) the Appeals Chamber dismisses the appeal; or

(iv) a bench of three Judges of the Appeals Chamber or the Appeals Chamber otherwise orders.

(H) 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. The provisions of Section 2 of Part Five shall apply *mutatis mutandis*.

(I) Without prejudice to the provisions of Rule 107, the Appeals Chamber may grant provisional release to convicted persons pending an appeal or for a fixed period if it is satisfied that:

(i) the appellant, if released, will either appear at the hearing of the appeal or will surrender into detention at the conclusion of the fixed period, as the case may be;

(ii) the appellant, if released, will not pose a danger to any victim, witness or other person, and

(iii) special circumstances exist warranting such release.

The provisions of paragraphs 65 (C) and 65 (H) shall apply *mutatis mutandis*.

Rule 65 *bis*
Status Conferences

(A) A Trial Chamber or a permanent Trial Chamber Judge shall convene a status conference within one hundred and twenty days of the initial appearance of the accused and thereafter within one hundred and twenty days after the last status conference:

(i) to organize exchanges between the parties so as to ensure expeditious preparation for trial;

(ii) to review the status of his or her case and to allow the accused the opportunity to raise issues in relation thereto, including the mental and physical condition of the accused.

(B) The Appeals Chamber or an Appeals Chamber Judge shall convene a status conference, within one hundred and twenty days of the filing of a notice of appeal and thereafter within one hundred and twenty days after the last status conference, to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person.

Rule 65 *ter*

Pre-Trial Judge

(A) The Presiding Judge of the Trial Chamber shall, no later than seven days after the initial appearance of the accused, designate from among its permanent members a Judge responsible for the pre-trial proceedings (hereinafter "pre-trial Judge").

(B) The pre-trial Judge shall, under the authority and supervision of the Trial Chamber seised of the case, coordinate communication between the parties during the pre-trial phase. The pre-trial Judge shall ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial.

(C) The pre-trial Judge shall be entrusted with all of the pre-trial functions set forth in Rule 66, Rule 73 *bis* and Rule 73 *ter*, and with all or part of the functions set forth in Rule 73.

(D) (i) The pre-trial Judge may be assisted in the performance of his or her duties by one of the Senior Legal Officers assigned to Chambers.

(ii) The pre-trial Judge shall establish a work plan indicating, in general terms, the obligations that the parties are required to meet pursuant to this Rule and the dates by which these obligations must be fulfilled.

(iii) Acting under the supervision of the pre-trial Judge, the Senior Legal Officer shall oversee the implementation of the work plan and shall keep the pre-trial Judge informed of the progress of the discussions between and with the parties and, in particular, of any potential difficulty. He or she shall present the pre-trial Judge with reports as appropriate and shall communicate to the parties, without delay, any observations and decisions made by the pre-trial Judge.

(iv) The pre-trial Judge shall order the parties to meet to discuss issues related to the preparation of the case, in particular, so that the Prosecutor can meet his or her obligations pursuant to paragraphs (E) (i) to (iii) of this Rule and for the defence to meet its obligations pursuant to paragraph (G) of this Rule and of Rule 73 *ter*.

(v) Such meetings are held *inter partes* or, at his or her request, with the Senior Legal Officer and one or more of the parties. The Senior Legal Officer ensures that the obligations set out in paragraphs (E) (i) to (iii) of this Rule and, at the appropriate time, that the obligations in paragraph (G) and Rule 73 *ter*, are satisfied in accordance with the work plan set by the pre-trial Judge.

(vi) The presence of the accused is not necessary for meetings convened by the Senior Legal Officer.

(vii) The Senior Legal Officer may be assisted by a representative of the Registry in the performance of his or her duties pursuant to this Rule and may require a transcript to be made.

(E) Once disclosure pursuant to Rules 66 and 68 is completed and any existing preliminary motions filed within the time-limit provided by Rule 72 are disposed of, the pre-trial Judge shall order the Prosecutor, upon the report of the Senior Legal Officer, and within a time-limit set by the pre-trial Judge and not less than six weeks before the Pre-Trial Conference required by Rule 73 *bis*, to file the following :

(i) the final version of the Prosecutor's pre-trial brief including, for each count, a summary of the evidence which the Prosecutor intends to bring regarding the commission of the alleged crime and the form of responsibility incurred by the accused; this brief shall include any admissions by the parties and a statement of matters which are not in dispute; as well as a statement of contested matters of fact and law;

(ii) the list of witnesses the Prosecutor intends to call with :

(a) the name or pseudonym of each witness;

(b) a summary of the facts on which each witness will testify;

(c) the points in the indictment as to which each witness will testify, including specific references to counts and relevant paragraphs in the indictment;

(d) the total number of witnesses and the number of witnesses who will testify against each accused and on each count;

(e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and

(f) the estimated length of time required for each witness and the total time estimated for presentation of the Prosecutor's case.

(iii) the list of exhibits the Prosecutor intends to offer stating where possible whether the defence has any objection as to authenticity.

(F) After the submission by the Prosecutor of the items mentioned in paragraph (E), the pre-trial Judge shall order the defence, within a time-limit set by the pre-trial Judge, and not later than three weeks before the Pre-Trial Conference, to file a pre-trial brief addressing the factual and legal issues, and including a written statement setting out:

(i) in general terms, the nature of the accused's defence;

(ii) the matters with which the accused takes issue in the Prosecutor's pre-trial brief; and

(iii) in the case of each such matter, the reason why the accused takes issue with it.

(G) After the close of the Prosecutor's case and before the commencement of the defence case, the pre-trial Judge shall order the defence to file the following:

(i) a list of witnesses the defence intends to call with:

(a) the name or pseudonym of each witness;

(b) a summary of the facts on which each witness will testify;

(c) the points in the indictment as to which each witness will testify;

(d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count;

(e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and

(f) the estimated length of time required for each witness and the total time estimated for presentation of the defence case; and

(ii) a list of exhibits the defence intends to offer in its case, stating where possible whether the Prosecutor has any objection as to authenticity.

(H) The pre-trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he or she may order the parties to file written submissions with either the pre-trial Judge or the Trial Chamber.

(I) In order to perform his or her functions, the pre-trial Judge may *proprio motu*, where appropriate, hear the parties without the accused being present. The pre-trial Judge may hear the parties in his or her private room, in which case minutes of the meeting shall be taken by a representative of the Registry.

(J) The pre-trial Judge shall keep the Trial Chamber regularly informed, particularly where

issues are in dispute and may refer such disputes to the Trial Chamber.

(K) The pre-trial Judge may set a time for the making of pre-trial motions and, if required, any hearing thereon. A motion made before trial shall be determined before trial unless the Judge, for good cause, orders that it be deferred for determination at trial. Failure by a party to raise objections or to make requests which can be made prior to trial at the time set by the Judge shall constitute waiver thereof, but the Judge for cause may grant relief from the waiver.

(L) (i) After the filings by the Prosecutor pursuant to paragraph (E), the pre-trial Judge shall submit to the Trial Chamber a complete file consisting of all the filings of the parties, transcripts of status conferences and minutes of meetings held in the performance of his or her functions pursuant to this Rule.

(ii) The pre-trial Judge shall submit a second file to the Trial Chamber after the defence filings pursuant to paragraph (G).

(M) The Trial Chamber may *proprio motu* exercise any of the functions of the pre-trial Judge.

(N) Upon a report of the pre-trial Judge, the Trial Chamber shall decide, should the case arise, on sanctions to be imposed on a party which fails to perform its obligations pursuant to the present Rule. Such sanctions may include the exclusion of testimonial or documentary evidence.

Section 4 : Production of Evidence

Rule 66
Disclosure by the Prosecutor

(A) Subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands

(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; and
(ii) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.

(B) The Prosecutor shall, on request, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's 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.

(C) Where information is in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting in camera to be relieved from an obligation under the Rules to disclose that information. When making such application the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential.

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 the Prosecutor 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 or may affect the credibility of prosecution evidence.

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) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Section.

(C) 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

(A) 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.

(B) If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin shall not be disclosed by the Prosecutor without the consent of the person or entity providing the initial information and shall in any event not be given in evidence without prior disclosure to the accused.

