

LEITZ

WETGEVING
VERDRAGEN

En

TRIBUNAAL

REGELINGEN

VOOR VERDE-
DELING

TRIBUNAL-
SLACHTTER

GOEGESLAVIE

TRIBUNAL



VERDRAGEN EN DOCUMENTEN INZAKE ICTY

1. Wet bepalingen oprichting tribunaal + parlementaire geschiedenis
2. Zetelovereenkomst Ned.-VN inzake oprichting tribunaal
3. Handvest VN ~~Resolutie 808 tot oprichting van het Tribunaal~~
4. European Convention Human Rights ~~Handvest VN + Statuut Int. Gerechtshof~~
5. Rules of European Court
6. Beschouwing over nieuwe court rules
7. International Covenant on economic, social and cultural rights
8. International Covenant on political and civil rights
9. Report to the secretary-general pursuant to paragraph 2 of security council resolution 808 (1993) van 3 mei 1993
10. Statuut ICTY + ~~Res 808 tot oprichting ICTY~~
11. Rules of procedure and evidence ICTY
12. Amendment to the Rules van 19 juli 2001
13. Detention rules ICTY
14. Regulations for disciplinary procedure detainees
15. Regulations for complaints procedure detainees
16. Regulations for visits and communication with detainees
17. Basic principles for the treatment of prisoners
18. Body of principles for the protection of alle detainees
19. Standard minimum rules for the treatment of prisoners
20. Open letter from the detainees ICTY 12 August 1998
21. Directive on assignment of defense council
22. Code of professional conduct for counsel
23. European agreement persons participating proceedings court of human rights
24. European convention on state immunity
25. ADRESSEN VAN EN OVER VN - WEGWIJZER



Security Council

Distr.
GENERAL

S/25704
3 May 1993

ORIGINAL: ENGLISH

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

CONTENTS

	Paragraphs	Page
Introduction	1 - 17	3
I. THE LEGAL BASIS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL	18 - 30	6
II. COMPETENCE OF THE INTERNATIONAL TRIBUNAL	31 - 68	9
A. Competence <u>ratione materiae</u> (subject-matter jurisdiction)	33 - 49	9
B. Competence <u>ratione personae</u> (personal jurisdiction) and individual criminal responsibility	50 - 59	14
C. Competence <u>ratione loci</u> (territorial jurisdiction) and <u>ratione temporis</u> (temporal jurisdiction)	60 - 63	16
D. Concurrent jurisdiction and the principle of <u>non-bis-in-idem</u>	64 - 68	16
III. THE ORGANIZATION OF THE INTERNATIONAL TRIBUNAL	69 - 92	18
A. The Chambers	72 - 84	18
1. Composition of the Chambers	72 - 73	18
2. Qualifications and election of judges	74 - 78	19
3. Officers and members of the Chambers	79 - 82	21
4. Rules of procedure and evidence	83 - 84	21

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>	
B. The Prosecutor	85 - 89	22	
C. The Registry	90 - 92	23	
IV. INVESTIGATION AND PRE-TRIAL PROCEEDINGS	93 - 98	24	
V. TRIAL AND POST-TRIAL PROCEEDINGS	99 - 124	25	
A. Commencement and conduct of trial proceedings	99 - 105	2 ^{the}	
B. Rights of the accused	106 - 107	27	
C. Protection of victims and witnesses	108 - 109	28	
D. Judgement and penalties	110 - 115	28	
E. Appellate and review proceedings	116 - 120	29	
F. Enforcement of sentences	121 - 124	30	
VI. COOPERATION AND JUDICIAL ASSISTANCE	125 - 127	31	
VII. GENERAL PROVISIONS	128 - 138	32	1
A. The status, privileges and immunities of the International Tribunal	128 - 130	32	of
B. Seat of the International Tribunal	131 - 132	33	
C. Financial arrangements	133 - 134	33	id
D. Working languages	135 - 136	34	
E. Annual report	137 - 138	34	
<u>Annex.</u> Statute of the International Tribunal		36	

Introduction

1. By paragraph 1 of resolution 808 (1993) of 22 February 1993, the Security Council decided "that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991".

2. By paragraph 2 of the resolution, the Secretary-General was requested "to submit for consideration by the Council at the earliest possible date, and if possible no later than 60 days after the adoption of the present resolution, a report on all aspects of this matter, including specific proposals and where appropriate options for the effective and expeditious implementation of the decision [to establish an international tribunal], taking into account suggestions put forward in this regard by Member States."

3. The present report is presented pursuant to that request. 1/

A

4. Resolution 808 (1993) represents a further step taken by the Security Council in a series of resolutions concerning serious violations of international humanitarian law occurring in the territory of the former Yugoslavia.

5. In resolution 764 (1992) of 13 July 1992, the Security Council reaffirmed that all parties to the conflict are bound to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches.

6. In resolution 771 (1992) of 13 August 1992, the Security Council expressed grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina, including reports of mass forcible expulsion and deportation of civilians, imprisonment and abuse of civilians in detention centres, deliberate attacks on non-combatants, hospitals and ambulances, impeding the delivery of food and medical supplies to the civilian population, and wanton devastation and destruction of property. The Council strongly condemned any violations of international humanitarian law, including those involved in the practice of "ethnic cleansing", and demanded that all parties to the conflict in the former Yugoslavia cease and desist from all breaches of international humanitarian law. It called upon States and international humanitarian organizations to collate substantiated information relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia and to make this information available to the Council. Furthermore, the Council decided, acting under Chapter VII of the Charter of the United Nations, that all parties and others concerned in the former Yugoslavia, and all military forces

in Bosnia and Herzegovina, should comply with the provisions of that resolution, failing which the Council would need to take further measures under the Charter.

7. In resolution 780 (1992) of 6 October 1992, the Security Council requested the Secretary-General to establish an impartial Commission of Experts to examine and analyse the information as requested by resolution 771 (1992), together with such further information as the Commission may obtain through its own investigations or efforts, of other persons or bodies pursuant to resolution 771 (1992), with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.

8. On 14 October 1992 the Secretary-General submitted a report to the Security Council pursuant to paragraph 3 of resolution 780 (1992) in which he outlined his decision to establish a five-member Commission of Experts (S/24657). On 26 October 1992, the Secretary-General announced the appointment of the Chairman and members of the Commission of Experts.

9. By a letter dated 9 February 1993, the Secretary-General submitted to the President of the Security Council an interim report of the Commission of Experts (S/25274), which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including wilful killing, "ethnic cleansing", mass killings, torture, rape, pillage and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests. In its report, the Commission noted that should the Security Council or another competent organ of the United Nations decide to establish an ad hoc international tribunal, such a decision would be consistent with the direction of its work.

10. It was against this background that the Security Council considered and adopted resolution 808 (1993). After recalling the provisions of resolutions 764 (1992), 771 (1992) and 780 (1992) and, taking into consideration the interim report of the Commission of Experts, the Security Council expressed once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including reports of mass killings and the continuation of the practice of "ethnic cleansing". The Council determined that this situation constituted a threat to international peace and security, and stated that it was determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them. The Security Council stated its conviction that in the particular circumstances of the former Yugoslavia the establishment of an international tribunal would enable this aim to be achieved and would contribute to the restoration and maintenance of peace.

11. The Secretary-General wishes to recall that in resolution 820 (1993) of 17 April 1993, the Security Council condemned once again all violations of international humanitarian law, including in particular, the practice of "ethnic cleansing" and the massive, organized and systematic detention and rape of women, and reaffirmed that those who commit or have committed or order or have ordered the commission of such acts will be held individually responsible in respect of such acts.

B

12. The Security Council's decision in resolution 808 (1993) to establish an international tribunal is circumscribed in scope and purpose: the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The decision does not relate to the establishment of an international criminal jurisdiction in general nor to the creation of an international criminal court of a permanent nature, issues which are and remain under active consideration by the International Law Commission and the General Assembly.

C

13. In accordance with the request of the Security Council, the Secretary-General has taken into account in the preparation of the present report the suggestions put forward by Member States, in particular those reflected in the following Security Council documents submitted by Member States and noted by the Council in its resolution 808 (1993): the report of the committee of jurists submitted by France (S/25266), the report of the commission of jurists submitted by Italy (S/25300), and the report submitted by the Permanent Representative of Sweden on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE) (S/25307). The Secretary-General has also sought the views of the Commission of Experts established pursuant to Security Council resolution 780 (1992) and has made use of the information gathered by that Commission. In addition, the Secretary-General has taken into account suggestions or comments put forward formally or informally by the following Member States since the adoption of resolution 808 (1993): Australia, Austria, Belgium, Brazil, Canada, Chile, China, Denmark, Egypt,* Germany, Iran (Islamic Republic of),* Ireland, Italy, Malaysia,* Mexico, Netherlands, New Zealand, Pakistan,* Portugal, Russian Federation, Saudi Arabia,* Senegal,* Slovenia, Spain, Sweden, Turkey,* United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. He has also received suggestions or comments from a non-member State (Switzerland).

14. The Secretary-General has also received comments from the International Committee of the Red Cross (ICRC) and from the following non-governmental organizations: Amnesty International, Association Internationale des Jeunes Avocats, Ethnic Minorities Barristers' Association, Fédération internationale des femmes des carrières juridiques, International Criminal Police Organization, Jacob Blaustein Institution for the Advancement of Human Rights, Lawyers Committee for Human Rights, National Alliance of Women's Organisations (NAWO), and Parliamentarians for Global Action. Observations have also been received from international meetings and individual experts in relevant fields.

* On behalf of the members of the Organization of the Islamic Conference (OIC) and as members of the Contact Group of OIC on Bosnia and Herzegovina.

15. The Secretary-General wishes to place on record his appreciation for the interest shown by all the Governments, organizations and individuals who have offered valuable suggestions and comments.

D

16. In the main body of the report which follows, the Secretary-General first examines the legal basis for the establishment of the International Tribunal foreseen in resolution 808 (1993). The Secretary-General then sets out in detail the competence of the International Tribunal as regards the law it will apply, the persons to whom the law will be applied, including considerations as to the principle of individual criminal responsibility, its territorial and temporal reach and the relation of its work to that of national courts. In succeeding chapters, the Secretary-General sets out detailed views on the organization of the international tribunal, the investigation and pre-trial proceedings, trial and post-trial proceedings, and cooperation and judicial assistance. A concluding chapter deals with a number of general and organizational issues such as privileges and immunities, the seat of the international tribunal, working languages and financial arrangements.

17. In response to the Security Council's request to include in the report specific proposals, the Secretary-General has decided to incorporate into the report specific language for inclusion in a statute of the International Tribunal. The formulations are based upon provisions found in existing international instruments, particularly with regard to competence ratione materiae of the International Tribunal. Suggestions and comments, including suggested draft articles, received from States, organizations and individuals as noted in paragraphs 13 and 14 above, also formed the basis upon which the Secretary-General prepared the statute. Texts prepared in the past by United Nations or other bodies for the establishment of international criminal courts were consulted by the Secretary-General, including texts prepared by the United Nations Committee on International Criminal Jurisdiction, 2/ the International Law Commission, and the International Law Association. Proposals regarding individual articles are, therefore, made throughout the body of the report; the full text of the statute of the International Tribunal is contained in the annex to the present report.

I. THE LEGAL BASIS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL

18. Security Council resolution 808 (1993) states that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. It does not, however, indicate how such an international tribunal is to be established or on what legal basis.

19. The approach which, in the normal course of events, would be followed in establishing an international tribunal would be the conclusion of a treaty by which the States parties would establish a tribunal and approve its statute. This treaty would be drawn up and adopted by an appropriate international body (e.g., the General Assembly or a specially convened conference), following which

it would be opened for signature and ratification. Such an approach would have the advantage of allowing for a detailed examination and elaboration of all the issues pertaining to the establishment of the international tribunal. It also would allow the States participating in the negotiation and conclusion of the treaty fully to exercise their sovereign will, in particular whether they wish to become parties to the treaty or not.

20. As has been pointed out in many of the comments received, the treaty approach incurs the disadvantage of requiring considerable time to establish an instrument and then to achieve the required number of ratifications for entry into force. Even then, there could be no guarantee that ratifications will be received from those States which should be parties to the treaty if it is to be truly effective.

21. A number of suggestions have been put forward to the effect that the General Assembly, as the most representative organ of the United Nations, should have a role in the establishment of the international tribunal in addition to its role in the administrative and budgetary aspects of the question. The involvement of the General Assembly in the drafting or the review of the statute of the International Tribunal would not be reconcilable with the urgency expressed by the Security Council in resolution 808 (1993). The Secretary-General believes that there are other ways of involving the authority and prestige of the General Assembly in the establishment of the International Tribunal.

