

UNITED  
NATIONS

---



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

IT/32 Rev.1  
5 May 1994

Original: English & French

---

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

**RULES OF PROCEDURE AND EVIDENCE**

(ADOPTED ON 11 FEBRUARY 1994)  
(AS AMENDED 5 MAY 1994)

UNITED  
NATIONS

---



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

IT/32  
14 March 1994

Original: English & French

---

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

RULES OF PROCEDURE AND EVIDENCE

(ADOPTED ON 11 FEBRUARY 1994)

---

## CONTENTS

PART		Page
One	GENERAL PROVISIONS . . . . .	1
	Rule 1 Entry into Force . . . . .	1
	Rule 2 Definitions . . . . .	1
	Rule 3 Languages . . . . .	3
	Rule 4 Meetings away from the Seat of the Tribunal . . . . .	3
	Rule 5 Non-compliance with Rules . . . . .	4
	Rule 6 Amendment of the Rules . . . . .	4
	Rule 7 Authentic Texts . . . . .	4
Two	PRIMACY OF THE TRIBUNAL . . . . .	5
	Rule 8 Request for Information . . . . .	5
	Rule 9 Prosecutor's Request for Deferral . . . . .	5
	Rule 10 Formal Request for Deferral . . . . .	6
	Rule 11 Non-compliance with a Request for Deferral . . . . .	6
	Rule 12 Determinations of National Courts . . . . .	7
	Rule 13 Non Bis in Idem . . . . .	7
Three	ORGANIZATION OF THE TRIBUNAL . . . . .	8
	Section 1 The Judges . . . . .	8
	Rule 14 Solemn Declaration . . . . .	8
	Rule 15 Disqualification of Judges . . . . .	8
	Rule 16 Resignation . . . . .	9
	Rule 17 Precedence . . . . .	10
	Section 2 The Presidency . . . . .	11
	Rule 18 Election of the President . . . . .	11
	Rule 19 Functions of the President . . . . .	11
	Rule 20 The Vice-President . . . . .	12
	Rule 21 Functions of the Vice-President . . . . .	12
	Rule 22 Replacements . . . . .	12
	Section 3 Internal Functioning of the Tribunal . . . . .	13
	Rule 23 The Bureau . . . . .	13
	Rule 24 Plenary Meetings of the Tribunal . . . . .	13
	Rule 25 Dates of Plenary Sessions . . . . .	14
	Rule 26 Quorum and Vote . . . . .	14
	Section 4 The Chambers . . . . .	15
	Rule 27 Rotation . . . . .	15
	Rule 28 Assignment to Review Indictments . . . . .	15
	Rule 29 Deliberations . . . . .	15

Section 5	The Registry . . . . .	16
Rule 30	Appointment of the Registrar . . . . .	16
Rule 31	Appointment of the Deputy Registrar and Registry Staff . . . . .	16
Rule 32	Solemn Declaration . . . . .	16
Rule 33	Functions of the Registrar . . . . .	17
Rule 34	Victims and Witnesses Unit . . . . .	17
Rule 35	Minutes . . . . .	18
Rule 36	Record Book . . . . .	18
Section 6	The Prosecutor . . . . .	19
Rule 37	Functions . . . . .	19
Rule 38	Deputy Prosecutor . . . . .	19
Four	INVESTIGATIONS AND RIGHTS OF SUSPECTS . . . . .	20
Section 1	Investigations . . . . .	20
Rule 39	Conduct of Investigations . . . . .	20
Rule 40	Provisional Measures . . . . .	21
Rule 41	Retention of Information . . . . .	21
Rule 42	Rights of Suspects during Investigation . . . . .	21
Rule 43	Recording Questioning of Suspects . . . . .	22
Section 2	Of Counsel . . . . .	24
Rule 44	Appointment and Qualifications of Counsel . . . . .	24
Rule 45	Assignment of Counsel . . . . .	24
Rule 46	Misconduct of Counsel . . . . .	25
Five	PRE-TRIAL PROCEEDINGS . . . . .	26
Section 1	Indictments . . . . .	26
Rule 47	Submission of Indictment by the Prosecutor . . . . .	26
Rule 48	Joinder of Accused . . . . .	27
Rule 49	Joinder of Crimes . . . . .	27
Rule 50	Amendment of Indictment . . . . .	27
Rule 51	Withdrawal of Indictment . . . . .	28
Rule 52	Public Character of Indictment . . . . .	28
Rule 53	Non-disclosure . . . . .	28
Section 2	Orders and Warrants . . . . .	29
Rule 54	General Rule . . . . .	29
Rule 55	Execution of Arrest Warrants . . . . .	29
Rule 56	Cooperation of States . . . . .	30
Rule 57	Procedure after Arrest . . . . .	30
Rule 58	National Extradition Provisions . . . . .	30
Rule 59	Failure to Execute a Warrant . . . . .	30
Rule 60	Advertisement of Indictment . . . . .	31
Rule 61	Procedure in Case of Failure to Execute a Warrant . . . . .	31
Rule 62	Initial Appearance of Accused . . . . .	33
Rule 63	Questioning of Accused . . . . .	33
Rule 64	Detention on Remand . . . . .	34