(C) If, after obtaining the consent of the person or entity providing information under this Rule, the Prosecutor elects to present as evidence any testimony, document or other material so provided, the Trial Chamber, notwithstanding Rule 98, may not order either party to produce additional evidence received from the person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance. A Trial Chamber may not use its power to order the attendance of witnesses or to require production of documents in order to compel the production of such additional evidence.

(D) If the Prosecutor calls a witness to introduce in evidence any information provided under this Rule, the Trial Chamber may not compel that witness to answer any question relating to the information or its origin, if the witness declines to answer on grounds of confidentiality.

(E) The right of the accused to challenge the evidence presented by the Prosecution shall remain unaffected subject only to the limitations contained in Sub-rules (C) and (D).

(F) The Trial Chamber may order upon an application by the accused or defence counsel that, in the interests of justice, the provisions of this Rule shall apply *mutatis mutandis* to specific information in the possession of the accused.

(G) Nothing in Sub-rule (C) or (D) above shall affect a Trial Chamber's power under Rule 89 (D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

Section 5 : Depositions

Rule 71
Depositions

(A) Where it is in the interests of justice to do so, a Trial Chamber may order, *proprio motu* or at the request of a party, that a deposition be taken for use at trial, whether or not the person whose deposition is sought is able physically to appear before the Tribunal to give evidence. The Trial Chamber shall appoint a Presiding Officer for that purpose.

(B) The motion for the taking of a deposition 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 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 be taken either at or away from the seat of the Tribunal, and it 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. The Presiding Officer shall transmit the record to the Trial Chamber.

Rule 71 *bis*
Testimony by Video-Conference Link

At the request of either party, a Trial Chamber may, in the interests of justice, order that testimony be received via video-conference link.

Section 6 : Motions

Rule 72
Preliminary Motions

(A) Preliminary motions, being motions which

(i) challenge jurisdiction;
(ii) allege defects in the form of the indictment;
(iii) seek the severance of counts joined in one indictment under Rule 49 or seek separate trials under Rule 82 (B); or
(iv) raise objections based on the refusal of a request for assignment of counsel made under Rule 45 (C)

shall be in writing and be brought not later than thirty days after disclosure by the Prosecutor to the defence of all material and statements referred to in Rule 66(A)(i) and shall be disposed of not later than sixty days after they were filed and before the commencement of the opening statements provided for in Rule 84.

(B) Decisions on preliminary motions are without interlocutory appeal save

(i) in the case of motions challenging jurisdiction, where an appeal by either party lies as of right;
(ii) in other cases where leave to appeal is, upon good cause being shown, granted by a bench of three Judges of the Appeals Chamber.

(C) Appeals under paragraph (B)(i) shall be filed within fifteen days and applications for leave to appeal under paragraph (B)(ii) shall be filed within seven days of filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.

(D) For the purpose of paragraphs (A)(i) and (B)(i), a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to:

(i) any of the persons indicated in Articles 1, 6, 7 and 9 of the Statute;

(ii) the territories indicated in Articles 1, 8 and 9 of the Statute;

(iii) the period indicated in Articles 1, 8 and 9 of the Statute;

(iv) any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute.

(E) An appeal brought under paragraph (B)(i) may not be proceeded with if a bench of three Judges, assigned by the President, decides that the appeal is not capable of satisfying the

requirement of paragraph (D), in which case the appeal shall be dismissed.

Rule 73
Other Motions

(A) After a case is assigned to a Trial Chamber, either party may at any time move before the Chamber by way of motion, not being a preliminary motion, for appropriate ruling or relief. Such motions may be written or oral, at the discretion of the Trial Chamber.

(B) Subject to paragraph (C), decisions rendered during the course of the trial on motions involving evidence and procedure (including, without limiting the generality of this Rule, orders and decisions under Rule 71, Depositions, and denials under Rule 98 *bis*, Motion for Judgement of Acquittal) are without interlocutory appeal. Such decisions may be assigned as grounds for appeal from the final judgement.

(C) The Trial Chamber may certify that an interlocutory appeal during trial from a decision involving evidence or procedure is appropriate for the continuation of the trial. If such certification is given, a party may appeal to the Appeals Chamber without leave.

(D) Decisions on all other motions are without interlocutory appeal save with the leave of a bench of three Judges of the Appeals Chamber which may grant such leave

(i) if the decision impugned would cause such prejudice to the case of the party seeking leave as could not be cured by the final disposal of the trial including post-judgement appeal;

(ii) if the issue in the proposed appeal is of general importance to proceedings before the Tribunal or in international law generally.

(E) Applications for leave to appeal shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

Section 7 : Conferences

Rule 73 *bis*

Pre-Trial Conference

(A) Prior to the commencement of the trial, the Trial Chamber shall hold a Pre-Trial Conference.

(B) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(i), the Trial Chamber may call upon the Prosecutor to shorten the estimated length of the examination-in-chief for some witnesses.

(C) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(i), the Trial Chamber, after having heard the Prosecutor, shall set the number of witnesses the Prosecutor may call.

(D) After commencement of the trial, the Prosecutor may, if he or she considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called.

(E) After having heard the Prosecutor, the Trial Chamber shall determine the time available to the Prosecutor for presenting evidence.

(F) During a trial, the Trial Chamber may grant the Prosecutor's request for additional time to present evidence if this is in the interests of justice.

Rule 73 *ter*
Pre-Defence Conference

(A) Prior to the commencement by the defence of its case the Trial Chamber may hold a Conference.

(B) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(ii), the Trial Chamber may call upon the defence to shorten the estimated length of the examination-in-chief for some witnesses.

(C) In the light of the file submitted to the Trial Chamber by the pre-trial Judge pursuant to Rule 65 *ter* (L)(ii), the Trial Chamber, after having heard the defence, shall set the number of witnesses the defence may call.

(D) After commencement of the defence case, the defence may, if it considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called.

(E) After having heard the defence, the Trial Chamber shall determine the time available to the defence for presenting evidence.

(F) During a trial, the Trial Chamber may grant a defence request for additional time to present evidence if this is in the interests of justice.

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 74 *bis*

Medical Examination of the Accused

A Trial Chamber may, *proprio motu* or at the request of a party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

Rule 75
Measures for the 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, or of the Victims and Witnesses Section, 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 in camera 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 a victim or witness by such means as:

(a) expunging names and identifying information from the Tribunal's public records;
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.

(D) Once protective measures have been issued in respect of a victim or witness, only the Chamber granting such measures may vary or rescind them or authorise the release of protected material to another Chamber for use in other proceedings. If, at the time of the request for variation or release, the original Chamber is no longer constituted by the same Judges, the President may authorise such variation or release after consulting with any Judge of the original Chamber who remains a Judge of the Tribunal and after giving due consideration to matters relating to witness protection.

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 the Tribunal

(A) Any person who

(i) being a witness before a Chamber, contumaciously refuses or fails to answer a question,

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber, or

(iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber,

commits a contempt of the Tribunal.

(B) Any person who threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness, commits a contempt of the Tribunal.

(C) Any person who threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber, commits a contempt of the Tribunal.

(D) Incitement to commit, and attempts to commit, any of the acts punishable under this Rule are punishable as contempts of the Tribunal with the same penalties.

(E) Nothing in this Rule affects the inherent power of the Tribunal to hold in contempt those who knowingly and wilfully interfere with its administration of justice.

(F) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may, *proprio motu*, initiate proceedings and call upon that person that he or she may be found in contempt, giving notice of the nature of the allegations against that person. After affording such person an opportunity to appear and answer personally or by counsel, the Chamber may, if satisfied beyond reasonable doubt, find the person to be in contempt of the Tribunal.

(G) Any person so called upon shall, if that person satisfies the criteria for determination of indigency established by the Registrar, be assigned counsel in accordance with Rule 45.

(H) The maximum penalty that may be imposed on a person found to be in contempt of the Tribunal:

(i) under paragraphs (A) and (E) above is a term of imprisonment not exceeding twelve months, or a fine not exceeding Dfl. 40,000, or both;

(ii) under paragraphs (B), (C) or (D) above is a term of imprisonment not exceeding seven years, or a fine not exceeding Dfl. 200,000, or both.