22. In the light of the disadvantages of the treaty approach in this particular case and of the need indicated in resolution 808 (1993) for an effective and expeditious implementation of the decision to establish an international tribunal, the Secretary-General believes that the International Tribunal should be established by a decision of the Security Council on the basis of Chapter VII of the Charter of the United Nations. Such a decision would constitute a measure to maintain or restore international peace and security, following the requisite determination of the existence of a threat to the peace, breach of the peace or act of aggression.

23. This approach would have the advantage of being expeditious and of being immediately effective as all States would be under a binding obligation to take whatever action is required to carry out a decision taken as an enforcement measure under Chapter VII.

24. In the particular case of the former Yugoslavia, the Secretary-General believes that the establishment of the International Tribunal by means of a Chapter VII decision would be legally justified, both in terms of the object and purpose of the decision, as indicated in the preceding paragraphs, and of past Security Council practice.

25. As indicated in paragraph 10 above, the Security Council has already determined that the situation posed by continuing reports of widespread violations of international humanitarian law occurring in the former Yugoslavia constitutes a threat to international peace and security. The Council has also decided under Chapter VII of the Charter that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, shall comply with the provisions of resolution 771 (1992), failing which it

would need to take further measures under the Charter. Furthermore, the Council has repeatedly reaffirmed that all parties in the former Yugoslavia are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches.

26. Finally, the Security Council stated in resolution 808 (1993) that it was convinced that in the particular circumstances of the former Yugoslavia, the establishment of an international tribunal would bring about the achievement of the aim of putting an end to such crimes and of taking effective measures to bring to justice the persons responsible for them, and would contribute to the restoration and maintenance of peace.

27. The Security Council has on various occasions adopted decisions under Chapter VII aimed at restoring and maintaining international peace and security, which have involved the establishment of subsidiary organs for a variety of purposes. Reference may be made in this regard to Security Council resolution 687 (1991) and subsequent resolutions relating to the situation between Iraq and Kuwait.

28. In this particular case, the Security Council would be establishing, as an enforcement measure under Chapter VII, a subsidiary organ within the terms of Article 29 of the Charter, but one of a judicial nature. This organ would, of course, have to perform its functions independently of political considerations; it would not be subject to the authority or control of the Security Council with regard to the performance of its judicial functions. As an enforcement measure under Chapter VII, however, the life span of the international tribunal would be linked to the restoration and maintenance of international peace and security in the territory of the former Yugoslavia, and Security Council decisions related thereto.

29. It should be pointed out that, in assigning to the International Tribunal the task of prosecuting persons responsible for serious violations of international humanitarian law, the Security Council would not be creating or purporting to "legislate" that law. Rather, the International Tribunal would have the task of applying existing international humanitarian law.

30. On the basis of the foregoing considerations, the Secretary-General proposes that the Security Council, acting under Chapter VII of the Charter, establish the International Tribunal. The resolution so adopted would have annexed to it a statute the opening passage of which would read as follows:

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

II. COMPETENCE OF THE INTERNATIONAL TRIBUNAL

31. The competence of the International Tribunal derives from the mandate set out in paragraph 1 of resolution 808 (1993). This part of the report will examine and make proposals regarding these fundamental elements of its competence: ratione materiae (subject-matter jurisdiction), ratione personae (personal jurisdiction), ratione loci (territorial jurisdiction) and ratione temporis (temporal jurisdiction), as well as the question of the concurrent jurisdiction of the International Tribunal and national courts.

32. The statute should begin with a general article on the competence of the International Tribunal which would read as follows:

Article 1

Competence of the International Tribunal

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

A. Competence ratione materiae (subject-matter jurisdiction)

33. According to paragraph 1 of resolution 808 (1993), the international tribunal shall prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. This body of law exists in the form of both conventional law and customary law. While there is international customary law which is not laid down in conventions, some of the major conventional humanitarian law has become part of customary international law.

34. In the view of the Secretary-General, the application of the principle nullum crimen sine lege requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law.

35. The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims; 3/ the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 4/ the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948; 5/ and the Charter of the International Military Tribunal of 8 August 1945. 6/

36. Suggestions have been made that the international tribunal should apply domestic law in so far as it incorporates customary international humanitarian

law. While international humanitarian law as outlined above provides a sufficient basis for subject-matter jurisdiction, there is one related issue which would require reference to domestic practice, namely, penalties (see para. 111 below).

Grave breaches of the 1949 Geneva Conventions

37. The Geneva Conventions constitute rules of international humanitarian law and provide the core of the customary law applicable in international armed conflicts. These Conventions regulate the conduct of war from the humanitarian perspective by protecting certain categories of persons: namely, wounded and sick members of armed forces in the field; wounded, sick and shipwrecked members of armed forces at sea; prisoners of war, and civilians in time of war.

38. Each Convention contains a provision listing the particularly serious violations that qualify as "grave breaches" or war crimes. Persons committing or ordering grave breaches are subject to trial and punishment. The lists of grave breaches contained in the Geneva Conventions are reproduced in the article which follows.

39. The Security Council has reaffirmed on several occasions that persons who commit or order the commission of grave breaches of the 1949 Geneva Conventions in the territory of the former Yugoslavia are individually responsible for such breaches as serious violations of international humanitarian law.

40. The corresponding article of the statute would read:

Article 2

Grave breaches of the Geneva Conventions of 1949

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

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

(g) unlawful deportation or transfer or unlawful confinement of a civilian;

(h) taking civilians as hostages.

Violations of the laws or customs of war

41. The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto comprise a second important area of conventional humanitarian international law which has become part of the body of international customary law.

42. The Nürnberg Tribunal recognized that many of the provisions contained in the Hague Regulations, although innovative at the time of their adoption were, by 1939, recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war. The Nürnberg Tribunal also recognized that war crimes defined in article 6(b) of the Nürnberg Charter were already recognized as war crimes under international law, and covered in the Hague Regulations, for which guilty individuals were punishable.

43. The Hague Regulations cover aspects of international humanitarian law which are also covered by the 1949 Geneva Conventions. However, the Hague Regulations also recognize that the right of belligerents to conduct warfare is not unlimited and that resort to certain methods of waging war is prohibited under the rules of land warfare.

44. These rules of customary law, as interpreted and applied by the Nürnberg Tribunal, provide the basis for the corresponding article of the statute which would read as follows:

Article 3

Violations of the laws or customs of war

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

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

(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;

(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(e) plunder of public or private property.

Genocide

45. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide, whether committed in time of peace or in time of war, is a crime under international law for which individuals shall be tried and punished. The Convention is today considered part of international customary law as evidenced by the International Court of Justice in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951. 7/

46. The relevant provisions of the Genocide Convention are reproduced in the corresponding article of the statute, which would read as follows:

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

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

Crimes against humanity

47. Crimes against humanity were first recognized in the Charter and Judgement of the Nürnberg Tribunal, as well as in Law No. 10 of the Control Council for Germany. 8/ Crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an armed conflict, international or internal in character. 9/

48. Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the form of so-called "ethnic cleansing" and widespread and systematic rape and other forms of sexual assault, including enforced prostitution.

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

Article 5

Crimes against humanity

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

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

B. Competence ratione personae (personal jurisdiction)
and individual criminal responsibility

50. By paragraph 1 of resolution 808 (1993), the Security Council decided that the International Tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. In the light of the complex of resolutions leading up to resolution 808 (1993) (see paras. 5-7 above), the ordinary meaning of the term "persons responsible for serious violations of international humanitarian law" would be natural persons to the exclusion of juridical persons.

51. The question arises, however, whether a juridical person, such as an association or organization, may be considered criminal as such and thus its members, for that reason alone, be made subject to the jurisdiction of the International Tribunal. The Secretary-General believes that this concept should not be retained in regard to the International Tribunal. The criminal acts set out in this statute are carried out by natural persons; such persons would be subject to the jurisdiction of the International Tribunal irrespective of membership in groups.

52. The corresponding article of the statute would read:

Article 6

Personal jurisdiction

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

Individual criminal responsibility

53.. An important element in relation to the competence ratione personae (personal jurisdiction) of the International Tribunal is the principle of individual criminal responsibility. As noted above, the Security Council has reaffirmed in a number of resolutions that persons committing serious violations of international humanitarian law in the former Yugoslavia are individually responsible for such violations.

54. The Secretary-General believes that all persons who participate in the planning, preparation or execution of serious violations of international humanitarian law in the former Yugoslavia contribute to the commission of the violation and are, therefore, individually responsible.

55. Virtually all of the written comments received by the Secretary-General have suggested that the statute of the International Tribunal should contain provisions with regard to the individual criminal responsibility of heads of State, government officials and persons acting in an official capacity. These suggestions draw upon the precedents following the Second World War. The Statute should, therefore, contain provisions which specify that a plea of head of State immunity or that an act was committed in the official capacity of the accused will not constitute a defence, nor will it mitigate punishment.

56. A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present statute. But he should also be held responsible for failure to prevent a crime or to deter the unlawful behaviour of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew or had reason to know that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them.

57. Acting upon an order of a Government or a superior cannot relieve the perpetrator of the crime of his criminal responsibility and should not be a defence. Obedience to superior orders may, however, be considered a mitigating factor, should the International Tribunal determine that justice so requires. For example, the International Tribunal may consider the factor of superior orders in connection with other defences such as coercion or lack of moral choice.

58. The International Tribunal itself will have to decide on various personal defences which may relieve a person of individual criminal responsibility, such as minimum age or mental incapacity, drawing upon general principles of law recognized by all nations.

59. The corresponding article of the statute would read:

Article 7

Individual criminal responsibility

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

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

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

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

C. Competence ratione loci (territorial jurisdiction) and
ratione temporis (temporal jurisdiction)

60. Pursuant to paragraph 1 of resolution 808 (1993), the territorial and temporal jurisdiction of the International Tribunal extends to serious violations of international humanitarian law to the extent that they have been "committed in the territory of the former Yugoslavia since 1991".
61. As far as the territorial jurisdiction of the International Tribunal is concerned, the territory of the former Yugoslavia means the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters.
62. With regard to temporal jurisdiction, Security Council resolution 808 (1993) extends the jurisdiction of the International Tribunal to violations committed "since 1991". The Secretary-General understands this to mean anytime on or after 1 January 1991. This is a neutral date which is not tied to any specific event and is clearly intended to convey the notion that no judgement as to the international or internal character of the conflict is being exercised.
63. The corresponding article of the statute would read:

Article 8

Territorial and temporal jurisdiction

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

D. Concurrent jurisdiction and the principle of
non-bis-in-idem

64. In establishing an international tribunal for the prosecution of persons responsible for serious violations committed in the territory of the former Yugoslavia since 1991, it was not the intention of the Security Council to preclude or prevent the exercise of jurisdiction by national courts with respect to such acts. Indeed national courts should be encouraged to exercise their jurisdiction in accordance with their relevant national laws and procedures.
65. It follows therefore that there is concurrent jurisdiction of the International Tribunal and national courts. This concurrent jurisdiction, however, should be subject to the primacy of the International Tribunal. At any stage of the procedure, the International Tribunal may formally request the national courts to defer to the competence of the International Tribunal. The details of how the primacy will be asserted shall be set out in the rules of procedure and evidence of the International Tribunal.

66. According to the principle of non-bis-in-idem, a person shall not be tried twice for the same crime. In the present context, given the primacy of the International Tribunal, the principle of non-bis-in-idem would preclude subsequent trial before a national court. However, the principle of non-bis-in-idem should not preclude a subsequent trial before the International Tribunal in the following two circumstances:

(a) The characterization of the act by the national court did not correspond to its characterization under the statute; or

(b) Conditions of impartiality, independence or effective means of adjudication were not guaranteed in the proceedings before the national courts.

67. Should the International Tribunal decide to assume jurisdiction over a person who has already been convicted by a national court, it should take into consideration the extent to which any penalty imposed by the national court has already been served.

68. The corresponding articles of the statute would read:

Article 9

Concurrent jurisdiction

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

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

Article 10

Non-bis-in-idem

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

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

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

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

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

III. THE ORGANIZATION OF THE INTERNATIONAL TRIBUNAL

69. The organization of the International Tribunal should reflect the function to be performed by it. Since the International Tribunal is established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, this presupposes an international tribunal composed of a judicial organ, a prosecutorial organ and a secretariat. It would be the function of the prosecutorial organ to investigate cases, prepare indictments and prosecute persons responsible for committing the violations referred to above. The judicial organ would hear the cases presented to its Trial Chambers, and consider appeals from the Trial Chambers in its Appeals Chamber. A secretariat or Registry would be required to service both the prosecutorial and judicial organs.