Section 5	The Registry . . . . .	16
Rule 30	Appointment of the Registrar . . . . .	16
Rule 31	Appointment of the Deputy Registrar and Registry Staff . . . . .	16
Rule 32	Solemn Declaration . . . . .	16
Rule 33	Functions of the Registrar . . . . .	17
Rule 34	Victims and Witnesses Unit . . . . .	17
Rule 35	Minutes . . . . .	18
Rule 36	Record Book . . . . .	18
Section 6	The Prosecutor . . . . .	19
Rule 37	Functions . . . . .	19
Rule 38	Deputy Prosecutor . . . . .	19
Four	INVESTIGATIONS AND RIGHTS OF SUSPECTS . . . . .	20
Section 1	Investigations . . . . .	20
Rule 39	Conduct of Investigations . . . . .	20
Rule 40	Provisional Measures . . . . .	21
Rule 41	Retention of Information . . . . .	21
Rule 42	Rights of Suspects during Investigation . . . . .	21
Rule 43	Recording Questioning of Suspects . . . . .	22
Section 2	Of Counsel . . . . .	24
Rule 44	Appointment and Qualifications of Counsel . . . . .	24
Rule 45	Assignment of Counsel . . . . .	24
Rule 46	Misconduct of Counsel . . . . .	25
Five	PRE-TRIAL PROCEEDINGS . . . . .	26
Section 1	Indictments . . . . .	26
Rule 47	Submission of Indictment by the Prosecutor . . . . .	26
Rule 48	Joinder of Accused . . . . .	27
Rule 49	Joinder of Crimes . . . . .	27
Rule 50	Amendment of Indictment . . . . .	27
Rule 51	Withdrawal of Indictment . . . . .	28
Rule 52	Public Character of Indictment . . . . .	28
Rule 53	Non-disclosure . . . . .	28
Section 2	Orders and Warrants . . . . .	29
Rule 54	General Rule . . . . .	29
Rule 55	Execution of Arrest Warrants . . . . .	29
Rule 56	Cooperation of States . . . . .	30
Rule 57	Procedure after Arrest . . . . .	30
Rule 58	National Extradition Provisions . . . . .	30
Rule 59	Failure to Execute a Warrant . . . . .	30
Rule 60	Advertisement of Indictment . . . . .	31
Rule 61	Procedure in Case of Failure to Execute a Warrant . . . . .	31
Rule 62	Initial Appearance of Accused . . . . .	33
Rule 63	Questioning of Accused . . . . .	33
Rule 64	Detention on Remand . . . . .	34