(I) Payment of a fine shall be made to the Registrar to be held in a separate account.

(J) Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

Rule 77 *bis*
Payment of fines

(A) In imposing a fine under Rule 77 or Rule 91, a Judge or Chamber shall specify the time for its payment.

(B) Where a fine imposed under Rule 77 or Rule 91 is not paid within the time specified, the Judge or Chamber imposing the fine may issue an order requiring the person on whom the fine

is imposed to appear before, or to respond in writing to, the Tribunal to explain why the fine has not been paid.

(C) After affording the person on whom the fine is imposed an opportunity to be heard, the Judge or Chamber may make a decision that appropriate measures be taken, including:

(i) extending the time for payment of the fine;
(ii) requiring the payment of the fine to be made in instalments;
(iii) in consultation with the Registrar, requiring that the moneys owed be deducted from any outstanding fees owing to the person by the Tribunal where the person is a counsel retained by the Tribunal pursuant to the Directive on the Assignment of Defence Counsel;
(iv) converting the whole or part of the fine to a term of imprisonment not exceeding twelve months.

(D) In addition to a decision under Sub-rule (C), the Judge or Chamber may find the person in contempt of the Tribunal and impose a new penalty applying Rule 77 (H)(i), if that person was able to pay the fine within the specified time and has wilfully failed to do so. This penalty for contempt of the Tribunal shall be additional to the original fine imposed.

(E) The Judge or Chamber may, if necessary, issue an arrest warrant to secure the person's presence where he or she fails to appear before or respond in writing pursuant to an order under Sub-rule (B). A State or authority to whom such a warrant is addressed, in accordance with Article 29 of the Statute, shall act promptly and with all due diligence to ensure proper and effective execution thereof. Where an arrest warrant is issued under this Sub-rule, the provisions of Rules 45, 57, 58, 59, 59 *bis*, and 60 shall apply *mutatis mutandis*. Following the transfer of the person concerned to the Tribunal, the provisions of Rules 64, 65 and 99 shall apply *mutatis mutandis*.

(F) Where under this Rule a penalty of imprisonment is imposed, or a fine is converted to a term of imprisonment, the provisions of Rules 102, 103 and 104 and Part Nine shall apply *mutatis mutandis*.

(G) Any finding of contempt or penalty imposed under this Rule shall be subject to appeal as allowed for in Rule 77 (J).

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 the absence of the accused if the accused has persisted in disruptive conduct following a warning that such conduct may warrant the removal of the accused from the courtroom.

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, after giving due consideration to any matters relating to witness protection, 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 subject to any Practice Direction or any order which a Chamber may at any time make with respect to the control or disposition of physical evidence offered during proceedings before that Chamber.

(D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registrar, 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 such accused 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 be used only on the order of the Registrar as a precaution against escape during transfer or in order to prevent an accused from self-injury, injury to others or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber or a Judge.

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 conclusion of the Prosecutor's presentation of evidence and before the presentation of evidence for the defence.

Rule 84 *bis*
Statement of the Accused

(A) After the opening statements of the parties or, if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

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; and

(vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.

(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 such witness in chief, but a Judge may at any stage put any question to the witness.

(C) If the accused so desires, the accused may appear as a witness in his or her own defence.

Rule 86
Closing Arguments

(A) After the presentation of all the evidence, the Prosecutor may present a closing argument; whether or not the Prosecutor does so, the defence may make a closing argument. The Prosecutor may present a rebuttal argument to which the defence may present a rejoinder.

(B) Not later than five days prior to presenting a closing argument, a party shall file a final trial brief.

(C) The parties shall also address matters of sentencing in closing arguments.

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.

(C) If the Trial Chamber finds the accused guilty on one or more charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused.

Rule 88
[Deleted]

Rule 88 *bis*

[Deleted]

Section 3 : Rules of Evidence

Rule 89
General Provisions

(A) A Chamber shall apply the rules of evidence set forth in this Section, and 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.

(F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

Rule 90
Testimony of Witnesses

(A) 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".

(B) A child who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, may be permitted to testify without that formality, if the Chamber is of the opinion that the child is sufficiently mature to be able to report the facts of which the child had knowledge and understands the duty to tell the truth. A judgement, however, cannot be based on such testimony alone.

(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) Notwithstanding paragraph (C), upon order of the Chamber, an investigator in charge of a party's investigation shall not be precluded from being called as a witness on the ground that he

or she has been present in the courtroom during the proceedings.

(E) A witness may object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony.

(F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to

(i) make the interrogation and presentation effective for the ascertainment of the truth; and

(ii) avoid needless consumption of time.

(G) The Trial Chamber may refuse to hear a witness whose name does not appear on the list of witnesses compiled pursuant to Rules 73 *bis* (C) and 73 *ter* (C).

(H) (i) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of that case.

(ii) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness.

(iii) The Trial Chamber may, in the exercise of its discretion, permit enquiry into additional matters.

Rule 90 *bis*
Transfer of a Detained Witness

(A) Any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the detention unit of the Tribunal, conditional on the person's return within the period decided by the Tribunal.

(B) The transfer order shall be issued by a permanent Judge or Trial Chamber only after prior verification that the following conditions have been met:

(i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;

(ii) transfer of the witness does not extend the period of detention as foreseen by the requested State.

(C) The Registrar shall transmit the order of transfer to the national authorities of the State on whose territory, or under whose jurisdiction or control, the witness is detained. Transfer shall be arranged by the national authorities concerned in liaison with the host country and the Registrar.

(D) The Registrar shall ensure the proper conduct of the transfer, including the supervision of the witness in the detention unit of the Tribunal; the Registrar shall remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the detention of the witness in the detention unit and, as promptly as possible, shall inform the relevant Judge or Chamber.

(E) On expiration of the period decided by the Tribunal for the temporary transfer, the detained witness shall be remanded to the authorities of the requested State, unless the State, within that period, has transmitted an order of release of the witness, which shall take effect immediately.

(F) If, by the end of the period decided by the Tribunal, the presence of the detained witness continues to be necessary, a permanent Judge or Chamber may extend the period on the same conditions as stated in paragraph (B).

Rule 91
False Testimony under Solemn Declaration

(A) A Chamber, *proprio motu* 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 Dfl. 200,000 or a term of imprisonment of seven years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Rule 77 (I).

(F) Paragraphs (B) to (E) apply *mutatis mutandis* to a person who knowingly and willingly makes a false statement in a written statement taken in accordance with Rule 92 *bis* which the person knows or has reason to know may be used as evidence in proceedings before the Tribunal.

(G) Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

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 92 *bis*

Proof of Facts other than by Oral Evidence

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a

written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

(i) Factors in favour of admitting evidence in the form of a written statement include but are not limited to circumstances in which the evidence in question:

(a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;

(b) relates to relevant historical, political or military background;

(c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;

(d) concerns the impact of crimes upon victims;

(e) relates to issues of the character of the accused; or

(f) relates to factors to be taken into account in determining sentence.

(ii) Factors against admitting evidence in the form of a written statement include whether:

(a) there is an overriding public interest in the evidence in question being presented orally;

(b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or

(c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

(B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and

(a) the declaration is witnessed by:

(i) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or

(ii) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

(b) the person witnessing the declaration verifies in writing:

(i) that the person making the statement is the person identified in the said statement;

(ii) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;

(iii) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and

(iv) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

(C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:

(i) is so satisfied on a balance of probabilities; and

(ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

(D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.

(E) Subject to Rule 127 or any order to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

Rule 93
Evidence of Consistent Pattern of Conduct

(A) Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice.

(B) Acts tending to show such a pattern of conduct shall be disclosed by the Prosecutor to the defence pursuant to Rule 66.

Rule 94
Judicial Notice

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

(B) At the request of a party or *proprio motu,* a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings.

Rule 94 *bis*

Testimony of Expert Witnesses

(A) Notwithstanding the provisions of Rule 65 *ter* (E)(iv)(b) and Rule 65 *ter* (G)(i)(b), the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed not less than twenty-one days prior to the date on which the expert is expected to testify.