70. The International Tribunal should therefore consist of the following organs: the Chambers, comprising two Trial Chambers and one Appeals Chamber; a Prosecutor; and a Registry.

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

Article 11

ns

Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

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

A. The Chambers

1. Composition of the Chambers

72. The Chambers should be composed of 11 independent judges, no 2 of whom may be nationals of the same State. Three judges would serve in each of the two Trial Chambers and five judges would serve in the Appeals Chamber.

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

Article 12

Composition of the Chambers

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

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

2. Qualifications and election of judges

74. The judges of the International Tribunal should be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Impartiality in this context includes impartiality with respect to the acts falling within the competence of the International Tribunal. In the overall composition of the Chambers, due account should be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

75. The judges should be elected by the General Assembly from a list submitted by the Security Council. The Secretary-General would invite nominations for judges from States Members of the United Nations as well as non-member States maintaining permanent observer missions at United Nations Headquarters. Within 60 days of the date of the invitation of the Secretary-General, each State would nominate up to two candidates meeting the qualifications mentioned in paragraph 74 above, who must not be of the same nationality. The Secretary-General would forward the nominations received to the Security Council. The Security Council would, as speedily as possible, establish from the nominations transmitted by the Secretary-General, a list of not less than 22 and not more than 33 candidates, taking due account of the adequate representation of the principal legal systems of the world. The President of the Security Council would then transmit the list to the General Assembly. From that list, the General Assembly would proceed as speedily as possible to elect the 11 judges of the International Tribunal. The candidates declared elected shall be those who have received an absolute majority of the votes of the States Members of the United Nations and of the States maintaining permanent observer missions at United Nations Headquarters. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

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

77. In the event of a vacancy occurring in the Chambers, the Secretary-General, after consultation with the Presidents of the Security Council and the General

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

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

Article 13

Qualifications and election of judges

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

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

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

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

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

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

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

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

3. Officers and members of the Chambers

79. The judges would elect a President of the International Tribunal from among their members who would be a member of the Appeals Chamber and would preside over the appellate proceedings.

80. Following consultation with the members of the Chambers, the President would assign the judges to the Appeals Chamber and to the Trial Chambers. Each judge would serve only in the chamber to which he or she was assigned.

81. The members of each Trial Chamber should elect a presiding judge who would conduct all of the proceedings before the Trial Chamber as a whole.

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

Article 14

Officers and members of the Chambers

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

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

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

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

4. Rules of procedure and evidence

83. The judges of the International Tribunal as a whole should draft and adopt the rules of procedure and evidence of the International Tribunal governing the pre-trial phase of the proceedings, the conduct of trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

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

Article 15

Rules of procedure and evidence

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

B. The Prosecutor

85. Responsibility for the conduct of all investigations and prosecutions of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 should be entrusted to an independent Prosecutor. The Prosecutor should act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.
86. The Prosecutor should be appointed by the Security Council, upon nomination by the Secretary-General. He or she should possess the highest level of professional competence and have extensive experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor should be appointed for a four-year term of office and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.
87. The Prosecutor would be assisted by such other staff as may be required to perform effectively and efficiently the functions entrusted to him or her. Such staff would be appointed by the Secretary-General on the recommendation of the Prosecutor. The Office of the Prosecutor should be composed of an investigation unit and a prosecution unit.
88. Staff appointed to the Office of the Prosecutor should meet rigorous criteria of professional experience and competence in their field. Persons should be sought who have had relevant experience in their own countries as investigators, prosecutors, criminal lawyers, law enforcement personnel or medical experts. Given the nature of the crimes committed and the sensitivities of victims of rape and sexual assault, due consideration should be given in the appointment of staff to the employment of qualified women.
89. The corresponding article of the statute would read as follows:

Article 16

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

C. The Registry

90. As indicated in paragraph 69 above, a Registry would be responsible for the servicing of the International Tribunal. The Registry would be headed by a Registrar, whose responsibilities shall include but should not be limited to the following:

- (a) Public information and external relations;
- (b) Preparation of minutes of meetings;
- (c) Conference-service facilities;
- (d) Printing and publication of all documents;
- (e) All administrative work, budgetary and personnel matters; and
- (f) Serving as the channel of communications to and from the International Tribunal.

91. The Registrar should be appointed by the Secretary-General after consultation with the President of the International Tribunal. He or she would be appointed to serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

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

Article 17

The Registry

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

IV. INVESTIGATION AND PRE-TRIAL PROCEEDINGS

93. The Prosecutor would initiate investigations ex officio, or on the basis of information obtained from any source, particularly from Governments or United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor would assess the information received or obtained and decide whether there is a sufficient basis to proceed.
94. In conducting his investigations, the Prosecutor should have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
95. Upon the completion of the investigation, if the Prosecutor has determined that a prima facie case exists for prosecution, he would prepare an indictment containing a concise statement of the facts and the crimes with which the accused is charged under the statute. The indictment would be transmitted to a judge of a Trial Chamber, who would review it and decide whether to confirm or to dismiss the indictment.
96. If the investigation includes questioning of the suspect, then he should have the right to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it. He shall also be entitled to the necessary translation into and from a language he speaks and understands.
97. Upon confirmation of the indictment, the judge would, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender and transfer of persons, or any other orders as may be necessary for the conduct of the trial.
98. The corresponding articles of the statute would read as follows:

Article 18

Investigation and preparation of indictment

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

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

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

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

Article 19

Review of the indictment

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

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

V. TRIAL AND POST-TRIAL PROCEEDINGS

A. Commencement and conduct of trial proceedings

99. The Trial Chambers should ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence and with full respect for the rights of the accused. The Trial Chamber should also provide appropriate protection for victims and witnesses during the proceedings.

100. A person against whom an indictment has been confirmed would, pursuant to an order or a warrant of the International Tribunal, be informed of the contents of the indictment and taken into custody.
101. A trial should not commence until the accused is physically present before the International Tribunal. There is a widespread perception that trials in absentia should not be provided for in the statute as this would not be consistent with article 14 of the International Covenant on Civil and Political Rights, 10/ which provides that the accused shall be entitled to be tried in his presence.
102. The person against whom an indictment has been confirmed would be transferred to the seat of the International Tribunal and brought before a Trial Chamber without undue delay and formally charged. The Trial Chamber would read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. After the plea has been entered, the Trial Chamber would set the date for trial.
103. The hearings should be held in public unless the Trial Chamber decides otherwise in accordance with its rules of procedure and evidence.
104. After hearing the submissions of the parties and examining the witnesses and evidence presented to it, the Trial Chamber would close the hearing and retire for private deliberations.
105. The corresponding article of the statute would read:

Article 20

Commencement and conduct of trial proceedings

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

B. Rights of the accused

106. It is axiomatic that the International Tribunal must fully respect internationally recognized standards regarding the rights of the accused at all stages of its proceedings. In the view of the Secretary-General, such internationally recognized standards are, in particular, contained in article 14 of the International Covenant on Civil and Political Rights. 10/

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

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

C. Protection of victims and witnesses

108. In the light of the particular nature of the crimes committed in the former Yugoslavia, it will be necessary for the International Tribunal to ensure the protection of victims and witnesses. Necessary protection measures should therefore be provided in the rules of procedure and evidence for victims and witnesses, especially in cases of rape or sexual assault. Such measures should include, but should not be limited to the conduct of in camera proceedings, and the protection of the victim's identity.

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

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

D. Judgement and penalties

110. The Trial Chambers would have the power to pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law. A judgement would be rendered by a majority of the judges of the Chamber and delivered in public. It should be written and accompanied by a reasoned opinion. Separate or dissenting opinions should be permitted.

111. The penalty to be imposed on a convicted person would be limited to imprisonment. In determining the term of imprisonment, the Trial Chambers should have recourse to the general practice of prison sentences applicable in the courts of the former Yugoslavia.

112. The International Tribunal should not be empowered to impose the death penalty.

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

114. In addition to imprisonment, property and proceeds acquired by criminal conduct should be confiscated and returned to their rightful owners. This would include the return of property wrongfully acquired by means of duress. In this connection the Secretary-General recalls that in resolution 779 (1992) of 6 October 1992, the Security Council endorsed the principle that all statements or commitments made under duress, particularly those relating to land and property, are wholly null and void.

115. The corresponding articles of the statute would read as follows:

Article 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

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

Article 24

Penalties

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

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

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

E. Appellate and review proceedings

116. The Secretary-General is of the view that the right of appeal should be provided for under the Statute. Such a right is a fundamental element of individual civil and political rights and has, inter alia, been incorporated in the International Covenant on Civil and Political Rights. For this reason, the Secretary-General has proposed that there should be an Appeals Chamber.

117. The right of appeal should be exercisable on two grounds: an error on a question of law invalidating the decision or, an error of fact which has occasioned a miscarriage of justice. The Prosecutor should also be entitled to initiate appeal proceedings on the same grounds.

118. The judgement of the Appeals Chamber affirming, reversing or revising the judgement of the Trial Chamber would be final. It would be delivered by the Appeals Chamber in public and be accompanied by a reasoned opinion to which separate or dissenting opinions may be appended.

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

120. The corresponding articles of the statute would read as follows:

Article 25

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:
 - (a) an error on a question of law invalidating the decision; or
 - (b) an error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 26

Review proceedings

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

F. Enforcement of sentences

121. The Secretary-General is of the view that, given the nature of the crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia. States should be encouraged to declare their readiness to carry out the enforcement of prison sentences in accordance with their domestic laws and procedures, under the supervision of the International Tribunal.

122. The Security Council would make appropriate arrangements to obtain from States an indication of their willingness to accept convicted persons. This information would be communicated to the Registrar, who would prepare a list of States in which the enforcement of sentences would be carried out.

123. The accused would be eligible for pardon or commutation of sentence in accordance with the laws of the State in which sentence is served. In such an event, the State concerned would notify the International Tribunal, which would

decide the matter in accordance with the interests of justice and the general principles of law.

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

Article 27

Enforcement of sentences

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Article 28

Pardon or commutation of sentences

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

VI. COOPERATION AND JUDICIAL ASSISTANCE

5. As pointed out in paragraph 23 above, the establishment of the International Tribunal on the basis of a Chapter VII decision creates a binding obligation on all States to take whatever steps are required to implement the decision. In practical terms, this means that all States would be under an obligation to cooperate with the International Tribunal and to assist it in all stages of the proceedings to ensure compliance with requests for assistance in the gathering of evidence, hearing of witnesses, suspects and experts, identification and location of persons and the service of documents. Effect shall also be given to orders issued by the Trial Chambers, such as warrants of arrest, search warrants, warrants for surrender or transfer of persons, and any other orders necessary for the conduct of the trial.

126. In this connection, an order by a Trial Chamber for the surrender or transfer of persons to the custody of the International Tribunal shall be considered to be the application of an enforcement measure under Chapter VII of the Charter of the United Nations.

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

Article 29

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the International Tribunal.

VII. GENERAL PROVISIONS

A. The status, privileges and immunities of the International Tribunal

128. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 would apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff. The judges, the Prosecutor, and the Registrar would be granted the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law. The staff of the Prosecutor and the Registrar would enjoy the privileges and immunities of officials of the United Nations within the meaning of articles V and VII of the Convention.

129. Other persons, including the accused, required at the seat of the International Tribunal would be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

130. The corresponding article of the statute would read:

Article 30

The status, privileges and immunities of the International Tribunal

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

B. Seat of the International Tribunal

31. While it will be for the Security Council to determine the location of the seat of the International Tribunal, in the view of the Secretary-General, there are a number of elementary considerations of justice and fairness, as well as administrative efficiency and economy which should be taken into account. As a matter of justice and fairness, it would not be appropriate for the International Tribunal to have its seat in the territory of the former Yugoslavia or in any State neighbouring upon the former Yugoslavia. For reasons of administrative efficiency and economy, it would be desirable to establish the seat of the International Tribunal at a European location in which the United Nations already has an important presence. The two locations which fulfil these requirements are Geneva and The Hague. Provided that the necessary arrangements can be made with the host country, the Secretary-General believes that the seat of the International Tribunal should be at The Hague.

