

**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. 10

3 December 1996

Original:
English & French

Twelfth Session
The Hague
The Netherlands
2 - 3 December 1996

RULES OF PROCEDURE AND EVIDENCE

(ADOPTED ON 11 FEBRUARY 1994)
(AS AMENDED 5 MAY 1994)
(AS FURTHER AMENDED 4 OCTOBER 1994)
(AS REVISED 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 1996 AND 5 JULY 1996)
(AS AMENDED 3 DECEMBER 1996)

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	4
	Rule 5 Non-compliance with Rules	4
	Rule 6 Amendment of the Rules	5
	Rule 7 Authentic Texts	5
Two	PRIMACY OF THE TRIBUNAL	6
	Rule 8 Request for Information	6
	Rule 9 Prosecutor's Request for Deferral	6
	Rule 10 Formal Request for Deferral	7
	Rule 11 Non-compliance with a Request for Deferral	8
	Rule 12 Determinations of Courts of any State	8
	Rule 13 Non Bis in Idem	8
Three	ORGANIZATION OF THE TRIBUNAL	9
	Section 1 The Judges	9
	Rule 14 Solemn Declaration	9
	Rule 15 Disqualification of Judges	9
	Rule 16 Resignation	11
	Rule 17 Precedence	11
	Section 2 The Presidency	12
	Rule 18 Election of the President	12
	Rule 19 Functions of the President	12
	Rule 20 The Vice-President	13
	Rule 21 Functions of the Vice-President	13
	Rule 22 Replacements	13
	Section 3 Internal Functioning of the Tribunal	14

Rule 23	The Bureau	14
Rule 24	Plenary Meetings of the Tribunal	14
Rule 25	Dates of Plenary Sessions	15
Rule 26	Quorum and Vote	15
Section 4	The Chambers	16
Rule 27	Rotation	16
Rule 28	Duty Roster	16
Rule 29	Deliberations	17
Section 5	The Registry	17
Rule 30	Appointment of the Registrar	17
Rule 31	Appointment of the Deputy Registrar and Registry Staff	17
Rule 32	Solemn Declaration	18
Rule 33	Functions of the Registrar	18
Rule 34	Victims and Witnesses Unit	19
Rule 35	Minutes	19
Rule 36	Record Book	19
Section 6	The Prosecutor	20
Rule 37	Functions of the Prosecutor	20
Rule 38	Deputy Prosecutor	20

Four	INVESTIGATIONS AND RIGHTS OF SUSPECTS	21
	Section 1	Investigations
		21
	Rule 39	Conduct of Investigations
		21
	Rule 40	Provisional Measures
		22
	Rule 40 <i>bis</i>	Transfer and Provisional Detention of Suspects
		22
	Rule 41	Retention of Information
		25
	Rule 42	Rights of Suspects during Investigation
		25
	Rule 43	Recording Questioning of Suspects
		26
	Section 2	Of Counsel
		27
	Rule 44	Appointment and Qualifications of Counsel
		27
	Rule 45	Assignment of Counsel
		27
	Rule 45 <i>bis</i>	Detained Persons
		29
	Rule 46	Misconduct of Counsel
		29
Five	PRE-TRIAL PROCEEDINGS	30
	Section 1	Indictments
		30
	Rule 47	Submission of Indictment by the Prosecutor
		30
	Rule 48	Joinder of Accused
		31
	Rule 49	Joinder of Crimes
		31
	Rule 50	Amendment of Indictment
		31
	Rule 51	Withdrawal of Indictment
		32
	Rule 52	Public Character of Indictment
		32
	Rule 53	Non-disclosure
		32
	Section 2	Orders and Warrants
		33
	Rule 54	General Rule
		33
	Rule 55	Execution of Arrest Warrants
		33
	Rule 56	Cooperation of States
		34
	Rule 57	Procedure after Arrest
		35
	Rule 58	National Extradition Provisions
		35
	Rule 59	Failure to Execute a Warrant or Transfer Order
		35
	Rule 59 <i>bis</i>	Transmission of Arrest Warrants
		36
	Rule 60	Advertisement of Indictment
		36

Rule 61	Procedure in Case of Failure to Execute a Warrant .	37
Rule 62	Initial Appearance of Accused	38
Rule 63	Questioning of Accused	39
Rule 64	Detention on Remand	40
Rule 65	Provisional Release	40
Section 3	Production of Evidence	41
Rule 66	Disclosure by the Prosecutor	41
Rule 67	Reciprocal Disclosure	42
Rule 68	Disclosure of Exculpatory Evidence	43
Rule 69	Protection of Victims and Witnesses	43
Rule 70	Matters not Subject to Disclosure	44
Section 4	Depositions	45
Rule 71	Depositions	45
Section 5	Preliminary Motions	46
Rule 72	General Provisions	46
Rule 73	Preliminary Motions by Accused	47
Six	PROCEEDINGS BEFORE TRIAL CHAMBERS	48
Section 1	General Provisions	48
Rule 74	Amicus Curiae	48
Rule 75	Measures for the Protection of Victims and Witnesses	48
Rule 76	Solemn Declaration by Interpreters and Translators	49
Rule 77	Contempt of the Tribunal	50
Rule 78	Open Sessions	50
Rule 79	Closed Sessions	51
Rule 80	Control of Proceedings	51
Rule 81	Records of Proceedings and Evidence	52
Section 2	Case Presentation	52