(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice indicating whether:

(i) it accepts the expert witness statement; or

(ii) it wishes to cross-examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

Rule 94 *ter*
[Deleted]

Rule 95
Exclusion of Certain Evidence

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

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 if the victim

(a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or

(b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;

(iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;

(iv) 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 *proprio motu* summon witnesses and order their attendance.

Section 4 : Judgement

Rule 98 *bis*
Motion for Judgement of Acquittal

(A) An accused may file a motion for the entry of judgement of acquittal on one or more

offences charged in the indictment within seven days after the close of the Prosecutor's case and, in any event, prior to the presentation of evidence by the defence pursuant to Rule 85 (A) (ii).

(B) The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or *proprio motu* if it finds that the evidence is insufficient to sustain a conviction on that or those charges.

Rule 98 *ter*
Judgement

(A) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present, subject to the provisions of Sub-rule 102 (B).

(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) The judgement shall be rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

(D) A copy of the judgement and of the Judges' opinions in a language which the accused understands shall as soon as possible be served on the accused if in custody. Copies thereof in that language and in the language in which they were delivered shall also as soon as possible be provided to counsel for the accused.

Rule 99
Status of the Acquitted Person

(A) Subject to Sub-rule (B), in the case of an acquittal or the upholding of a challenge to jurisdiction, 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 the Prosecutor's intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, on application in that behalf by the Prosecutor and upon hearing the parties, in its discretion, issue an order for the continued detention of the accused, pending the determination of the appeal.

Section 5 : Sentencing and Penalties

Rule 100
Sentencing Procedure on a Guilty Plea

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Sub-rule 102 (B).

Rule 101
Penalties

(A) A convicted person may be sentenced to imprisonment for a term up to and including the

remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 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 extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

Rule 102
Status of the Convicted Person

(A) The sentence shall begin to run from the day it is pronounced. 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 is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for the convicted person's arrest. On arrest, the convicted person 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 President of 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.

(C) Pending the finalisation of arrangements for his or her transfer to the State where his or her sentence will be served, the convicted person shall remain in the custody of the Tribunal.

Rule 104
Supervision of Imprisonment

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

Rule 105
Restitution of Property

(A) After a judgement of conviction containing a specific finding as provided in Sub-rule 98 *ter* (B), the Trial Chamber shall, at the request of the Prosecutor, or may, *proprio motu*, hold a

special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.

(B) The determination may extend to such property or its proceeds, even in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.

(C) Such third parties shall be summoned before the Trial Chamber and be given an opportunity to justify their claim to the property or its proceeds.

(D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

(E) Should the Trial Chamber not be able to determine ownership, it shall notify the competent national authorities and request them so to determine.

(F) Upon notice from the national authorities that an affirmative determination has been made, the Trial Chamber shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

(G) The Registrar shall transmit to the competent national authorities any summonses, orders and requests issued by a Trial Chamber pursuant to Sub-rules (C), (D), (E) and (F).

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 the victim 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.

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 fifteen days from the date on which the judgement was pronounced, file a notice of appeal.

Rule 108 *bis*
State Request for Review

(A) A State directly affected by an interlocutory decision of a Trial Chamber may, within fifteen

days from the date of the decision, file a request for review of the decision by the Appeals Chamber if that decision concerns issues of general importance relating to the powers of the Tribunal.

(B) The party upon whose motion the Trial Chamber issued the impugned decision shall be heard by the Appeals Chamber. The other party may be heard if the Appeals Chamber considers that the interests of justice so require.

(C) The Appeals Chamber may at any stage suspend the execution of the impugned decision.

(D) Rule 116 *bis* shall apply *mutatis mutandis*.

Rule 109
Record on Appeal

The record on appeal shall consist of the trial record, as certified by the Registrar.

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 setting out the grounds of appeal and authorities shall be filed within ninety days of filing of the notice of appeal pursuant to Rule 108.

Rule 112
Respondent's Brief

A Respondent's brief of argument and authorities shall be filed 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

[Deleted]

Rule 116 *bis*
Expedited Appeals Procedure

(A) An appeal under Rule 72 (B) or Rule 73 (B) or appeal from a decision rendered under Rule 54 *bis* (C), Rule 65, Rule 77 or Rule 91 shall be heard expeditiously on the basis of the original record of the Trial Chamber. Appeals may be determined entirely on the basis of written briefs.

(B) Rules 109 to 114 shall not apply to such appeals.

(C) The Presiding Judge, after consulting the members of the Appeals Chamber, may decide not to apply Rule 117 (D).

Rule 117
Judgement on Appeal

(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 rendered by a majority of the Judges. It shall be accompanied or followed as soon as possible by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

(C) In appropriate circumstances the Appeals Chamber may order that the accused be retried according to law.

(D) The judgement shall be pronounced in public, on a date of which notice shall have been given to the parties and counsel and at which they shall be entitled to be present.

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 an acquittal, order the arrest or surrender of the accused 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 of imprisonment, a convicted person 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 permanent 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.

PART TEN

TIME

Rule 126
General Provision

Where the time prescribed by or under these Rules for the doing of any act is to run as from the occurrence of an event, that time shall begin to run as from the date on which notice of the occurrence of the event would have been received in the normal course of transmission by counsel for the accused or the Prosecutor as the case may be.

Rule 127
Variation of Time-limits

(A) Save as provided by paragraph (C), a Trial Chamber may, on good cause being shown by motion,

(i) enlarge or reduce any time prescribed by or under these Rules;

(ii) recognize as validly done any act done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired.

(B) In relation to any step falling to be taken in connection with an appeal or application for leave to appeal, the Appeals Chamber or a bench of three Judges of that Chamber may exercise the like power as is conferred by paragraph (A) and in like manner and subject to the same conditions as are therein set out.

(C) This Rule shall not apply to the times prescribed in Rules 40 *bis* and 90 *bis*.

PRODUCTIE 4

IN NAAM DER KONINGIN!

PRESIDENT VAN DE ARRONDISSEMENTSRECHTBANK TE 's-GRAVENHAGE

vonnis in kort geding van 30 mei 1997,
gewezen in de zaak met rolnummer 97/742 van:

D O
thans verblijvende in Detention Unit van de Verenigde Naties te 's-Gravenhage,
eiser,
procureur mr. J.M. Sjöcrona,

tegen:

de Staat der Nederlanden,
gevestigd te 's-Gravenhage,
gedaagde,
procureur mr. C.M. Bitter.

1. De feiten

Op grond van de stukken en het verhandelde ter zitting van 30 mei 1997 staat in dit geding het navolgende tussen partijen vast:

- Bij aanhoudingsbevel van 2 juni 1995 heeft de Republiek Bosnië-Herzegovina eiser als gedetineerde getuige ter beschikking gesteld van het Tribunaal te 's-Gravenhage, onder de garantie dat eiser naar voornoemde Republiek zou worden teruggebracht als hij aan zijn verplichtingen als getuige zou hebben voldaan. Eiser heeft inmiddels aan zijn verplichting tot getuigen voldaan.
- Eiser heeft bij het Tribunaal een verzoek ingediend niet naar voornoemde Republiek te worden teruggestuurd. Bij beschikking van 27 mei 1997 heeft het Tribunaal het verzoek afgewezen.
- Namens het Tribunaal is aan de advocaat van eiser meegedeeld dat hij waarschijnlijk zondag 1 of maandag 2 juni 1997 zal worden teruggeleverd aan Bosnië-Herzegovina.

2. De vordering, de gronden daarvoor en het verweer

Eiser vordert, kort weergegeven, na vermeerdering van eis:
primair, de Staat te verbieden:
a. enige vorm van actieve medewerking te verlenen aan het transport van eiser naar de betrokken Republiek, danwel
b. te gedogen dat eiser door (toedoen van) het Tribunaal naar de betrokken Republiek wordt getransporteerd,
subsidiair, niet eerder vonnis in deze te wijzen dan wanneer definitief is beslist op het (volgende week in te dienen) verzoekschrift.

Daartoe wordt het volgende aangevoerd.
Eiser wenst niet te worden teruggestuurd naar een Staat die hem fundamentele mensenrechten heeft onthouden. Eiser heeft gegronde redenen te vrezen dat hem ook in de toekomst in Bosnië-Herzegovina een behandeling ten deel zal vallen die in strijd is met kritieke rechtswaarborgen.