32. The corresponding article of the statute would read:

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

C. Financial arrangements

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

134. The corresponding article of the statute would read:

Article 32

Expenses of the International Tribunal

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

D. Working languages

135. The working languages of the Tribunal should be English and French.
136. The corresponding article of the statute would read as follows:

Article 33

Working languages

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

E. Annual report

137. The International Tribunal should submit an annual report on its activities to the Security Council and the General Assembly.
138. The corresponding article of the statute would read:

Article 34

Annual report

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

Notes

- 1/ On 19 April 1993, the Secretary-General addressed a letter to the President of the Security Council informing him that the report would be made available to the Security Council no later than 6 May 1993.
- 2/ The 1953 Committee on International Criminal Jurisdiction was established by General Assembly resolution 687 (VII) of 5 December 1952.
- 3/ Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, Convention relative to the Treatment of Prisoners of War of 12 August 1949, Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (United Nations, Treaty Series, vol. 75, No. 970-973).
- 4/ Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899 and 1907 (New York, Oxford University Press, 1915), p. 100.
- 5/ United Nations, Treaty Series, vol. 78, No. 1021.
- 6/ The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed at London on 8 August 1945 (United Nations, Treaty Series, vol. 82, No. 251); see also Judgement of the International Military Tribunal for the Prosecution and Punishment of the Major War Criminals of the European Axis (United States Government Printing Office, Nazi Conspiracy and Aggression, Opinion and Judgement) and General Assembly resolution 95 (I) of 11 December 1946 on the Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal.
- 7/ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide: Advisory Opinion of 28 May 1951, International Court of Justice Reports, 1951, p. 23.
- 8/ Official Gazette of the Control Council for Germany, No. 3, p. 22, Military Government Gazette, Germany, British Zone of Control, No. 5, p. 46, Journal Officiel du Commandement en Chef Français en Allemagne, No. 12 of 11 January 1946.
- 9/ In this context, it is to be noted that the International Court of Justice has recognized that the prohibitions contained in common article 3 of the 1949 Geneva Conventions are based on "elementary considerations of humanity" and cannot be breached in an armed conflict, regardless of whether it is international or internal in character. Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgement of 27 June 1986: I.C.J. Reports 1986, p. 114.
- 10/ United Nations, Treaty Series, vol. 999, No. 14668, p. 171 and vol. 1057, p. 407 (proces-verbal of rectification of authentic Spanish text).

Annex

Statute of the International Tribunal

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

Article 1

Competence of the International Tribunal

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

Article 2

Grave breaches of the Geneva Conventions of 1949

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

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

Article 3

Violations of the laws or customs of war

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

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

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2.. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;

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

Article 5

Crimes against humanity

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

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

Article 6

Personal jurisdiction

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

Article 7

Individual criminal responsibility

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

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

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

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

Article 8

Territorial and temporal jurisdiction

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

Article 9

Concurrent jurisdiction

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

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

Article 10

Non-bis-in-idem

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

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

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

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

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

Article 11

Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

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

Article 12

Composition of the Chambers

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

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

Article 13

Qualifications and election of judges

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

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

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

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

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

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

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

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

Article 14

Officers and members of the Chambers

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

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

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

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

Article 15

Rules of procedure and evidence

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

Article 16

The Prosecutor

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

Article 17

The Registry

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

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

Article 18

Investigation and preparation of indictment

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

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

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

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

Article 19

Review of the indictment

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

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

Article 20

Commencement and conduct of trial proceedings

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

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;

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

Article 22

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

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

Article 24

Penalties

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

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

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

Article 25

Appellate proceedings

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

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

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

Article 26

Review proceedings

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

Article 27

Enforcement of sentences

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Article 28

Pardon or commutation of sentences

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

Article 29

Cooperation and judicial assistance

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

Article 30

The status, privileges and immunities of the International Tribunal

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

Article 31

Seat of the International Tribunal

The International Tribunal shall have its seat at The Hague.

Article 32

Expenses of the International Tribunal

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

Article 33

Working languages

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

Article 34

Annual report

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

STATUTE OF THE INTERNATIONAL TRIBUNAL

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

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

Article 1**Competence of the International Tribunal**

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

Article 2**Grave breaches of the Geneva Conventions of 1949**

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

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

Article 3**Violations of the laws or customs of war**

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

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

Article 4**Genocide**

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;

- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

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

Article 5 Crimes against humanity

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

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

Article 6 Personal jurisdiction

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

Article 7 Individual criminal responsibility

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

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

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

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

Article 8 Territorial and temporal jurisdiction

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

Article 9 Concurrent jurisdiction

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

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

Article 10 *Non-bis-in-idem*

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

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

- (a) the act for which he or she was tried was characterized as an ordinary crime; or
- (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

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

Article 11 Organization of the International Tribunal

The International Tribunal shall consist of the following organs:

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

Article 12 Composition of the Chambers

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

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

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

Article 13 Qualifications of judges

The permanent and *ad litem* judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 13 *bis* Election of permanent judges

1. Fourteen of the permanent judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the Statute, no two of whom

shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "The International Tribunal for Rwanda") in accordance with article 12 of the Statute of that Tribunal.

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

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

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 13 *ter* Election and appointment of *ad litem* judges

1. The *ad litem* judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

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

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 13 of the Statute, taking into account the importance of a fair representation of female and male candidates.

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than fifty-four candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution.

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the twenty-seven *ad litem* judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

(e) The *ad litem* judges shall be elected for a term of four years. They shall not be eligible for re-election.

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

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

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

(a) benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal;

(b) enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal;

(c) enjoy the privileges and immunities, exemptions and facilities of a judge of the International

Tribunal.

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

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

(b) have power:

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

Article 14 Officers and members of the Chambers

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

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

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

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

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

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

7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of the Trial Chamber as a whole.

Article 15 Rules of procedure and evidence

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

Article 16 The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 17 The Registry

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

Article 18 Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations *ex-officio* or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organisations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.
4. Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 19 Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 20 Commencement and conduct of trial proceedings

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

Article 21 Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
 - (g) not to be compelled to testify against himself or to confess guilt.

Article 22 Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 23 Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.
2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 24 Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 25 Appellate proceedings

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

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

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

Article 26 **Review proceedings**

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

Article 27 **Enforcement of sentences**

Imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal.

Article 28 **Pardon or commutation of sentences**

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

Article 29 **Co-operation and judicial assistance**

1. States shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the International Tribunal.

Article 30 **The status, privileges and immunities of the International Tribunal**

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

Article 31 **Seat of the International Tribunal**

The International Tribunal shall have its seat at The Hague.

Article 32
Expenses of the International Tribunal

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

Article 33
Working languages

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

Article 34
Annual report

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

RULES OF PROCEDURE AND EVIDENCE

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

(IT/32/REV.19)

CONTENTS

PART ONE GENERAL PROVISIONS

Rule 1 Entry into Force
Rule 2 Definitions
Rule 3 Languages
Rule 4 Meetings away from the Seat of the Tribunal
Rule 5 Non-compliance with Rules
Rule 6 Amendment of the Rules
Rule 7 Authentic Texts

PART TWO PRIMACY OF THE TRIBUNAL

Rule 7 bis Non-compliance with Obligations
Rule 8 Request for Information
Rule 9 Prosecutor's Request for Deferral
Rule 10 Formal Request for Deferral
Rule 11 Non-compliance with a Request for Deferral
Rule 11 bis Suspension of Indictment in case of Proceedings before National Courts
Rule 12 Determinations of Courts of any State
Rule 13 *Non bis in idem*

PART THREE ORGANIZATION OF THE TRIBUNAL

SECTION 1 THE JUDGES

Rule 14 Solemn Declaration

Rule 15 Disqualification of Judges
Rule 15 bis Absence of a Judge
Rule 16 Resignation
Rule 17 Precedence

SECTION 2 THE PRESIDENCY

Rule 18 Election of the President
Rule 19 Functions of the President
Rule 20 The Vice-President
Rule 21 Functions of the Vice-President
Rule 22 Replacements

SECTION 3 INTERNAL FUNCTIONING OF THE TRIBUNAL

Rule 23 The Bureau
Rule 23 bis The Coordination Council
Rule 23 ter The Management Committee
Rule 24 Plenary Meetings of the Tribunal
Rule 25 Dates of Plenary Sessions
Rule 26 Quorum and Vote

SECTION 4 THE CHAMBERS

Rule 27 Rotation
Rule 28 Reviewing and Duty Judges
Rule 29 Deliberations

SECTION 5 THE REGISTRY

Rule 30 Appointment of the Registrar
Rule 31 Appointment of the Deputy Registrar and Registry Staff
Rule 32 Solemn Declaration
Rule 33 Functions of the Registrar
Rule 33 bis Functions of the Deputy Registrar
Rule 34 Victims and Witnesses Unit
Rule 35 Minutes
Rule 36 Record Book

SECTION 6 THE PROSECUTOR

Rule 37 Functions of the Prosecutor
Rule 38 Deputy Prosecutor

PART FOUR INVESTIGATIONS AND RIGHTS OF SUSPECTS

SECTION 1 INVESTIGATIONS

Rule 39 Conduct of Investigations
Rule 40 Provisional Measures
Rule 40 bis Transfer and Provisional Detention of Suspects
Rule 41 Retention of Information
Rule 42 Rights of Suspects during Investigation
Rule 43 Recording Questioning of Suspects

SECTION 2 OF COUNSEL

Rule 44 Appointment, Qualifications and Duties of Counsel
Rule 45 Assignment of Counsel
Rule 45 *bis* Detained Persons
Rule 46 Misconduct of Counsel

PART FIVE PRE-TRIAL PROCEEDINGS

SECTION 1 INDICTMENTS

Rule 47 Submission of Indictment by the Prosecutor
Rule 48 Joinder of Accused
Rule 49 Joinder of Crimes
Rule 50 Amendment of Indictment
Rule 51 Withdrawal of Indictment
Rule 52 Public Character of Indictment
Rule 53 Non-disclosure of Indictment
Rule 53 *bis* Service of Indictment

SECTION 2 ORDERS AND WARRANTS

Rule 54 General Rule
Rule 54 *bis* Orders Directed to States for the Production of Documents
Rule 55 Execution of Arrest Warrants
Rule 56 Cooperation of States
Rule 57 Procedure after Arrest
Rule 58 National Extradition Provisions
Rule 59 Failure to Execute a Warrant or Transfer Order
Rule 59 *bis* Transmission of Arrest Warrants
Rule 60 Advertisement of Indictment
Rule 61 Procedure in Case of Failure to Execute a Warrant

SECTION 3 PRELIMINARY PROCEEDINGS

Rule 62 Initial Appearance of Accused
Rule 62 *bis* Guilty Pleas
Rule 63 Questioning of Accused
Rule 64 Detention on Remand
Rule 65 Provisional Release
Rule 65 *bis* Status Conferences
Rule 65 *ter* Pre-Trial Judge

SECTION 4 PRODUCTION OF EVIDENCE

Rule 66 Disclosure by the Prosecutor
Rule 67 Reciprocal Disclosure
Rule 68 Disclosure of Exculpatory Evidence
Rule 69 Protection of Victims and Witnesses
Rule 70 Matters not Subject to Disclosure

SECTION 5 DEPOSITIONS

Rule 71 Depositions
Rule 71 *bis* Testimony by Video-Conference Link

SECTION 6 MOTIONS

Rule 72 Preliminary Motions

Rule 73 Other Motions

SECTION 7 CONFERENCES

Rule 73 *bis* Pre-Trial Conference

Rule 73 *ter* Pre-Defence Conference

PART SIX PROCEEDINGS BEFORE TRIAL CHAMBERS

SECTION 1 GENERAL PROVISIONS

Rule 74 *Amicus Curiae*

Rule 74 *bis* Medical Examination of the Accused

Rule 75 Measures for the Protection of Victims and Witnesses

Rule 76 Solemn Declaration by Interpreters and Translators

Rule 77 Contempt of the Tribunal

Rule 77 *bis* Payment of Fines

Rule 78 Open Sessions

Rule 79 Closed Sessions

Rule 80 Control of Proceedings

Rule 81 Records of Proceedings and Evidence

SECTION 2 CASE PRESENTATION

Rule 82 Joint and Separate Trials

Rule 83 Instruments of Restraint

Rule 84 Opening Statements

Rule 84 *bis* Statement of the Accused

Rule 85 Presentation of Evidence

Rule 86 Closing Arguments

Rule 87 Deliberations

Rule 88 [Deleted]

Rule 88 *bis* [Deleted]

SECTION 3 RULES OF EVIDENCE

Rule 89 General Provisions

Rule 90 Testimony of Witnesses

Rule 90 *bis* Transfer of a Detained Witness

Rule 91 False Testimony under Solemn Declaration

Rule 92 Confessions

Rule 92 *bis* Proof of Facts other than by Oral Evidence

Rule 93 Evidence of Consistent Pattern of Conduct

Rule 94 Judicial Notice

Rule 94 *bis* Testimony of Expert Witnesses

Rule 94 *ter* [Deleted]