Rule 82	Joint and Separate Trials	52
Rule 83	Instruments of Restraint	53
Rule 84	Opening Statements	53
Rule 85	Presentation of Evidence	53
Rule 86	Closing Arguments	54
Rule 87	Deliberations	54
Rule 88	Judgement	55
Section 3	Rules of Evidence	56
Rule 89	General Provisions	56
Rule 90	Testimony of Witnesses	57
Rule 90 <i>bis</i>	Transfer of a Detained Witness	58
Rule 91	False Testimony under Solemn Declaration	59
Rule 92	Confessions	60
Rule 93	Evidence of Consistent Pattern of Conduct	60
Rule 94	Judicial Notice	60
Rule 95	Evidence Obtained by Means Contrary to Internationally Protected Human Rights	61
Rule 96	Evidence in Cases of Sexual Assault	61
Rule 97	Lawyer-Client Privilege	62
Rule 98	Power of Chambers to Order Production of Additional Evidence	62

Section 4	Sentencing Procedure	62
Rule 99	Status of the Acquitted Person	62
Rule 100	Pre-sentencing Procedure	63
Rule 101	Penalties	63
Rule 102	Status of the Convicted Person	64
Rule 103	Place of Imprisonment	65
Rule 104	Supervision of Imprisonment	65
Rule 105	Restitution of Property	65
Rule 106	Compensation to Victims	66
Seven	APPELLATE PROCEEDINGS	68
Rule 107	General Provision	68
Rule 108	Notice of Appeal	68
Rule 109	Record on Appeal	69
Rule 110	Copies of Record	69
Rule 111	Appellant's Brief	70
Rule 112	Respondent's Brief	70
Rule 113	Brief in Reply	70
Rule 114	Date of Hearing	70
Rule 115	Additional Evidence	71
Rule 116	Extension of Time-limits	71
Rule 116	<i>bis</i> Expedited Appeals Procedure.....	71
Rule 117	Judgement on Appeal	72
Rule 118	Status of the Accused Following Appeal	72
Eight	REVIEW PROCEEDINGS	73
Rule 119	Request for Review	73
Rule 120	Preliminary Examination	73
Rule 121	Appeals	73
Rule 122	Return of Case to Trial Chamber	74

Nine	PARDON AND COMMUTATION OF SENTENCE	75
	Rule 123 Notification by States	75
	Rule 124 Determination by the President	75
	Rule 125 General Standards for Granting Pardon or Commutation	75

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;

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

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 he 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 own language.

(C) Any other person appearing before the Tribunal, other than as counsel, who does not have sufficient knowledge of either of the two working languages, may use his 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.

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 or Regulations 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 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 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 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 Courts of any State

Subject to Article 10(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 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 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 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) In case of illness or an unfilled vacancy, the President may authorise a Chamber to conduct routine matters, such as the holding of an initial appearance under Rule 62 or the delivery of decisions, in the absence of one or more of its members.
- (F) 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 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.

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

Duty Roster

The President shall, every six months and after consultation with the Judges, designate for each fortnight of the next six months one Judge from each Trial Chamber as the Judges to whom indictments, warrants, and other submissions not pertaining to a case already assigned to a Chamber, shall be transmitted for review. The duty roster shall be published by the Registrar.

However, in exceptional circumstances, a Judge on duty may request another Judge of the same Chamber to replace him, after having informed the President and the Registrar.

Notwithstanding Rule 27(C), when a Judge on duty is not available, the President may designate a Judge of the Appeals Chamber to whom applications to issue a warrant of arrest shall be transmitted for review.

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, subject to Rule 53, 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 him. Any alleged inconsistency in the Regulations shall be brought to the attention of the Bureau to whose opinion the Prosecutor shall defer.

- (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, 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 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 Sub-rule (A), including the provisional charge, and shall state the Judge's grounds for making the order, having regard to Sub-rule (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 30 days from the signing of the provisional detention order. At the end of that period, at the Prosecutor's request, the Judge who made the order, or another Judge of the same Trial Chamber, may decide, subsequent to an *inter partes* hearing of the Prosecutor and the suspect assisted by his counsel, to extend the detention for a period not exceeding 30 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 Judge of the same Trial Chamber, may decide, subsequent to an

inter partes hearing of the Prosecutor and the suspect assisted by his counsel, to extend the detention for a further period not exceeding 30 days, if warranted by special circumstances. The total period of detention shall in no case exceed 90 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 his transfer to the seat of the Tribunal, the suspect, assisted by his counsel, shall be brought, without delay, before the Judge who made the order, or another Judge of the same Trial Chamber, who shall ensure that his rights are respected.
- (G) During detention, the Prosecutor and the suspect or his 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 Sub-rule (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