Gedaagde heeft een zelfstandige verantwoordelijkheid bij de doorvoer van eiser over Nederlands grondgebied, immers tijdens die doorvoer valt eiser onder de Nederlandse jurisdictie, zodat gedaagde gehouden is de mensenrechten te respecteren die eiser krachtens het EVRM en het BUPO op Nederlands territoir en onder de Nederlandse rechtsmacht toekomen. Er is geen principieel verschil tussen uitlevering en doorvoer.
Terugzending van eiser naar de Republiek Bosnië-Herzegovina zou met zich mee brengen dat gedaagde art. 2 en/of 3 en/of 5 en/of 6 EVRM zou schenden en zou derhalve jegens eiser onrechtmatig zijn.
Weliswaar heeft voornoemde Republiek op 1 mei 1993 te kennen gegeven de voortzetting te wensen van het BUPO-verdrag, welk verdrag vergelijkbare garanties biedt als het EVRM, maar het BUPO-verdrag mist een individueel klachtrecht. Bovendien worden in de Republiek, het BUPO-verdrag ten spijt, (nog immer) mensenrechten geschonden.
In het licht van voornoemde omstandigheden alsmede de internationale en nationale jurisprudentie, moet in dit geval van conflicterende verplichtingen nakoming van de verplichting tot teruglevering van eiser worden achtergesteld bij die tot naleving van het EVRM.

Gedaagde heeft als volgt verweer gevoerd.
Gedaagde is verplicht tot doorvoer van eiser naar Bosnië-Herzegovina op grond van de dwingendrechtelijke bepaling van Resolutie 827 en hoofdstuk VII van het Handvest, nog daargelaten dat hij zijn positie als gastland niet mag gebruiken om het Tribunaal of andere betrokken Staten eenzijdig zijn maatstaven op te leggen. Het begrip 'doorvoer' verschilt uitdrukkelijk van 'overlevering'; bij doorvoer biedt gedaagde enkel hand- en spandiensten t.b.v. het Tribunaal of andere Staten.
Er is geen ruimte voor een toetsing door de Nederlandse rechter van beslissingen van het Tribunaal: art. 9 lid 2 van het Statuut bij Resolutie 827 legt het primaat van rechtspraak bij het Tribunaal.
Door het Tribunaal is uitdrukkelijk getoetst of eiser gegronde vrees heeft voor marteling of een anderszins onmenselijke behandeling in voornoemde Republiek. Nu het Tribunaal, dat gebonden is aan de bepalingen van het Bupo-verdrag, dat evenveel bescherming biedt als het EVRM, deze vraag ontkennend heeft beantwoord, is de Nederlandse regering aan die uitspraak gebonden alsmede aan de teruglevergarantie die het Tribunaal voor eiser heeft gegeven.

3. Beoordeling van het geschil

3.1. Er bestaat principieel onderscheid tussen de begrippen 'overlevering' en 'doorvoer'. In casu is sprake van doorvoer: het in opdracht van het Tribunaal begeleid vervoeren van eiser over Nederlands grondgebied t.b.v. zijn terbeschikkingstelling door het Tribunaal aan Bosnië-Herzegovina.

3.2. Als gastland heeft Nederland de beslissingen van het Tribunaal te respecteren en zijn opdrachten uit te voeren, zoals in hoofdstuk VII van het Handvest, Resolutie 827 en art. 9 van het Statuut dwingend is voorgeschreven. In het licht van deze strakke regelgeving is Nederland gebonden aan de teruglevergarantie, zodat eiser in beginsel conform de opdracht van het Tribunaal tot aan de grens moet worden doorgevoerd t.b.v. zijn terbeschikkingstelling aan Bosnië-Herzegovina.

3.3. Het Tribunaal heeft als onafhankelijke en onpartijdige rechter het

verzoek van eiser om niet aan Bosnië-Herzegovina te worden teruggeleverd getoetst aan het BUPO-verdrag, dat evenveel bescherming biedt als het EVRM. Nu deze teruglevering naar het oordeel van het Tribunaal geen (toekomstige) schending van mensenrechten betekent, is er voor Nederland geen sprake van een conflict tussen de doorvoer-verplichting en zijn verplichting mensenrechten te verzekeren, zoals in art. 1 EVRM bedoeld.

3.4. De procedure bij het Tribunaal is een met voldoende waarborgen omklede rechtsgang. Het Tribunaal legt bij zijn beslissingen een zelfde toetsingsmaatstaf aan als de Nederlandse rechter. De beschikking van het Tribunaal kan derhalve niet nog eens door de Nederlandse rechter in kort geding worden getoetst.

3.5. Het voorgaande leidt tot de conclusie dat de vordering moet worden afgewezen. Eiser zal, als de in het ongelijk gestelde partij, worden veroordeeld in de kosten van dit geding.

4. Beslissing

De President:

Wijst de vordering af.

Veroordeelt eiser in de kosten van dit geding, tot dusverre aan de zijde van gedaagde begroot op *f* 1.845,-, waarvan *f* 345,- aan griffierecht.

Aldus gewezen door mr. A.H. van Delden en uitgesproken ter openbare zitting van 30 mei 1997 in tegenwoordigheid van de griffier.

MKUBvOA

ARRONDISSEMENTS-RECHTBANK 's-GRAVENHAGE

Uitgegeven voor eerste grosse aan
mr. C.M. Bitter
toegezonden, door mij GRIFFIER van de
Arrondissementsrechtbank te 's-Gravenhage
op heden 6-6-97

23/800

Heden, de veertiende augustus tweeduizendéén, op verzoek van:

SLOBODAN MILOSEVIC, wonende te Belgrado, Federale Republiek Joegoslavië, thans verblijvende te Scheveningen, gemeente Den Haag,

te dezer zake woonplaats kiezende te s-Gravenhage aan de Valkenboslaan 72, ten kantore van mr. A.B.B. Beelaard, die tot procureur wordt gesteld,

heb ik,

Gerardus Johannes Maria Wouters, als ~~toegevoegd kandidaat~~ deurwaarder werkzaam ten kantore van Johannes Helenus Hubertus Heger, gerechtsdeurwaarder te 's-Gravenhage, kantoorhoudende te 's-Gravenhage aan de Bezuidenhoutseweg 115 en mitsdien beiden ten deze woonplaats hebbende aldaar,

krachtens mij verstrekte mondelinge last van de E.A. Heer President van de Arrondissementsrechtbank te Den Haag,

IN KORT GEDING GEDAGVAARD :

/(Ministerie van Algemene Zaken en Buitenlandse Zaken) &i.

DE STAAT DER NEDERLANDEN,/ zetelend te 's-Gravenhage aan de Kazernestraat 52, ten parkette van de Procureur-Generaal bij de Hoge Raad der Nederlanden, aldaar mij exploit doende, sprekende met en afschrift dezes latende aan :
Mw. A.E. Toet,

OM :

4voor elk der Ministeries één f.i.

op donderdag drieëntwintig augustus tweeduizendéén, des morgens om 9.00 uur, te verschijnen ter terechtzitting van de President van de Arrondissementsrechtbank te Den Haag, alsdan rechtdoende in kort geding, gehouden wordende in het Paleis van Justitie aan de Prins Clauslaan 60 te Den Haag;

TENEINDE :

Namems mijn verzoeker als eiser te horen concluderen:

1. **Aangezien bij de ontvoering van eiser vanuit de Federale Republiek Joegoslavië naar Nederland elementaire mensenrechten van eiser ernstig zijn geschonden;**

2. **Aangezien met deze ontvoering immers een zware inbreuk is gemaakt op fundamentele rechten die in verband met een voorgenomen uitlevering een ieder toekomen;**

3. Aangezien de Staat der Nederlanden voor deze schending van fundamentele rechten van eiser een zware mede-verantwoordelijkheid draagt en mitsdien uit dien hoofde aansprakelijk is voor het bewuste onrechtmatige handelen jegens eiser;

4. Aangezien bij de vrijheidsberoving van eiser eveneens fundamentele mensenrechten van eiser, welke bescherming bieden tegen willekeurige vrijheidsbeneming, worden geschonden;