Rule 95 Exclusion of Certain Evidence

Rule 96 Evidence in Cases of Sexual Assault

Rule 97 Lawyer-Client Privilege

Rule 98 Power of Chambers to Order Production of Additional Evidence

SECTION 4 JUDGEMENT

Rule 98 *bis* Motion for Judgement of Acquittal

Rule 98 *ter* Judgement

Rule 99 Status of the Acquitted Person

SECTION 5 SENTENCING AND PENALTIES

- Rule 100 Sentencing Procedure on a Guilty Plea
- Rule 101 Penalties
- Rule 102 Status of the Convicted Person
- Rule 103 Place of Imprisonment
- Rule 104 Supervision of Imprisonment
- Rule 105 Restitution of Property
- Rule 106 Compensation to Victims

PART SEVEN APPELLATE PROCEEDINGS

- Rule 107 General Provision
- Rule 108 Notice of Appeal
- Rule 108 bis State Request for Review
- Rule 109 Record on Appeal
- Rule 110 Copies of Record
- Rule 111 Appellant's Brief
- Rule 112 Respondent's Brief
- Rule 113 Brief in Reply
- Rule 114 Date of Hearing
- Rule 115 Additional Evidence
- Rule 116 [Deleted]
- Rule 116 bis Expedited Appeals Procedure
- Rule 117 Judgement on Appeal
- Rule 118 Status of the Accused following Appeal

PART EIGHT REVIEW PROCEEDINGS

- Rule 119 Request for Review
- Rule 120 Preliminary Examination
- Rule 121 Appeals
- Rule 122 Return of Case to Trial Chamber

PART NINE PARDON AND COMMUTATION OF SENTENCE

- Rule 123 Notification by States
- Rule 124 Determination by the President
- Rule 125 General Standards for Granting Pardon or Commutation

PART TEN TIME

- Rule 126 General Provision
- Rule 127 Variation of Time-limits

RULES OF PROCEDURE AND EVIDENCE

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

(IT/32/REV.20)

PART ONE

GENERAL PROVISIONS

Rule 1 Entry into Force

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

Rule 2 Definitions

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

Rules:
The Rules of Procedure and Evidence in force;

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

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

* * *

Accused:

A person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47;

Ad litem Judge:

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

Arrest:

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

Bureau:

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

Defence:

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

Investigation:

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

Parties:

The Prosecutor and the Defence;

Permanent Judge:

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

President:

The President of the Tribunal;

Prosecutor:

The Prosecutor appointed pursuant to Article 16 of the Statute;

Regulations:

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

State:

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

Suspect:

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

Transaction:

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

Victim:

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

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

Rule 3

Languages

- (A) The working languages of the Tribunal shall be English and French.
- (B) An accused shall have the right to use his or her own language.
- (C) Other persons appearing before the Tribunal, other than as counsel, who do not have sufficient knowledge of either of the two working languages, may use their own language.
- (D) Counsel for an accused may apply to the Presiding Judge of a Chamber for leave to use a language other than the two working ones or the language of the accused. If such leave is granted, the expenses of interpretation and translation shall be borne by the Tribunal to the extent, if any, determined by the President, taking into account the rights of the defence and the interests of justice.
- (E) The Registrar shall make any necessary arrangements for interpretation and translation into and from the working languages.
- (F) If:
 - (i) a party is required to take any action within a specified time after the filing or service of a document by another party; and
 - (ii) pursuant to the Rules, that document is filed in a language other than one of the working languages of the Tribunal,time shall not run until the party required to take action has received from the Registrar a translation of the document into one of the working languages of the Tribunal.

Rule 4 Meetings away from the Seat of the Tribunal

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

Rule 5 Non-compliance with Rules

- (A) Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber shall grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to that party.
- (B) Where such an objection is raised otherwise than at the earliest opportunity, the Trial Chamber may in its discretion grant relief if it finds that the alleged non-compliance is proved and that it has caused material prejudice to the objecting party.
- (C) The relief granted by a Trial Chamber under this Rule shall be such remedy as the Trial Chamber considers appropriate to ensure consistency with the fundamental principles of fairness.

Rule 6 Amendment of the Rules

- (A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than ten permanent Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.

(B) An amendment to the Rules may be otherwise adopted, provided it is unanimously approved by the permanent Judges.

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

(D) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment, but shall not operate to prejudice the rights of the accused or of a convicted or acquitted person in any pending case.

Rule 7 Authentic Texts

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

PART TWO

PRIMACY OF THE TRIBUNAL

Rule 7 bis Non-compliance with Obligations

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

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

Rule 8 Request for Information

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

Rule 9 Prosecutor's Request for Deferral

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

(i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;

(ii) there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or

(iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

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

Rule 10 **Formal Request for Deferral**

(A) If it appears to the Trial Chamber seised of a proposal for deferral that, on any of the grounds specified in Rule 9, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its court defer to the competence of the Tribunal.

(B) A request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.

(C) Where deferral to the Tribunal has been requested by a Trial Chamber, any subsequent trial shall be held before another Trial Chamber.

Rule 11 **Non-compliance with a Request for Deferral**

If, within sixty days after a request for deferral has been notified by the Registrar to the State under whose jurisdiction the investigations or criminal proceedings have been instituted, the State fails to file a response which satisfies the Trial Chamber that the State has taken or is taking adequate steps to comply with the request, the Trial Chamber may request the President to report the matter to the Security Council.

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

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

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

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

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

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

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

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

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

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

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

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

Rule 12 **Determinations of Courts of any State**

Subject to Article 10, paragraph 2, of the Statute, determinations of courts of any State are not binding on the Tribunal.

Rule 13 **Non Bis in Idem**

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

PART THREE **ORGANIZATION OF THE TRIBUNAL**

Section 1 : The Judges

Rule 14 **Solemn Declaration**

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

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

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

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

Rule 15 **Disqualification of Judges**

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

(B) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The

Presiding Judge shall confer with the Judge in question, and if necessary the Bureau shall determine the matter. If the Bureau upholds the application, the President shall assign another Judge to sit in place of the disqualified Judge.

(C) The Judge of the Trial Chamber who reviews an indictment against an accused, pursuant to Article 19 of the Statute and Rules 47 or 61, shall not be disqualified for sitting as a member of the Trial Chamber for the trial of that accused. Such a Judge shall also not be disqualified for sitting as a member of the Appeals Chamber, or as a member of a bench of three Judges appointed pursuant to Rules 65 (D), 72 (B)(ii) or 73 (B), to hear any appeal in that case.

(D) (i) No Judge shall sit on any appeal or as a member of a bench of three Judges appointed pursuant to Rules 65 (D), 72 (B)(ii), 73 (B) or 77 (J) in a case in which that Judge sat as a member of the Trial Chamber.

(ii) No Judge shall sit on any State Request for Review pursuant to Rule 108 *bis* in a matter in which that Judge sat as a member of the Trial Chamber whose decision is to be reviewed.

Rule 15 *bis* Absence of a Judge

(A) If

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

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

(B) If

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

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

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

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

Rule 16 Resignation

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

Rule 17 Precedence

(A) All Judges are equal in the exercise of their judicial functions, regardless of dates of election, appointment, age or period of service.

(B) The Presiding Judges of the Trial Chambers shall take precedence according to age after the President and the Vice-President.

(C) Permanent Judges elected or appointed on different dates shall take precedence according to the dates of their election or appointment; Judges elected or appointed on the same date shall take precedence according to age.

(D) In case of re-election, the total period of service as a Judge of the Tribunal shall be taken into account.

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

Section 2 : The Presidency

Rule 18 Election of the President

(A) The President shall be elected for a term of two years, or such shorter term as shall coincide with the duration of his or her term of office as a Judge. The President may be re-elected once.

(B) If the President ceases to be a member of the Tribunal or resigns from office before the expiration of his or her term, the permanent Judges shall elect from among their number a successor for the remainder of the term.

(C) The President shall be elected by a majority of the votes of the permanent Judges composing the Tribunal. If no Judge obtains such a majority, the second ballot shall be limited to the two Judges who obtained the greatest number of votes on the first ballot. In the case of equality of votes on the second ballot, the Judge who takes precedence in accordance with Rule 17 shall be declared elected.

Rule 19 Functions of the President

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

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

Rule 20 The Vice-President

(A) The Vice-President shall be elected for a term of two years, or such shorter term as shall

coincide with the duration of his or her term of office as a permanent Judge. The Vice President may be re-elected once.

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

(C) Rules 18 (B) and (C) shall apply *mutatis mutandis* to the Vice-President.

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

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

Rule 22 **Replacements**

(A) If neither the President nor the Vice-President can carry out the functions of the President, these shall be assumed by the senior permanent Judge, determined in accordance with Rule 17.

(B) If the President is unable to exercise the functions of Presiding Judge of the Appeals Chamber, that Chamber shall elect a Presiding Judge from among its number.

Section 3 : Internal Functioning of the Tribunal

Rule 23 **The Bureau**

(A) The Bureau shall be composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers.

(B) The President shall consult the other members of the Bureau on all major questions relating to the functioning of the Tribunal.

(C) The President may consult with the *ad litem* Judges on matters to be discussed in the Bureau and may invite a representative of the *ad litem* Judges to attend Bureau meetings.

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

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

Rule 23 bis

The Coordination Council

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

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

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

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

Rule 23 *ter*

The Management Committee

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

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

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

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

Rule 24

Plenary Meetings of the Tribunal

Subject to the restrictions on the voting rights of *ad litem* Judges set out in Article 13 *quater* of the Statute, the Judges shall meet in plenary to:

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

Rule 25

Dates of Plenary Sessions

(A) The dates of the plenary sessions of the Tribunal shall normally be agreed upon in July of each year for the following calendar year.

(B) Other plenary meetings shall be convened by the President if so requested by at least eight Judges, and may be convened whenever the exercise of the President's functions under the Statute or the Rules so requires.

Rule 26

Quorum and Vote

(A) The quorum for each plenary meeting of the Tribunal shall be ten permanent Judges.

(B) Subject to Rules 6 (A), (B) and 18 (C), the decisions of the plenary meetings of the Tribunal shall be taken by the majority of the Judges present. In the event of an equality of votes, the President or the Judge acting in the place of the President shall have a casting vote.

Section 4 : The Chambers

Rule 27

Rotation

(A) Permanent Judges shall rotate on a regular basis between the Trial Chambers and the Appeals Chamber. Rotation shall take into account the efficient disposal of cases.

(B) The Judges shall take their places in their new Chamber as soon as the President thinks it convenient, having regard to the disposal of part-heard cases.

(C) The President may at any time temporarily assign a member of a Trial Chamber or of the Appeals Chamber to another Chamber.

Rule 28

Reviewing and Duty Judges

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

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

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

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

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

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

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

Rule 29

Deliberations

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

Section 5 : The Registry

Rule 30

Appointment of the Registrar

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

Rule 31

Appointment of the Deputy Registrar and Registry Staff

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

Rule 32

Solemn Declaration

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

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

(B) Before taking up duties, the Deputy Registrar shall make a similar declaration before the President.

(C) Every staff member of the Registry shall make a similar declaration before the Registrar.

Rule 33

Functions of the Registrar

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

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

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

Rule 33 bis

Functions of the Deputy Registrar

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

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

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

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

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

Rule 34 Victims and Witnesses Unit

(A) There shall be set up under the authority of the Registrar a Victims and Witnesses Section consisting of qualified staff to:

(i) recommend protective measures for victims and witnesses in accordance with Article 22 of the Statute; and

(ii) provide counselling and support for them, in particular in cases of rape and sexual assault.

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

Rule 35 Minutes

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

Rule 36 Record Book

The Registrar shall keep a Record Book which shall list, subject to any Practice Direction under Rule 19 or any order of a Judge or Chamber providing for the non-disclosure of any document or information, all the particulars of each case brought before the Tribunal. The Record Book shall be open to the public.

Section 6 : The Prosecutor

Rule 37 Functions of the Prosecutor

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

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

**Rule 38
Deputy Prosecutor**

(A) The Prosecutor shall make recommendations to the Secretary-General of the United Nations for the appointment of a Deputy Prosecutor.

(B) The Deputy Prosecutor shall exercise the functions of the Prosecutor in the event of the latter's absence from duty or inability to act or upon the Prosecutor's express instructions.