Section 4	Sentencing Procedure . . . . .	53
	Rule 99 Status of the Acquitted Person . . . . .	53
	Rule 100 Pre-sentencing Procedure . . . . .	53
	Rule 101 Penalties . . . . .	53
	Rule 102 Status of the Convicted Person . . . . .	54
	Rule 103 Place of Imprisonment . . . . .	55
	Rule 104 Supervision of Imprisonment . . . . .	55
	Rule 105 Restitution of Property . . . . .	56
	Rule 106 Compensation to Victims . . . . .	57
Seven	APPELLATE PROCEEDINGS . . . . .	58
	Rule 107 General Provision . . . . .	58
	Rule 108 Notice of Appeal . . . . .	58
	Rule 109 Record on Appeal . . . . .	58
	Rule 110 Copies of Record . . . . .	59
	Rule 111 Appellant's Brief . . . . .	59
	Rule 112 Respondent's Brief . . . . .	59
	Rule 113 Brief in Reply . . . . .	60
	Rule 114 Date of Hearing . . . . .	60
	Rule 115 Additional Evidence . . . . .	60
	Rule 116 Extension of Time-limits . . . . .	61
	Rule 117 Judgement . . . . .	61
	Rule 118 Status of the Accused Following Appeal . . . . .	61
Eight	REVIEW PROCEEDINGS . . . . .	62
	Rule 119 Request for Review . . . . .	62
	Rule 120 Preliminary Examination . . . . .	62
	Rule 121 Appeals . . . . .	62
	Rule 122 Return of Case to Trial Chamber . . . . .	63
Nine	PARDON AND COMMUTATION OF SENTENCE . . . . .	64
	Rule 123 Notification by States . . . . .	64
	Rule 124 Determination by the President . . . . .	64
	Rule 125 General Standards for Granting Pardon or Commutation . . . . .	64

Part One

GENERAL PROVISIONS

Rule 1

Entry into Force

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

Rule 2

Definitions

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

Rules: The Rules referred to in Rule 1;

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

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

\* \* \*

Accused: A person against whom an indictment has been submitted in accordance with Rule 47;

Arrest: The act of taking a suspect or an accused into custody by a national authority;

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

Investigation: All activities undertaken by the Prosecutor under the Statute and the Rules for the collection of information and evidence;

Party: The Prosecutor or the accused;

President: The President of the Tribunal;

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

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

Victim: A person against whom a crime over which the Tribunal has jurisdiction has allegedly been committed.

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



**Rule 3**  
**Languages**

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

**Rule 4**  
**Meetings away from the Seat of the Tribunal**

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

**Rule 5**  
**Non-compliance with Rules**

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

**Rule 6**  
**Amendment of the Rules**

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

**Rule 7**  
**Authentic Texts**

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

Part Two

PRIMACY OF THE TRIBUNAL

Rule 8

Request for Information

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

Rule 9

Prosecutor's Request for Deferral

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

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

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

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

#### **Rule 10**

##### **Formal Request for Deferral**

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

#### **Rule 11**

##### **Non-compliance with a Request for Deferral**

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

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

#### Rule 12

#### Determinations of National Courts

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

#### Rule 13

#### Non Bis in Idem

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

## Part Three

### ORGANIZATION OF THE TRIBUNAL

#### Section 1 The Judges

##### Rule 14

##### Solemn Declaration

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

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

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

##### Rule 15

##### Disqualification of Judges

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

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

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

**Rule 16**  
**Resignation**

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

**Rule 17**  
**Precedence**

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



## Section 2 The Presidency

### Rule 18

#### Election of the President

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

### Rule 19

#### Functions of the President

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

**Rule 20**  
**The Vice-President**

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

**Rule 21**  
**Functions of the Vice-President**

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

**Rule 22**  
**Replacements**

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

### **Section 3 Internal Functioning of the Tribunal**

#### **Rule 23**

##### **The Bureau**

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

#### **Rule 24**

##### **Plenary Meetings of the Tribunal**

The Judges shall meet in plenary to:

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

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

#### Rule 25

##### Dates of Plenary Sessions

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

#### Rule 26

##### Quorum and Vote

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

## Section 4 The Chambers

### Rule 27

#### Rotation

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

### Rule 28

#### Assignment to Review Indictments

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

### Rule 29

#### Deliberations

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

## **Section 5 The Registry**

### **Rule 30**

#### **Appointment of the Registrar**

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

### **Rule 31**

#### **Appointment of the Deputy Registrar and Registry Staff**

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

### **Rule 32**

#### **Solemn Declaration**

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

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

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

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

### **Rule 33**

#### **Functions of the Registrar**

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

### **Rule 34**

#### **Victims and Witnesses Unit**

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

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

**Rule 35**

**Minutes**

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

**Rule 36**

**Record Book**

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



## Section 6 The Prosecutor

### Rule 37 Functions

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

### Rule 38 Deputy Prosecutor

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

## Part Four

### INVESTIGATIONS AND RIGHTS OF SUSPECTS

#### Section 1 Investigations

##### Rule 39

##### Conduct of Investigations

In the conduct of an investigation, the Prosecutor may:

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

**Rule 40**  
**Provisional Measures**

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

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

**Rule 41**  
**Retention of Information**

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

**Rule 42**  
**Rights of Suspects during Investigation**

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

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

### Rule 43

#### Recording Questioning of Suspects

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

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

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

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

## Section 2 Of Counsel

### Rule 44

#### Appointment and Qualifications of Counsel

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

### Rule 45

#### Assignment of Counsel

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

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

#### Rule 46

#### Misconduct of Counsel

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

Part Five

PRE-TRIAL PROCEEDINGS

Section 1 Indictments

Rule 47

Submission of Indictment by the Prosecutor

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



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

**Rule 48**  
**Joinder of Accused**

Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.

**Rule 49**  
**Joinder of Crimes**

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

**Rule 50**  
**Amendment of Indictment**

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

**Rule 51**  
**Withdrawal of Indictment**

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

**Rule 52**  
**Public Character of Indictment**

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

**Rule 53**  
**Non-disclosure of Indictment**

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

## Section 2 Orders and Warrants

### Rule 54 General Rule

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

### Rule 55 Execution of Arrest Warrants

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

**Rule 56**  
**Cooperation of States**

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

**Rule 57**  
**Procedure after Arrest**

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

**Rule 58**  
**National Extradition Provisions**

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

**Rule 59**  
**Failure to Execute a Warrant**

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

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

#### **Rule 60**

##### **Advertisement of Indictment**

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

#### **Rule 61**

##### **Procedure in Case of Failure to Execute a Warrant**

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

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

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

## Rule 62

### Initial Appearance of Accused

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

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

## Rule 63

### Questioning of Accused

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

**Rule 64**  
**Detention on Remand**

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

**Rule 65**  
**Provisional Release**

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



### Section 3 Production of Evidence

#### Rule 66

##### Disclosure by the Prosecutor

- (A) The Prosecutor shall make available to the defence, as soon as practicable after the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought.
  
- (B) The Prosecutor shall on request permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

#### Rule 67

##### Reciprocal Disclosure

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

notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

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

#### **Rule 68**

#### **Disclosure of Exculpatory Evidence**

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

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

#### **Rule 69**

##### **Protection of Victims and Witnesses**

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

#### **Rule 70**

##### **Matters not Subject to Disclosure**

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

## Section 4 Depositions

### Rule 71 Depositions

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

## Section 5 Preliminary Motions

### Rule 72

#### General Provisions

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

### Rule 73

#### Preliminary Motions by Accused

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

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

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

Part Six

PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1 General Provisions

Rule 74

Amicus Curiae

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

Rule 75

Protection of Victims and Witnesses

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

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

#### **Rule 76**

##### **Solemn Declaration by Interpreters and Translators**

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

#### **Rule 77**

##### **Contempt of Court**

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



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

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

#### **Rule 78**

##### **Open Sessions**

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

#### **Rule 79**

##### **Closed Sessions**

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

**Rule 80**  
**Control of Proceedings**

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

**Rule 81**  
**Records of Proceedings and Evidence**

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

## Section 2 Case Presentation

### Rule 82

#### Joint and Separate Trials

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

### Rule 83

#### Instruments of Restraint

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

### Rule 84

#### Opening Statements

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

**Rule 85**  
**Presentation of Evidence**

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

**Rule 86**  
**Closing Arguments**

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

**Rule 87**  
**Deliberations**

- (A) When both parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.
  