5. Aangezien de Staat der Nederlanden ook voor deze vrijheidsbeneming van eiser in strijd met fundamentele rechtsnormen een rechtstreekse mede-verantwoordelijkheid draagt;

6. Aangezien voorts ook de rechtsomstandigheden waaronder eiser gedwongen wordt om het voorarrest te ondergaan een flagrante schending vormen van diens fundamentele rechten;

7. Aangezien de Staat der Nederlanden zich immers zonder enig voorbehoud als gebonden beschouwd aan de wet van 1994 met betrekking tot de installatie van het zogenoemde tribunaal in Nederland;

8. Aangezien voor deze rechtsomstandigheden waaronder eiser gedwongen wordt om deze detentie te ondergaan de Staat evenzeer rechtstreeks mede-verantwoordelijk is;

9. Aangezien overigens het tribunaal ook op zichzelf elke rechtsgrond ontbeert en mitsdien zich onrechtmatigerwijs enige jurisdictie over eiser aanmatigt;

10. Aangezien in het licht van de belangrijke mensenrechten-verdragen een strafrechtsinstelling alleen dan als rechtmatig kan worden beschouwd, indien deze democratisch is gelegitimeerd, een element dat bij het zogenoemde tribunaal ontbreekt;

11. Aangezien de meest fundamentele pijler van het volkenrecht wordt gevormd door het beginsel van van gelijkheid en gelijke rechten voor alle volkeren en staten, en het zogenoemde tribunaal, dat zich slechts richt op een zeer kleine factie van de wereldgemeenschap, geheel in tegenspraak is met deze basis-conceptie van het volkenrecht, hetgeen het zogenoemde tribunaal eveneens nietig maakt;

12. Aangezien, zelfs als het oordeel zou worden gehuldigd dat dit laatste anders zou liggen, niettemin het zogenoemde tribunaal niet kan worden beschouwd als een onafhankelijke en onpartijdige instelling, naar de maatstaven van artikel 6 van het Europese Verdrag voor de Rechten van de Mens, een en ander vanwege diens schaamteloze vriendschapsbanden met de NAVO en afhankelijkheid van de NAVO, diens constante

schendingen van de mensenrechten door kidnapping, diens openlijk discriminatoire vervolgingsbeleid, diens zogenoemde regelgeving van eigen maaksel, diens wijze van procesvoering, diens gedragspatronen, diens publieke uitlatingen en de herkomst van veel van diens fondsen;

13. Aangezien de uitoefening van rechtsmacht van dit instituut over eiser dan ook slechts onrechtmatigerwijs, onder onrechtmatige dwang en in tegenspraak met de fundamentele rechten van eiser plaastvindt;

14. Aangezien voorts het concept dat dit instituut zelf als enige zou oordelen over de eigen competentie en legitimiteit als een slechte grap moet worden beschouwd;

15. Aangezien de Staat der Nederlanden bij deze onrechtmatigheden eveneens, en niet in de laatste plaats, diep is betrokken vanwege het feit dat hij dit zogenoemde tribunaal een plek heeft geboden op Nederlands territoir, alsmede door diens samenwerking met en het verlenen van faciliteiten aan deze institutie;

16. Aangezien eiser de rechtsbescherming inroept van de Nederlandse rechter tegen de rechtsschendingen waaraan hij, als gevolg van het optreden van het zogenoemde tribunaal blootstaat en het slachtoffer is gemaakt, alsmede tegen de jurisdictie die het zogenoemde tribunaal onrechtmatigerwijs over hem tracht uit te oefenen;

17. Aangezien immers de Nederlandse rechter de bevoegde rechter is terzake van rechtsbescherming van personen die zich op Nederlands territoir bevinden;

18. Aangezien dit laatste zelfs a fortiori geldt voor het geval bij een zodanig beroep op de Nederlandse rechter fundamentele mensenrechten in het spel zijn en de bescherming die de Nederlandse rechter dan behoort te bieden ook op zichzelf weer een fundamenteel mensenrecht vormt, waarop eiser dan ook uitdrukkelijk aanspraak maakt;

19. Aangezien dit een fundamentele rechtsbeginsel als zodanig ook tot uitdrukking wordt gebracht in artikel 13 van Het Europees Verdrag tot Bescherming van Rechten van de Mens;

20. Aangezien eiser tenslotte als (gewezen) staatshoofd immuniteit van rechtsvervolging toekomt, ook indien dit tribunaal geacht zou worden rechtmatigerwijs rechtsmacht uit te oefenen;

21. Aangezien de regel dat het zogenoemde tribunaal geen enkele immuniteit erkent even nietig is als de oprichting van het zogenoemde tribunaal zelf - het is

geen zaak van de Veiligheidsraad of van het zogenoemde tribunaal om te beslissen over immuniteiten, maar een zaak van het volkenrecht;

22. Aangezien eiser dan ook van de Staat vordert het, zonder enige verdere vertraging, daarheen te geleiden - dan wel daarvoor elke noodzakelijke inspanning te verrichten - dat eiser terstond en onvoorwaardelijk wordt vrijgelaten, dan wel onverwijld en onvoorwaardelijk wordt gerepatriëerd naar de Federale Republiek Joegoslavië, een en ander overeenkomstig de navolgende eisen:

MITSDIEN :

De President van de Arrondissementsrechtbank te Den Haag wordt verzocht om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

te bevelen dat de Staat der Nederlanden binnen 8 uur na betekening van dit vonnis over gaat onvoorwaardelijke invrijheidstelling van eiser;

subsidiair

te bevelen dat de Staat, binnen 24 uur na de betekening van dit vonnis, ertoe overgaat om eiser terug te brengen of te doen brengen naar het grondgebied van de Federale Republiek Joegoslavië;

meer subsidiair

te bevelen dat de Staat onverwijld uitdrukkelijk de onmiddellijke en onvoorwaardelijke invrijheidstelling van eiser bepleit bij het zogeheten tribunaal en bij alle overigens in dit verband relevante internationale lichamen en instellingen;

nog meer subsidiair

te bevelen dat de Staat onverwijld uitdrukkelijk de onmiddellijke terugbrenging van eiser bepleit naar het grondgebied van de Federale Republiek Joegoslavië bij het zogeheten tribunaal en bij alle overigens relevante internationale lichamen en

instellingen;

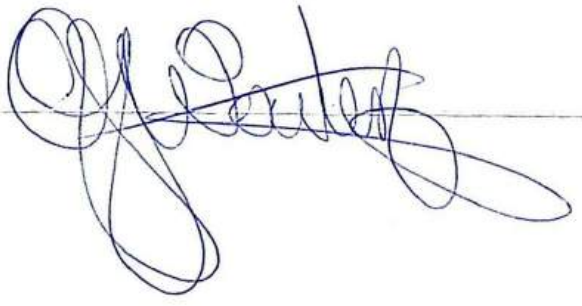
met veroordeling van gedaagde in de kosten van het geding.

met aanzegging dat als gedaagde ter zitting verschijnt, hij een vast recht verschuldigd is van f 400,- .

exploot/proc. verbaal f 140,53
verschotten:
- GBA
- KvK
- overige

opslag (b.t.w.) f 26,70

f 167,23



23 aug

Heden, de dertiende augustus tweeduizendéén, op verzoek van:

SLOBODAN MILOSEVIC, wonende te Belgrado, Federale Republiek Joegoslavië, thans verblijvende te Scheveningen, gemeente Den Haag,

te dezer zake woonplaats kiezende te s-Gravenhage aan de Valkenboslaan 72, ten kantore van mr. A.B.B. Boelaard, die tot procureur wordt gesteld,

Gerardus Johannes Maria Wouters, als toegevoegd-kandidaat deurwaarder werkzaam ten kantore van Johannes Hendrikus Franciscus Hengst, gerechtsdeurwaarder te 's-Gravenhage, kantoorhoudende te 's-Gravenhage aan de Bezuidenhoutseweg 215 en elkaars leden ten deze woonplaats hebbende aldaar,

heb ik,

krachtens mij verstrekte mondelinge last van de F.A. Hoer President van de Arrondissementsrechtbank te Den Haag

IN KORT GEDING GEDAAGD :