PART FOUR

INVESTIGATIONS AND RIGHTS OF SUSPECTS

Section 1 : Investigations

**Rule 39
Conduct of Investigations**

In the conduct of an investigation, the Prosecutor may:

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

**Rule 40
Provisional Measures**

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

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

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

**Rule 40 bis
Transfer and Provisional Detention of Suspects**

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

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

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

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

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

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

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

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

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

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

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

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

Rule 41 **Retention of Information**

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

Rule 42

Rights of Suspects during Investigation

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect speaks and understands:

- (i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it;
- (ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and
- (iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43

Recording Questioning of Suspects

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

- (i) the suspect shall be informed in a language the suspect speaks and understands that the questioning is being audio-recorded or video-recorded;
- (ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
- (iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
- (iv) the tape shall then be transcribed as soon as practicable after the conclusion of questioning and a copy of the transcript supplied to the suspect, together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes; and
- (v) after a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

Section 2 : Of Counsel

Rule 44

Appointment, Qualifications and Duties of Counsel

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

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

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

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

Rule 45 Assignment of Counsel

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

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

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

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

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

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

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

Rule 45 bis Detained Persons

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

Rule 46
Misconduct of Counsel

(A) A Chamber may, after a warning, refuse audience to counsel if, in its opinion, the conduct of that counsel is offensive, abusive or otherwise obstructs the proper conduct of the proceedings.

(B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in the counsel's State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of that counsel's University.

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

PART FIVE

PRE-TRIAL PROCEEDINGS

Section 1 : Indictments

Rule 47
Submission of Indictment by the Prosecutor

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

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

(C) The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.

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

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

(F) The reviewing Judge may:

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

(ii) confirm each count;

(iii) dismiss each count; or

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

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

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

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

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

(I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing an amended indictment based on the acts underlying that count if supported by additional evidence.

Rule 48 Joinder of Accused

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

Rule 49 Joinder of Crimes

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

Rule 50 Amendment of Indictment

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

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

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

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

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

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

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

(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence.

Rule 51
Withdrawal of Indictment

(A) The Prosecutor may withdraw an indictment, without leave, at any time before its confirmation, but thereafter, until the initial appearance of the accused before a Trial Chamber pursuant to Rule 62, only with leave of the Judge who confirmed it. At or after such initial appearance an indictment may only be withdrawn by motion before that Trial Chamber pursuant to Rule 73.

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

Rule 52
Public Character of Indictment

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

Rule 53
Non-disclosure

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

(B) When confirming an indictment the Judge may, in consultation with the Prosecutor, order that there be no public disclosure of the indictment until it is served on the accused, or, in the case of joint accused, on all the accused.

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

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

Rule 53 bis
Service of Indictment

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

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

Section 2 : Orders & Warrants

Rule 54
General Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 55 **Execution of Arrest Warrants**

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

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

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

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

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

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

arrest.

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

Rule 56 Cooperation of States

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

Rule 57 Procedure after Arrest

Upon arrest, the accused shall be detained by the State concerned which shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal shall be arranged between the State authorities concerned, the authorities of the host country and the Registrar.

Rule 58 National Extradition Provisions

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

Rule 59 Failure to Execute a Warrant or Transfer Order

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

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

Rule 59 bis Transmission of Arrest Warrants

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

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

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

Rule 60
Advertisement of Indictment

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States, for publication in newspapers or for broadcast via radio and television, notifying publicly the existence of an indictment and calling upon the accused to surrender to the Tribunal and inviting any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.

Rule 61
Procedure in Case of Failure to Execute a Warrant

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

(i) the Registrar and the Prosecutor have taken all reasonable steps to secure the arrest of the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to them to be; and

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

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

(B) Upon obtaining such an order the Prosecutor shall submit the indictment to the Trial Chamber in open court, together with all the evidence that was before the Judge who initially confirmed the indictment. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge. In addition, the Trial Chamber may request the Prosecutor to call any other witness whose statement has been submitted to the confirming Judge.

(C) If the Trial Chamber is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, it shall so determine. The Trial Chamber shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in Sub-rule (A) above.

(D) The Trial Chamber shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States. Upon request by the Prosecutor or *proprio motu*, after having heard the Prosecutor, the Trial Chamber may order a State or States to adopt provisional measures to freeze the assets of the accused, without prejudice to the rights of third parties.

(E) If the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with Article 29 of the Statute, the Trial Chamber shall so certify. After consulting the Presiding Judges of the Chambers, the President shall notify the Security Council thereof in such manner as the President thinks fit.

Section 3 : Preliminary Proceedings

Rule 62
Initial Appearance of Accused

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

- (i) satisfy itself, himself or herself that the right of the accused to counsel is respected;
- (ii) read or have the indictment read to the accused in a language the accused speaks and understands, and satisfy itself, himself or herself that the accused understands the indictment;
- (iii) inform the accused that, within thirty days of the initial appearance, he or she will be called upon to enter a plea of guilty or not guilty on each count but that, should the accused so request, he or she may immediately enter a plea of guilty or not guilty on one or more count;
- (iv) if the accused fails to enter a plea at the initial or any further appearance, enter a plea of not guilty on the accused's behalf; (v) in case of a plea of not guilty, instruct the Registrar to set a date for trial;
- (vi) in case of a plea of guilty:
 - (a) if before the Trial Chamber, act in accordance with Rule 62 *bis*, or
 - (b) if before a Judge, refer the plea to the Trial Chamber so that it may act in accordance with Rule 62 *bis*;
- (vii) instruct the Registrar to set such other dates as appropriate.

Rule 62 *bis*

Guilty Pleas

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

- (i) the guilty plea has been made voluntarily;
- (ii) the guilty plea is informed;
- (iii) the guilty plea is not equivocal; and
- (iv) there is a sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or on lack of any material disagreement between the parties about the facts of the case,

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

Rule 63 Questioning of Accused

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

(B) The questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42 (A)(iii).

Rule 64 Detention on Remand

Upon being transferred to the seat of the Tribunal, the accused shall be detained in facilities provided by the host country, or by another country. In exceptional circumstances, the accused may be held in facilities outside of the host country. The President may, on the application of a party, request modification of the conditions of detention of an accused.

Rule 65 Provisional Release

(A) Once detained, an accused may not be released except upon an order of a Chamber.

(B) Release may be ordered by a Trial Chamber only after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

(C) The Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

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

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

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

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

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

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

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

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

(iii) the Appeals Chamber dismisses the appeal; or

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

(H) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been released or is for any other reason at liberty. The provisions of Section 2 of Part Five shall apply *mutatis mutandis*.

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

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

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

(iii) special circumstances exist warranting such release.

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

Rule 65 bis **Status Conferences**

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

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

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

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

Rule 65 ter

Pre-Trial Judge

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the name or pseudonym of each witness;

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

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

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

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

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

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

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

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

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

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

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

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

(a) the name or pseudonym of each witness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4 : Production of Evidence

Rule 66

Disclosure by the Prosecutor

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

(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; and

(ii) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 *ter*, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.

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

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

Rule 67

Reciprocal Disclosure

(A) As early as reasonably practicable and in any event prior to the commencement of the trial:

(i) the Prosecutor shall notify the defence of the names of the witnesses that the Prosecutor intends to call in proof of the guilt of the accused and in rebuttal of any defence plea of which the Prosecutor has received notice in accordance with Sub-rule (ii) below;

(ii) the defence shall notify the Prosecutor of its intent to offer:

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

(b) any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence.

(B) Failure of the defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences.

(C) If the defence makes a request pursuant to Sub-rule 66 (B), the Prosecutor shall be entitled to inspect any books, documents, photographs and tangible objects, which are within the custody or control of the defence and which it intends to use as evidence at the trial.

(D) If either party discovers additional evidence or material which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or material.

Rule 68

Disclosure of Exculpatory Evidence

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

Rule 69

Protection of Victims and Witnesses

(A) In exceptional circumstances, the Prosecutor may apply to a Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal.

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

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the defence.

Rule 70

Matters not Subject to Disclosure

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

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

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

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

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

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

(G) Nothing in Sub-rule (C) or (D) above shall affect a Trial Chamber's power under Rule 89

(D) to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

Section 5 : Depositions

Rule 71 Depositions

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

(B) The motion for the taking of a deposition shall indicate the name and whereabouts of the person whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the circumstances justifying the taking of the deposition.

(C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the person whose deposition is being taken.

(D) Deposition evidence may be taken either at or away from the seat of the Tribunal, and it may also be given by means of a video-conference.

(E) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. The Presiding Officer shall transmit the record to the Trial Chamber.

Rule 71 bis
Testimony by Video-Conference Link

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

Section 6 : Motions

Rule 72
Preliminary Motions

(A) Preliminary motions, being motions which

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

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

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

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

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

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

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

- (i) any of the persons indicated in Articles 1, 6, 7 and 9 of the Statute;
- (ii) the territories indicated in Articles 1, 8 and 9 of the Statute;
- (iii) the period indicated in Articles 1, 8 and 9 of the Statute;
- (iv) any of the violations indicated in Articles 2, 3, 4, 5 and 7 of the Statute.

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

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

Rule 73 Other Motions

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

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

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

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

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

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

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

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

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

Section 7 : Conferences

Rule 73 *bis*

Pre-Trial Conference

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

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

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

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

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

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

Rule 73 *ter* **Pre-Defence Conference**

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

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

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

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

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

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

PART SIX

PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1 : General Provisions

Rule 74 **Amicus Curiae**

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

Rule 74 *bis*

Medical Examination of the Accused

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

Rule 75
Measures for the Protection of Victims and Witnesses

(A) A Judge or a Chamber may, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.

(B) A Chamber may hold an in camera proceeding to determine whether to order:

(i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as:

- (a) expunging names and identifying information from the Tribunal's public records;
- non-disclosure to the public of any records identifying the victim;
- (c) giving of testimony through image- or voice- altering devices or closed circuit television; and
- (d) assignment of a pseudonym;

(ii) closed sessions, in accordance with Rule 79;

(iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.

(C) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.

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

Rule 76
Solemn Declaration by Interpreters and Translators

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

Rule 77
Contempt of the Tribunal

(A) Any person who

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

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

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

commits a contempt of the Tribunal.

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 77 bis Payment of fines

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

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

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

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

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

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

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

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

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

Rule 78 Open Sessions

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

Rule 79 Closed Sessions

(A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

- (i) public order or morality;
- (ii) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
- (iii) the protection of the interests of justice.

(B) The Trial Chamber shall make public the reasons for its order.

Rule 80
Control of Proceedings

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

Rule 81
Records of Proceedings and Evidence

- (A) The Registrar shall cause to be made and preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.
- (B) The Trial Chamber, after giving due consideration to any matters relating to witness protection, may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.
- (C) The Registrar shall retain and preserve all physical evidence offered during the proceedings subject to any Practice Direction or any order which a Chamber may at any time make with respect to the control or disposition of physical evidence offered during proceedings before that Chamber.
- (D) Photography, video-recording or audio-recording of the trial, otherwise than by the Registrar, may be authorised at the discretion of the Trial Chamber.

Section 2 : Case Presentation

Rule 82
Joint and Separate Trials

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

Rule 83
Instruments of Restraint

Instruments of restraint, such as handcuffs, shall be used only on the order of the Registrar as a precaution against escape during transfer or in order to prevent an accused from self-injury, injury to others or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber or a Judge.

Rule 84
Opening Statements

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

Rule 84 bis
Statement of the Accused

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

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

Rule 85
Presentation of Evidence

(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

- (i) evidence for the prosecution;
- (ii) evidence for the defence;
- (iii) prosecution evidence in rebuttal;
- (iv) defence evidence in rejoinder;
- (v) evidence ordered by the Trial Chamber pursuant to Rule 98; and
- (vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine such witness in chief, but a Judge may at any stage put any question to the witness.

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

Rule 86
Closing Arguments

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

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

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

Rule 87
Deliberations

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

proved beyond reasonable doubt.

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

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

Rule 88
[Deleted]

Rule 88 bis

[Deleted]

Section 3 : Rules of Evidence

Rule 89
General Provisions

(A) A Chamber shall apply the rules of evidence set forth in this Section, and shall not be bound by national rules of evidence.

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

(E) A Chamber may request verification of the authenticity of evidence obtained out of court.

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

Rule 90
Testimony of Witnesses

(A) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth".

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

(C) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.

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

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

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

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

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

(ii) avoid needless consumption of time.

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

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

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

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

Rule 90 *bis* Transfer of a Detained Witness

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

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

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

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

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

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

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

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

Rule 91 **False Testimony under Solemn Declaration**

(A) A Chamber, *proprio motu* or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.