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;
 - (ii) the right to have the free assistance of an interpreter if he 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 he 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 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 audio-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 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 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 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 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) (i) 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.
- (ii) In particular circumstances, upon the request of an indigent suspect or accused, the Registrar may be authorised, by a Judge or a Trial Chamber seized of the case, to assign counsel who speaks the language of the suspect or the accused but does not speak either of the two working languages of the Tribunal.
- (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, in consultation with the Judges, establish the criteria for the payment of fees to assigned counsel.
- (F) If a suspect or an accused elects to conduct his own defence, he shall so notify the Registrar in writing at the first opportunity.
- (G) Where an alleged indigent person is subsequently found not to be indigent, the Chamber may make an order of contribution to recover the cost of providing counsel.

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, 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 one of the Judges 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

- (A) 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, after the presentation of evidence in terms of Rule 85 has commenced, 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.

- (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 sixty days in which to file preliminary motions pursuant to Rule 73 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 only with leave of the Judge who confirmed it or, after the presentation of evidence in terms of Rule 85 has commenced, 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

- (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.

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, 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 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 an order for 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, or is believed by the Registrar to be likely to be found, 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 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 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, 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 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 his prompt transfer to the Tribunal in the event that he 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 he understands, of the charges against him and of the fact that he is being transferred to the Tribunal and, upon his transfer, the indictment and a statement of the rights of the accused shall be read to him and he shall be cautioned in such a language.

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, 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 he has taken. When the Judge is satisfied that:
- (i) the Prosecutor 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) the Prosecutor 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 his 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. The Prosecutor may also call before the Trial Chamber and examine any 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 he thinks fit.

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 on each count; should the accused fail to do so, enter a plea of not guilty on his behalf;
- (iv) in case of a plea of not guilty, instruct the Registrar to set a date for trial;

- (v) in case of a plea of guilty, instruct the Registrar to set a date for the pre-sentencing hearing;
- (vi) instruct the Registrar to set such other dates as appropriate.

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 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, 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 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 as well as all prior statements obtained by the Prosecutor from the accused or from prosecution witnesses. The final version of the statement of the accused or a witness, as audio-recorded at the time of the interview, as well as a translation into one of the working languages of the Tribunal, shall be provided to the defence.
- (B) The Prosecutor shall on request, subject to Sub-rule (C), 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.
- (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 the obligation to disclose pursuant to Sub-rule (B). 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 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 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 Unit.
- (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 him 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.

- (D) If the Prosecutor calls as a witness the person providing, or a representative of the entity providing, information under this Rule, the Trial Chamber may not compel the witness to answer any question 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) 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 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* and without interlocutory appeal, save
 - (i) in the case of dismissal of an objection based on lack of jurisdiction, where an appeal will lie as of right;
 - (ii) in other cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon serious cause being shown, within seven days following the impugned decision.

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
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 Unit, 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 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 the Tribunal

- (A) Subject to the provisions of Sub-rule 90(E), 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) Any person who attempts to interfere with or intimidate a witness may be found guilty of contempt and sentenced in accordance with Sub-rule (A).
- (D) Any judgement rendered under this Rule shall be subject to appeal.
- (E) 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, 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.
- (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.

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 unless a Chamber has ordered 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 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 he is sufficiently mature to be able to report the facts of which he had knowledge and that he understands the duty to tell the truth. A judgement, however, cannot be based on such testimony alone.
- (D) 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.
- (E) A witness may object to making any statement which might tend to incriminate him. 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 perjury.

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 his return within the period decided by the Tribunal.

- (B) The transfer order shall be issued by a 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 his detention as foreseen by the requested State.

- (C) The Registry 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 Registry shall ensure the proper conduct of the transfer, including the supervision of the witness in the detention unit of the Tribunal; it 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 Judge or Chamber may extend the period on the same conditions as stated in Sub-rule (B).

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(E).

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

- (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 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**

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 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 the accused pleads guilty or 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 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(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).
- (E) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his 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 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 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 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) Subject to Sub-rule (B), a party seeking to appeal a judgement or sentence shall, not more than thirty days from the date on which the judgement or sentence was pronounced, file with the Registrar and serve upon the other parties a written notice of appeal, setting forth the grounds.
- (B) Such delay shall be fixed at fifteen days in case of an appeal from a judgement dismissing an objection based on lack of jurisdiction or a decision rendered under Rule 77 or Rule 91.

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 116 bis
Expedited Appeals Procedure

- (A) An appeal under Sub-rule 108(B) shall be heard expeditiously on the basis of the original record of the Trial Chamber and without the necessity of any written brief.

- (B) All delays and other procedural requirements shall be fixed by an order of the President issued on an application by one of the parties, or *proprio moto* should no such application have been made within fifteen days after the filing of the notice of appeal.

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

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 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.