(Ministerie van Algemene Zaken en Buitenlandse Zaken)
bij

DE STAAT [illegible]
Kazernelaan [illegible]
de Hoge Raad [illegible]
sprekende [illegible]

OM :

(voor elk der Ministeries één bij.

op dezelfde dag [illegible] gens en ten [illegible] President van [illegible] rechtdoende [illegible] van Justitie aan de Prins [illegible] te Den Haag

TENEINDE :

Namens mijn verzoeker als elder te horen concluderen:

1. Aangezien bij de ontvoering van elder vanuit de Federale Republiek Joegoslavië naar Nederland elementaire mensenrechten van elder ernstig zijn geschonden;

2. Aangezien met deze ontvoering immers een zware inbreuk is gemaakt op fundamentele rechten die in verband met een voorgenomen uitlevering een ieder toekomen;

3. Aangezien de Staat der Nederlanden voor deze schending van fundamentele rechten van eiser een zware mede-verantwoordelijkheid draagt en mitsdien uit dien hoofde aansprakelijk is voor het bewuste onrechtmatige handelen jegens eiser;

4. Aangezien bij de vrijheidsberoving van eiser eveneens fundamentele mensenrechten van eiser, welke bescherming bieden tegen willekeurige vrijheidsbeneming, worden geschonden;

5. Aangezien de Staat der Nederlanden ook voor deze vrijheidsbeneming van eiser in strijd met fundamentele rechtsnormen een rechtstreekse mede-verantwoordelijkheid draagt;

6. Aangezien voorts ook de rechtsomstandigheden waaronder eiser gedwongen wordt om het voorarrest te ondergaan een flagrante schending vormen van diens fundamentele rechten;

7. Aangezien de Staat der Nederlanden zich immers zonder enig voorbehoud als gebonden beschouwd aan de wet van 1994 met betrekking tot de installatie van het zogenoemde tribunaal in Nederland;

8. Aangezien voor deze rechtsomstandigheden waaronder eiser gedwongen wordt om deze detentie te ondergaan de Staat evenzeer rechtstreeks mede-verantwoordelijk is;

9. Aangezien overigens het tribunaal ook op zichzelf elke rechtsgrond ontbeert en mitsdien zich onrechtmatigerwijs enige jurisdictie over eiser aanmatigt;

10. Aangezien in het licht van de belangrijke mensenrechten-verdragen een strafrechtsinstelling alleen dan als rechtmatig kan worden beschouwd, indien deze democratisch is gelegitimeerd, een element dat bij het zogenoemde tribunaal ontbreekt;

11. Aangezien de meest fundamentele pijler van het volkenrecht wordt gevormd door het beginsel van van gelijkheid en gelijke rechten voor alle volkeren en staten, en het zogenoemde tribunaal, dat zich slechts richt op een zeer kleine factie van de wereldgemeenschap, geheel in tegenspraak is met deze basis-conceptie van het volkenrecht, hetgeen het zogenoemde tribunaal eveneens nietig maakt;

12. Aangezien, zelfs als het oordeel zou worden gehuldigd dat dit laatste anders zou liggen, niettemin het zogenoemde tribunaal niet kan worden beschouwd als een onafhankelijke en onpartijdige instelling, naar de maatstaven van artikel 6 van het Europese Verdrag voor de Rechten van de Mens, een en ander vanwege diens schaamteloze vriendschapsbanden met de NAVO en afhankelijkheid van de NAVO, diens constante

schendingen van de mensenrechten door kidnapping, diens openlijk discriminatoire vervolgingsbeleid, diens zogenoemde regelgeving van eigen maaksel, diens wijze van procesvoering, diens gedragspatronen, diens publieke uitlatingen en de herkomst van veel van diens fondsen;

13. Aangezien de uitoefening van rechtsmacht van dit instituut over eiser dan ook slechts onrechtmatigerwijs, onder onrechtmatige dwang en in tegenspraak met de fundamentele rechten van eiser plaastvindt;

14. Aangezien voorts het concept dat dit instituut zelf als enige zou oordelen over de eigen competentie en legitimiteit als een slechte grap moet worden beschouwd;

15. Aangezien de Staat der Nederlanden bij deze onrechtmatigheden eveneens, en niet in de laatste plaats, diep is betrokken vanwege het feit dat hij dit zogenoemde tribunaal een plek heeft geboden op Nederlands territoir, alsmede door diens samenwerking met en het verlenen van faciliteiten aan deze institutie;

16. Aangezien eiser de rechtsbescherming inroept van de Nederlandse rechter tegen de rechtsschendingen waaraan hij, als gevolg van het optreden van het zogenoemde tribunaal blootstaat en het slachtoffer is gemaakt, alsmede tegen de jurisdictie die het zogenoemde tribunaal onrechtmatigerwijs over hem tracht uit te oefenen;

17. Aangezien immers de Nederlandse rechter de bevoegde rechter is terzake van rechtsbescherming van personen die zich op Nederlands territoir bevinden;

18. Aangezien dit laatste zelfs a fortiori geldt voor het geval bij een zodanig beroep op de Nederlandse rechter fundamentele mensenrechten in het spel zijn en de bescherming die de Nederlandse rechter dan behoort te bieden ook op zichzelf voor een fundamenteel mensenrecht vormt, waarop eiser dan ook uitdrukkelijk aanspraak maakt;

19. Aangezien dit een fundamentele rechtsbeginsel als zodanig ook tot uitdrukking wordt gebracht in artikel 13 van het Europees Verdrag tot Bescherming van Rechten van de Mens;

20. Aangezien einer tenslotte als (gewezen) staatshoofd immuniteit van rechtsvervolging toekomt, ook indien dit tribunaal geacht zou worden rechtmatigerwijze rechtsmacht uit te oefenen;

21. Aangezien de regel dat het zogenoemde tribunaal geen enkele immuniteit erkent even nietig is als de oprichting van het zogenoemde tribunaal zelf - het is

geen raak van de Veiligheidsraad of van het zogenoemde tribunaal om te beslissen over immuniteiten, maar een zaak van het volkenrecht;

22. Aangezien eiser dan ook van de Staat vordert het, zonder enige verdere vertraging, daarhaan te gelijden - dan wel daarvoor alle noodzakelijke inspanning te verrichten - dat eiser terstond en onvoorwaardelijk wordt vrijgelaten, dan wel onverwijld en onvoorwaardelijk wordt gerepatrieerd naar de Federale Republiek Joegoslavië, een en ander overeenkomstig de navolgende eisen:

MEDEDELING:

De Presidente van de Arrondissementsrechtbank te Den Haag wordt verzocht om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

te bevelen dat de Staat der Nederlanden binnen 1 uur na betekening van dit vonnis voor gaat onvoorwaardelijken invrijheidstelling van eiser;

subsidiair

te bevelen dat de Staat, binnen 24 uur na de betekening van dit vonnis, verder overgaat om eiser terug te brengen of te doen brengen naar het grondgebied van de Federale Republiek Joegoslavië;

meer subsidiair

te bevelen dat de Staat onverwijld uitermate lijk de onmiddelijke en onvoorwaardelijke invrijheidstelling van eiser bepleit bij het zogeheten tribunaal en bij alle overigens in dit verband relevante internationale lichamen en instellingen;

nog meer subsidiair

te bevelen dat de Staat onverwijld uitdrukkelijk de onmiddelijke terugbrenging van eiser bepleit naar het grondgebied van de Federale Republiek Joegoslavië bij het zogeheten tribunaal en bij alle overigens relevante internationale lichamen en

Instellingen:

met veroordeling van gedaagde in de kosten van het geding.

met aanzegging dat als gedaagde een dwangsom verschuldigd is van f 400,- .

exploot/proc. verbaal (MO.5.1
verschotten:
- GBA
- KvK
- overige

opslag (b.t.w.)