(B) If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony.

(C) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.

(D) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.

(E) The maximum penalty for false testimony under solemn declaration shall be a fine of Dfl. 200,000 or a term of imprisonment of seven years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Rule 77 (I).

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

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

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

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

Rule 92 **Confessions**

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

Rule 92 *bis*

Proof of Facts other than by Oral Evidence

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

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

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

- (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
- (b) relates to relevant historical, political or military background;
- (c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
- (d) concerns the impact of crimes upon victims;
- (e) relates to issues of the character of the accused; or
- (f) relates to factors to be taken into account in determining sentence.

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

- (a) there is an overriding public interest in the evidence in question being presented orally;
- (b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
- (c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

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

(a) the declaration is witnessed by:

- (i) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
- (ii) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

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

- (i) that the person making the statement is the person identified in the said statement;
- (ii) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
- (iii) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and

- (iv) the date and place of the declaration.

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

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

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

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

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

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

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

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

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

Rule 94 **Judicial Notice**

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

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

Rule 94 bis

Testimony of Expert Witnesses

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

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

(i) it accepts the expert witness statement; or

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

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

Rule 94 *ter*
[Deleted]

Rule 95
Exclusion of Certain Evidence

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

Rule 96
Evidence in Cases of Sexual Assault

In cases of sexual assault:

- (i) no corroboration of the victim's testimony shall be required;
- (ii) consent shall not be allowed as a defence if the victim
 - (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or
 - (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;
- (iii) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible;
- (iv) prior sexual conduct of the victim shall not be admitted in evidence.

Rule 97
Lawyer-Client Privilege

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

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

Rule 98
Power of Chambers to Order Production of Additional Evidence

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

Section 4 : Judgement

Rule 98 *bis*
Motion for Judgement of Acquittal

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

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

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

Rule 98 *ter* Judgement

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

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

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

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

Rule 99 Status of the Acquitted Person

(A) Subject to Sub-rule (B), in the case of an acquittal or the upholding of a challenge to jurisdiction, the accused shall be released immediately.

(B) If, at the time the judgement is pronounced, the Prosecutor advises the Trial Chamber in open court of the Prosecutor's intention to file notice of appeal pursuant to Rule 108, the Trial Chamber may, on application in that behalf by the Prosecutor and upon hearing the parties, in its discretion, issue an order for the continued detention of the accused, pending the determination of the appeal.

Section 5 : Sentencing and Penalties

Rule 100 Sentencing Procedure on a Guilty Plea

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

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

Rule 101 Penalties

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

remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.

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

Rule 102 **Status of the Convicted Person**

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

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

Rule 103 **Place of Imprisonment**

(A) Imprisonment shall be served in a State designated by the President of the Tribunal from a list of States which have indicated their willingness to accept convicted persons.

(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.

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

Rule 104 **Supervision of Imprisonment**

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

Rule 105 **Restitution of Property**

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

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

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

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

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

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

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

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

Rule 106 Compensation to Victims

(A) The Registrar shall transmit to the competent authorities of the States concerned the judgement finding the accused guilty of a crime which has caused injury to a victim.

(B) Pursuant to the relevant national legislation, a victim or persons claiming through the victim may bring an action in a national court or other competent body to obtain compensation.

(C) For the purposes of a claim made under Sub-rule (B) the judgement of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury.

PART SEVEN APPELLATE PROCEEDINGS

Rule 107 General Provision

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

Rule 108 Notice of Appeal

A party seeking to appeal a judgement shall, not more than fifteen days from the date on which the judgement was pronounced, file a notice of appeal.

Rule 108 bis State Request for Review

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

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

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

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

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

Rule 109 Record on Appeal

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

Rule 110 Copies of Record

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

Rule 111 Appellant's Brief

An Appellant's brief of argument setting out the grounds of appeal and authorities shall be filed within ninety days of filing of the notice of appeal pursuant to Rule 108.

Rule 112 Respondent's Brief

A Respondent's brief of argument and authorities shall be filed within thirty days of the filing of the Appellant's brief.

Rule 113 Brief in Reply

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

Rule 114 Date of Hearing

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

Rule 115 Additional Evidence

(A) A party may apply by motion to present before the Appeals Chamber additional evidence which was not available to it at the trial. Such motion must be served on the other party and filed with the Registrar not less than fifteen days before the date of the hearing.

(B) The Appeals Chamber shall authorise the presentation of such evidence if it considers that the interests of justice so require.

Rule 116

[Deleted]

Rule 116 *bis*
Expedited Appeals Procedure

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

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

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

Rule 117
Judgement on Appeal

(A) The Appeals Chamber shall pronounce judgement on the basis of the record on appeal together with such additional evidence as has been presented to it.

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

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

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

Rule 118
Status of the Accused following Appeal

(A) A sentence pronounced by the Appeals Chamber shall be enforced immediately.

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

PART EIGHT
REVIEW PROCEEDINGS

Rule 119
Request for Review

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

Rule 120
Preliminary Examination

If a majority of Judges of the Chamber that pronounced the judgement agree that the new fact, if proved,

could have been a decisive factor in reaching a decision, the Chamber shall review the judgement, and pronounce a further judgement after hearing the parties.

Rule 121 Appeals

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

Rule 122 Return of Case to Trial Chamber

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

PART NINE

PARDON AND COMMUTATION OF SENTENCE

Rule 123 Notification by States

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

Rule 124 Determination by the President

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

Rule 125 General Standards for Granting Pardon or Commutation

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

PART TEN

TIME

Rule 126 General Provision

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

Rule 127 Variation of Time-limits

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

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

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

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

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

AMENDMENTS TO THE RULES OF PROCEDURE AND EVIDENCE

By decision of the Judges at the Twenty-fourth plenary session of the International Tribunal, the following Rules of the Rules of Procedure and Evidence ("Rules") are amended:

Rule 22 English and French
 Rule 65 *ter* English and French
 Rule 68 English and French
 Rule 119 English and French
 Rule 120 English and French

Where possible, the amendments have been highlighted in the text of this document.

Pursuant to Sub-rule 6 (D), these amendments shall enter into force seven days after the date of issue of this official document, i.e., on 26 July 2001. Document IT/32/Rev. 21 will be issued in both languages as soon as possible.

The full texts of the amended Rules are set out in the Annex to this document.

Richard May
 Judge
 Chair of the Rules Committee

Dated this nineteenth day of July 2001
 At The Hague
 The Netherlands

ANNEX

Rule 22
Replacements

(A) If neither the President nor the Vice-President ~~can~~ remains in office or is able to carry out the functions of the President, these shall be assumed by the senior permanent Judge, determined in accordance with Rule 17 (C).

(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.

(C) The President and the Vice-President, if still permanent Judges, shall continue to discharge their functions after the expiration of their terms until the election of the President and the Vice-President has taken place.

Rule 65 *ter*
Pre-Trial Judge

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

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

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

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

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

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

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

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

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

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

(E) Once ~~disclosure pursuant to Rules 66 and 68 is completed and~~ any existing preliminary motions filed within the time-limit provided by Rule 72 are disposed of, the pre-trial Judge shall order the Prosecutor, within a time-limit set by the pre-trial Judge and before the Pre-Trial Conference required by Rule 73 *bis*, to file the following:

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

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

- (a) the name or pseudonym of each witness;
- (b) a summary of the facts on which each witness will testify;
- (c) the points in the indictment as to which each witness will testify, including specific references to counts and relevant paragraphs in the indictment;
- (d) the total number of witnesses and the number of witnesses who will testify against each accused and on each count;
- (e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and
- (f) the estimated length of time required for each witness and the total time estimated for presentation of the Prosecutor's case.

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

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

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

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

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

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

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

- (a) the name or pseudonym of each witness;
- (b) a summary of the facts on which each witness will testify;
- (c) the points in the indictment as to which each witness will testify;
- (d) the total number of witnesses and the number of witnesses who will testify for each accused and on each count;
- (e) an indication of whether the witness will testify in person or pursuant to Rule 92 *bis* by way of written statement or use of a transcript of testimony from other proceedings before the Tribunal; and
- (f) the estimated length of time required for each witness and the total time estimated for presentation of the

defence case; and

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

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

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

(J) The pre-trial Judge shall keep the Trial Chamber regularly informed, particularly where issues are in dispute and may refer such disputes to the Trial Chamber.

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

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

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

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

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

Rule 68 Disclosure of Exculpatory Evidence Material

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of ~~evidence~~ material 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 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. ~~If, at the time of the request for review,~~ any of the Judges who constituted the original Chamber are no longer Judges of the Tribunal, the President shall appoint a Judge or Judges in their place.

Rule 120 Preliminary Examination

If a majority of Judges of the Chamber constituted pursuant to Rule 119 ~~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.

**UNITED NATIONS DETENTION UNIT
REGULATIONS TO GOVERN THE SUPERVISION OF VISITS TO
AND COMMUNICATIONS WITH DETAINEES**

**(AS AMENDED JUNE 1995)
(AS AMENDED JANUARY 1997)
(AS AMENDED SEPTEMBER 1997)
(AS AMENDED NOVEMBER 1997)
(AS AMENDED JULY 1999)**

(IT/98/REV. 3)

UNITED NATIONS DETENTION UNIT

**REGULATIONS TO GOVERN THE SUPERVISION OF VISITS TO AND COMMUNICATIONS
WITH DETAINEES**

(IT/98/REV. 3)

Issued by the Registrar

April 1995

Amended June 1995

Amended January 1997

Amended September 1997

Amended November 1997

Amended July 1999

**REGULATIONS TO GOVERN THE SUPERVISION OF VISITS TO AND COMMUNICATIONS
WITH THE DETAINEES**

PREAMBLE

Issued by the Registrar of the Tribunal and the Commanding Officer pursuant to Rules 61 and 63 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention").

These Regulations are subject to the provisions of the Rules of Detention of the Tribunal and, where applicable, to its Rules of Procedure and Evidence. In particular, the rights of a detainee in respect of visits or communications are subject to any order prohibiting contact between the detainee and any other person made pursuant to Rule 66 of the Rules of Detention.

MAIL

Regulation 1

A detainee has the right to send and receive mail to or from any person, subject to the following Regulations.

Regulation 2

All mail entering or leaving the detention unit shall be inspected for explosives or irregular material by using X-ray and metal and explosives detectors.

Regulation 3

Incoming mail will be inspected both on delivery to the host prison and to the United Nations detention unit.

Regulation 4

- (A) The Commanding Officer may confiscate any item which, in his opinion, constitutes a threat to:
- (i) the security or good order of the detention unit or the host prison; or,
 - (ii) the health or safety of any person therein.
- (B) Any such item confiscated by the Commanding Officer shall be retained or disposed of in accordance with Rule 14 of the Rules of Detention.

Regulation 5

- (A) Materials for outgoing mail, including postage, shall be for the cost of the detainee or, in the case of a detainee who lacks financial means as determined by the Registrar, shall be provided upon confirmation from the Registrar that such costs shall be borne by the Tribunal.
- (B) The Registrar may impose reasonable limits on the amount and weight of correspondence sent by any

detainee who lacks financial means as determined by the Registrar.

- (C) A detainee who lacks financial means as determined by the Registrar may at any time request the President to vary any such restrictions imposed by the Registrar.

Regulation 6

All incoming and outgoing mail shall be subject to review by the Registrar, other than items addressed to or sent by:

- (i) counsel for the detainee;
- (ii) the Tribunal;
- (iii) the Inspecting Authority; or,
- (iv) the diplomatic or consular representative accredited to the Host State of the State to which the detainee belongs or which takes charge of his interests.

Regulation 7

- (A) The Commanding Officer shall forward to the Registrar all incoming and outgoing mail to or from a detainee, other than that addressed to or from:

- (i) counsel for the detainee;
- (ii) the Tribunal;
- (iii) the Inspecting Authority; or,
- (iv) the diplomatic or consular representative accredited to the Host State of the State to which the detainee belongs or which takes charge of his interests.

- (B) A log of all such mail shall be kept by the Commanding Officer, with details of the name of the detainee, the name of the sender (if known) or of the addressee and the date on which it was sent to the Registrar.

- (C) A copy of each entry shall be given to the detainee in a language he understands.

Regulation 8

- (A) The Registrar, or a person authorised by him, shall, within twenty-four hours of receipt, open and read, or have read, each item of mail.