- (B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together under Rule 48, separate findings shall be made as to each accused.

**Rule 88**  
**Judgement**

- (A) The judgement shall be pronounced in public and in the presence of the accused, on a date of which notice shall have been given to the parties and counsel.
  
- (B) If the Trial Chamber finds the accused guilty of a crime and concludes from the evidence that unlawful taking of property by the accused was associated with it, it shall make a specific finding to that effect in its judgement. The Trial Chamber may order restitution as provided in Rule 105.
  
- (C) A Judge of the Trial Chamber may append a separate or dissenting opinion to the judgement.

### Section 3 Rules of Evidence

#### Rule 89

##### General Provisions

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

#### Rule 90

##### Testimony of Witnesses

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

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

#### Rule 91

##### False Testimony under Solemn Declaration

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

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

**Rule 92**  
**Confessions**

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

**Rule 93**  
**Evidence of Consistent Pattern of Conduct**

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

**Rule 94**  
**Judicial Notice**

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



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

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

**Rule 96**  
**Evidence in Cases of Sexual Assault**

In cases of sexual assault:

- (i) no corroboration of the victim's testimony shall be required;
- (ii) consent shall not be allowed as a defence 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 she did not submit, another might be so subjected, threatened or put in fear;
- (iii) prior sexual conduct of the victim shall not be admitted in evidence.

**Rule 97**  
**Lawyer-Client Privilege**

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

- (i) the client consents to such disclosure; or
- (ii) the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

**Rule 98**  
**Power of Chambers to Order Production of Additional Evidence**

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

## **Section 4 Sentencing Procedure**

### **Rule 99**

#### **Status of the Acquitted Person**

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

### **Rule 100**

#### **Pre-sentencing Procedure**

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

### **Rule 101**

#### **Penalties**

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

Statute, as well as such factors as:

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

#### **Rule 102**

##### **Status of the Convicted Person**

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

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

### **Rule 103**

#### **Place of Imprisonment**

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

### **Rule 104**

#### **Supervision of Imprisonment**

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

**Rule 105**  
**Restitution of Property**

- (A) After a judgement of conviction containing a specific finding as provided in Sub-rule 88(B), the Trial Chamber shall, at the request of the Prosecutor, or may, at its own initiative, 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 as 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) 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) and (E).

Rule 106

Compensation to Victims

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

Part Seven

APPELLATE PROCEEDINGS

Rule 107

General Provision

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

Rule 108

Notice of Appeal

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

Rule 109

Record on Appeal

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



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

**Rule 110**  
**Copies of Record**

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

**Rule 111**  
**Appellant's Brief**

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

**Rule 112**  
**Respondent's Brief**

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

**Rule 113**  
**Brief in Reply**

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

**Rule 114**  
**Date of Hearing**

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

**Rule 115**  
**Additional Evidence**

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

**Rule 116**  
**Extension of Time-limits**

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

**Rule 117**  
**Judgement**

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

**Rule 118**  
**Status of the Accused Following Appeal**

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

## Part Eight

### REVIEW PROCEEDINGS

#### Rule 119

##### Request for Review

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

#### Rule 120

##### Preliminary Examination

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

#### Rule 121

##### Appeals

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

**Rule 122**

**Return of Case to Trial Chamber**

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

Part Nine

PARDON AND COMMUTATION OF SENTENCE

Rule 123

Notification by States

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

Rule 124

Determination by the President

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

Rule 125

General Standards for Granting Pardon or Commutation

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