Heden, de augustus tweeduizendéén, op verzoek van:

SLOBODAN MILOSEVIC, wonende te Belgrado, Federale Republiek Joegoslavië, thans verblijvende te Scheveningen, gemeente Den Haag,

te dezer zake woonplaats kiezende te s-Gravenhage aan de Valkenboslaan 72, ten kantore van mr. A.B.B. Beelaard, die tot procureur wordt gesteld,

heb ik,

krachtens mij verstrekte mondelinge last van de E.A. Heer President van de Arrondissementsrechtbank te Den Haag,

IN KORT GEDING GEDAGVAARD :

DE STAAT DER NEDERLANDEN, zetelend te 's-Gravenhage aan de Kazernestraat 52, ten parkette van de Procureur-Generaal bij de Hoge Raad der Nederlanden, aldaar mij exploit doende, sprekende met en afschrift dezes latende aan :

OM :

op donderdag drieëntwintig augustus tweeduizendéén, des morgens om 9.00 uur, te verschijnen ter terechtzitting van de President van de Arrondissementsrechtbank te Den Haag, alsdan rechtdoende in kort geding, gehouden wordende in het Paleis van Justitie aan de Prins Clauslaan 60 te Den Haag;

TENEINDE :

Namems mijn verzoeker als eiser te horen concluderen:

1. **Aangezien bij de ontvoering van eiser vanuit de Federale Republiek Joegoslavië naar Nederland elementaire mensenrechten van eiser ernstig zijn geschonden;**

2. **Aangezien met deze ontvoering immers een zware inbreuk is gemaakt op fundamentele rechten die in verband met een voorgenomen uitlevering een ieder toekomen;**

3. Aangezien de Staat der Nederlanden voor deze schending van fundamentele rechten van eiser een zware mede-verantwoordelijkheid draagt en mitsdien uit dien hoofde aansprakelijk is voor het bewuste onrechtmatige handelen jegens eiser;

4. Aangezien bij de vrijheidsberoving van eiser eveneens fundamentele mensenrechten van eiser, welke bescherming bieden tegen willekeurige vrijheidsbeneming, worden geschonden;

5. Aangezien de Staat der Nederlanden ook voor deze vrijheidsbeneming van eiser in strijd met fundamentele rechtsnormen een rechtstreekse mede-verantwoordelijkheid draagt;

6. Aangezien voorts ook de rechtsomstandigheden waaronder eiser gedwongen wordt om het voorarrest te ondergaan een flagrante schending vormen van diens fundamentele rechten;

7. Aangezien de Staat der Nederlanden zich immers zonder enig voorbehoud als gebonden beschouwd aan de wet van 1994 met betrekking tot de installatie van het zogenoemde tribunaal in Nederland;

8. Aangezien voor deze rechtsomstandigheden waaronder eiser gedwongen wordt om deze detentie te ondergaan de Staat evenzeer rechtstreeks mede-verantwoordelijk is;

9. Aangezien overigens het tribunaal ook op zichzelf elke rechtsgrond ontbeert en mitsdien zich onrechtmatigerwijs enige jurisdictie over eiser aanmatigt;

10. Aangezien in het licht van de belangrijke mensenrechten-verdragen een strafrechtsinstelling alleen dan als rechtmatig kan worden beschouwd, indien deze democratisch is gelegitimeerd, een element dat bij het zogenoemde tribunaal ontbreekt;

11. Aangezien de meest fundamentele pijler van het volkenrecht wordt gevormd door het beginsel van van gelijkheid en gelijke rechten voor alle volkeren en staten, en het zogenoemde tribunaal, dat zich slechts richt op een zeer kleine factie van de wereldgemeenschap, geheel in tegenspraak is met deze basis-conceptie van het volkenrecht, hetgeen het zogenoemde tribunaal eveneens nietig maakt;

12. Aangezien, zelfs als het oordeel zou worden gehuldigd dat dit laatste anders zou liggen, niettemin het zogenoemde tribunaal niet kan worden beschouwd als een onafhankelijke en onpartijdige instelling, naar de maatstaven van artikel 6 van het Europese Verdrag voor de Rechten van de Mens, een en ander vanwege diens schaamteloze vriendschapsbanden met de NAVO en afhankelijkheid van de NAVO, diens constante

schendingen van de mensenrechten door kidnapping, diens openlijk discriminatoire vervolgingsbeleid, diens zogenoemde regelgeving van eigen maaksel, diens wijze van procesvoering, diens gedragspatronen, diens publieke uitlatingen en de herkomst van veel van diens fondsen;

13. Aangezien de uitoefening van rechtsmacht van dit instituut over eiser dan ook slechts onrechtmatigerwijs, onder onrechtmatige dwang en in tegenspraak met de fundamentele rechten van eiser plaastvindt;

14. Aangezien voorts het concept dat dit instituut zelf als enige zou oordelen over de eigen competentie en legitimiteit als een slechte grap moet worden beschouwd;

15. Aangezien de Staat der Nederlanden bij deze onrechtmatigheden eveneens, en niet in de laatste plaats, diep is betrokken vanwege het feit dat hij dit zogenoemde tribunaal een plek heeft geboden op Nederlands territoir, alsmede door diens samenwerking met en het verlenen van faciliteiten aan deze institutie;

16. Aangezien eiser de rechtsbescherming inroept van de Nederlandse rechter tegen de rechtsschendingen waaraan hij, als gevolg van het optreden van het zogenoemde tribunaal blootstaat en het slachtoffer is gemaakt, alsmede tegen de jurisdictie die het zogenoemde tribunaal onrechtmatigerwijs over hem tracht uit te oefenen;

17. Aangezien immers de Nederlandse rechter de bevoegde rechter is terzake van rechtsbescherming van personen die zich op Nederlands territoir bevinden;

18. Aangezien dit laatste zelfs a fortiori geldt voor het geval bij een zodanig beroep op de Nederlandse rechter fundamentele mensenrechten in het spel zijn en de bescherming die de Nederlandse rechter dan behoort te bieden ook op zichzelf weer een fundamenteel mensenrecht vormt, waarop eiser dan ook uitdrukkelijk aanspraak maakt;

19. Aangezien dit een fundamentele rechtsbeginsel als zodanig ook tot uitdrukking wordt gebracht in artikel 13 van Het Europees Verdrag tot Bescherming van Rechten van de Mens;

20. Aangezien eiser tenslotte als (gewezen) staatshoofd immuniteit van rechtsvervolging toekomt, ook indien dit tribunaal geacht zou worden rechtmatigerwijs rechtsmacht uit te oefenen;

21. Aangezien de regel dat het zogenoemde tribunaal geen enkele immuniteit erkent even nietig is als de oprichting van het zogenoemde tribunaal zelf - het is

geen zaak van de Veiligheidsraad of van het zogenoemde tribunaal om te beslissen over immuniteiten, maar een zaak van het volkenrecht;

22. Aangezien eiser dan ook van de Staat vordert het, zonder enige verdere vertraging, daarheen te geleiden - dan wel daarvoor elke noodzakelijke inspanning te verrichten - dat eiser terstond en onvoorwaardelijk wordt vrijgelaten, dan wel onverwijld en onvoorwaardelijk wordt gerepatriëerd naar de Federale Republiek Joegoslavië, een en ander overeenkomstig de navolgende eisen:

MITSDIEN :

De President van de Arrondissementsrechtbank te Den Haag wordt verzocht om bij vonnis, voor zover mogelijk uitvoerbaar bij voorraad:

te bevelen dat de Staat der Nederlanden binnen 8 uur na betekening van dit vonnis over gaat onvoorwaardelijke invrijheidstelling van eiser;

subsidiair

te bevelen dat de Staat, binnen 24 uur na de betekening van dit vonnis, ertoe overgaat om eiser terug te brengen of te doen brengen naar het grondgebied van de Federale Republiek Joegoslavië;

meer subsidiair

te bevelen dat de Staat onverwijld uitdrukkelijk de onmiddellijke en onvoorwaardelijke invrijheidstelling van eiser bepleit bij het zogeheten tribunaal en bij alle overigens in dit verband relevante internationale lichamen en instellingen;

nog meer subsidiair

te bevelen dat de Staat onverwijld uitdrukkelijk de onmiddellijke terugbrenging van eiser bepleit naar het grondgebied van de Federale Republiek Joegoslavië bij het zogeheten tribunaal en bij alle overigens relevante internationale lichamen en

instellingen;

met veroordeling van gedaagde in de kosten van het geding.

met aanzegging dat als gedaagde ter zitting verschijnt, hij een vast recht verschuldigd is van f 400,- .