- (B) Items of opened mail shall be delivered to the detainee or posted to the addressee immediately thereafter and the detainee informed accordingly unless the item:

- (i) is in breach of:
 - (a) the Rules of Detention;
 - (b) these Regulations; or,
 - (c) an Order of the Tribunal;
- (ii) gives reasonable grounds to the Registrar, or a person authorised by him, to believe that the detainee may be attempting to:
 - (a) arrange escape;
 - (b) interfere with or intimidate a witness;
 - (c) interfere with the administration of justice; or,
 - (d) otherwise disturb the security and good order of the detention unit.

Regulation 9

- (A) If the Registrar, or a person authorised by him, finds there to have been a breach of the Rules of Detention, these Regulations or an Order of the Tribunal, an offending item of:

- (i) outgoing mail shall be returned to the detainee together with a note from the Registrar, in a language the detainee understands, giving the reasons for refusal to post the offending item;

- (ii) incoming mail shall, in the sole discretion of the Registrar, either be returned to the sender or retained by the Registrar and the detainee shall be informed accordingly.
- (B) Detainees shall be given the opportunity to rewrite items of outgoing mail omitting the offending part.
- (C) A copy shall be kept by the Registrar of all offending items and any offending enclosure may be confiscated.
- (D) The Registrar may also notify the Prosecutor, the Commanding Officer and, if deemed necessary, the Dutch authorities of the breach and of the nature of the offending item.

Regulation 10

A detainee may at any time request the President to reverse any decision by the Registrar taken under Regulation 9(A).

Regulation 11

- (A) Correspondence addressed to or from counsel for the detainee shall not be interfered with in any manner unless the Commanding Officer or the Registrar has reasonable grounds for believing that this facility is being abused in an attempt to:
 - (i) arrange escape;
 - (ii) interfere with or intimidate a witness;
 - (iii) interfere with the administration of justice; or,
 - (iv) otherwise disturb the good order of the detention unit.
- (B) In any such case, the Commanding Officer shall immediately forward the item in question to the Registrar, unopened, and shall enter details of the interception in the log referred to above and notify the detainee accordingly.
- (C) The Registrar shall contact the counsel to whom the item is addressed or by whom it was sent and request counsel to open the item in his presence.
- (D) Counsel may be required to explain to the Registrar, in one of the working languages of the Tribunal, the nature of the item and to hand over any offending item or enclosure.

Regulation 12

- (A) Any item which is copied or confiscated under Regulation 9(C) shall be retained by the Registrar.
- (B) Such items shall not be handed over to the Prosecutor as evidence of contempt of the Tribunal pursuant to Rule 77(C) of the Rules of Procedure and Evidence without prior notice and disclosure to counsel for the detainee.

Regulation 13

A detainee whose mail has been intercepted or confiscated may make a formal complaint in accordance with the Complaints Procedure.

Regulation 14

- (A) A detainee may receive parcels which will also be inspected in accordance with these Regulations.
- (B) Limits may be imposed by the Registrar as to the quantity and weight of parcels received.
- (C) Parcels containing items that, in the sole discretion of the Commanding Officer, pose a threat to the safety and good order of the detention unit shall be confiscated and their contents retained or disposed of in accordance with Rule 14 of the Rules of Detention and the detainee informed accordingly.

TELEPHONE CALLS

Regulation 15

The Commanding Officer may, in consultation with the Registrar, place such restrictions upon the time that a detainee may spend on any one telephone call as are reasonable for the good order of the detention unit.

Regulation 16

- (A) All incoming calls for a detainee shall be received by the Commanding Officer or a member of the staff of the detention unit. Details of the call, including the name and contact telephone number of the caller and the time and date of the call shall be noted by the Commanding Officer or member of staff and passed to the detainee.
- (B) The Commanding Officer may, at his sole discretion, permit a detainee to receive an incoming call in an emergency.

Regulation 17

- (A) Outgoing calls may be made by a detainee, on request to the Commanding Officer, at any time from 9 a.m. to 5 p.m. on working days, subject to the reasonable demands of the daily schedule of the detention unit.
- (B) In exceptional circumstances, the Commanding Officer, at his sole discretion, may permit a detainee to make calls outside these times, unless the calls of the detainee are being monitored by order of the Registrar made in accordance with Regulation 21.

Regulation 18

- (A) Outgoing calls shall be for the expense of the detainee or, in the case of a detainee who lacks financial means as determined by the Registrar, upon confirmation from the Registrar that such costs shall be borne by the Tribunal.
- (B) The Registrar may impose reasonable limits on the number and duration of calls made by any detainee who lacks financial means as determined by the Registrar.
- (C) A detainee who lacks financial means as determined by the Registrar may at any time request the President to vary any such restrictions imposed by the Registrar.

Regulation 19

If the Commanding Officer believes that he has reasonable grounds for intervention, he may immediately terminate a call and advise the detainee of his reasons for so doing. The Commanding Officer shall also report the matter to the Registrar.

Regulation 20

Telephone conversations will not be recorded or monitored unless:

- (A) the Commanding Officer or the Registrar has reasonable grounds for believing that the detainee may be attempting to:
 - (i) arrange escape;
 - (ii) interfere with or intimidate a witness;
 - (iii) interfere with the administration of justice; or,
 - (iv) otherwise disturb the maintenance of good order in the detention unit;
- (B) an Order for non-disclosure has been made by a Judge or a Chamber pursuant to Rule 53 and Rule 75 of the Rules of Procedure and Evidence;
- (C) specifically requested by the Prosecutor following the disclosure to the defence of the names of

witnesses pursuant to Rule 67 of the Rules of Procedure and Evidence.

Regulation 21

- (A) If one of the situations listed in Regulation 20 arises, the Registrar may order all telephone calls to and from that detainee, other than with counsel and diplomatic representatives, to be recorded or monitored for a period not exceeding thirty days.
- (B) Renewals of the period, which shall not exceed thirty days, shall be reported to the President.
- (C) The detainee and his counsel shall be notified of the Registrar's decision within twenty-four hours.

Regulation 22

The detainee may at any time request the President to reverse any decision of the Registrar taken under Regulation 21.

Regulation 23

- (A) A log of all recorded or monitored calls shall be kept by the Commanding Officer, with details of the name of the detainee, the number called, the name of the other party if known, the reason for recording or monitoring and the date on which the Registrar made the relevant order.
- (B) A copy of each entry shall be given to the detainee in a language he understands.

Regulation 24

Details of all recorded or monitored calls shall be forwarded to the Registrar within twenty-four hours, who shall make a determination whether to listen to, or have transcribed and read, each individual recorded call.

Regulation 25

If, having reviewed a call, the Registrar determines that there has been no breach of the Rules of Detention, these Regulations or an Order of the Tribunal and the call does not provide any other reason for further action, the tape recording of the call shall be erased within forty-eight hours.

Regulation 26

- (A) If the Registrar finds there to have been a breach of the Rules of Detention, these Regulations or an Order of the Tribunal, the offending call will be transcribed by the Registry and, where necessary, translated into one of the working languages of the Tribunal.
- (B) The Registrar may notify the Prosecutor, the Commanding Officer and, if deemed necessary, the Dutch authorities of the nature of the breach.

Regulation 27

- (A) Any offending call which is transcribed shall be retained by the Registrar.
- (B) Such transcriptions shall not be handed over to the Prosecutor as evidence of contempt of the Tribunal pursuant to Rule 77(C) of the Rules of Procedure and Evidence without prior notice and disclosure to counsel for the detainee.

Regulation 28

A detainee whose calls have been monitored may make a formal complaint in accordance with the Complaints Procedure.

VISITS

Regulation 29

The Commanding Officer shall, in consultation with the Registrar, fix the daily visiting hours for all visitors, taking into account the reasonable demands of the daily schedule of the detention unit and the facilities and staff available.

Regulation 30

- (A) Subject to the regulations below, counsel may make arrangements by telephone with the Commanding Officer to visit a detainee from Monday through Friday from 9 a.m. to 5 p.m.
- (B) A detainee may request a visit from his counsel outside these hours or at the weekend. Such a request shall be granted at the sole discretion of the Commanding Officer.

Regulation 31

- (A) The Registrar shall automatically issue defence counsel with a written regular permit as soon as such counsel is entered on the record or assigned by the Tribunal.
- (B) The Registrar may issue permits to counsel for one-time visits prior to the initial appearance of the detainee based on a written request from the detainee, identifying the counsel in question.

Regulation 32

- (A) All visitors, other than counsel or a representative of the Tribunal, shall first apply to the Registrar for permission to visit a named detainee.
- (B) Other than in exceptional circumstances, permission shall be applied for in writing in one of the working languages of the Tribunal, not later than ten working days prior to the day a visit is requested.

Regulation 33

- (A) Permission shall be granted for such visits unless the Registrar or the Commanding Officer has reasonable grounds for believing that the detainee may be attempting to:
 - (i) arrange escape;
 - (ii) interfere with or intimidate a witness;
 - (iii) interfere with the administration of justice; or,
 - (iv) otherwise disturb the maintenance of good order in the detention unit.
- (B) Permission may be denied if the Registrar has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.
- (C) Where permission has been granted, the Registrar shall issue the visitor with a written permit for a one-time visit. At his discretion, the Registrar may issue a visitor with a written permit for regular visits.
- (D) The Commanding Officer shall be given a copy of all permits issued.

Regulation 34

Both the detainee and the visitor shall be notified in writing, by the Registrar, of any request for permission to visit which is denied, giving reasons for such refusal.

Regulation 35

The detainee may request the President to reverse any decision of the Registrar taken under paragraphs A and B of Regulation 33.

Regulation 36

The detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.

Regulation 37

The written permission of the Registrar, together with some official identification bearing a current photograph, must be produced by all visitors in order to gain access to the premises of the host prison and of the detention unit.

Regulation 38

All persons, including counsel and diplomatic representatives, are subject to the security requirements of the host prison, including personal searches of clothing and X-ray examination of possessions on entry, pursuant to the Agreement on Security and Order.

Regulation 39

- (A) All persons, including counsel and diplomatic representatives, are also subject to personal searches of clothing, X-ray examination of possessions and other security measures as determined by the Commanding Officer, on entry to the United Nations detention unit.
- (B) Searches of counsel shall not extend to reading or copying documents brought to the detention unit by counsel.

Regulation 40

- (A) No visitor, other than counsel, may pass any item to a detainee during a visit.
- (B) Any items intended for a detainee must be handed to the staff of the detention unit on entry and shall be dealt with as provided for in Rules 79 and 80 of the Rules of Detention.

Regulation 41

- (A) Counsel may pass documents to and from a detainee during a visit. Any quantity of documents which is too large to be physically passed over by counsel to the detainee at the visiting facility shall be handed to the Commanding Officer who shall pass them unopened and unread to the detainee.
- (B) All documents passed to and from a detainee in this manner shall be treated as mail for the purposes of these regulations and, in particular, Regulation 11 concerning incoming mail shall apply.

Regulation 42

- (A) If the Commanding Officer believes that he has reasonable grounds for intervention, or that these Regulations are being breached in any way, he may immediately terminate the visit and advise the detainee and the visitor of his reasons for so doing.
- (B) The visitor may be required to leave the detention unit and the Commanding Officer shall report the matter to the Registrar.
- (C) This provision applies equally to visits by counsel.

Regulation 43

- (A) All visits shall be conducted within the sight of the staff of the detention unit, save in exceptional circumstances and at the discretion of the Commanding Officer in consultation with the Registrar.
- (B) Discussions between the detainee and the visitor shall not be recorded unless:
 - (i) the Commanding Officer has reasonable grounds for believing that the detainee may be attempting to:
 - (a) arrange escape;
 - (b) interfere with or intimidate a witness;
 - (c) interfere with the administration of justice; or,

- (d) otherwise disturb the maintenance of good order in the detention unit;
- (ii) an Order for non-disclosure has been made by a Judge or a Chamber pursuant to Rule 53 or Rule 75 of the Rules of Procedure and Evidence.
- (iii) specifically requested by the Prosecutor following the disclosure to the defence of the names of witnesses pursuant to Rule 67 of the Rules of Procedure and Evidence.

Regulation 44

- (A) If one of the situations listed in Regulation 43(B) arises, the Registrar may, at the request of the Commanding Officer or otherwise, order that all visits to that detainee, other than by counsel and diplomatic representatives, be recorded for a period not exceeding seven days.
- (B) Renewal of the period, which shall not exceed seven days, shall be reported to the President.
- (C) The detainee and his counsel shall be notified of the request and of the Registrar's decision within twenty-four hours.

Regulation 45

The detainee may at any time request the President to reverse any decision of the Registrar taken under Regulation 44.

Regulation 46

- (A) A log of all recorded visits shall be kept by the Commanding Officer, with details of the name of the detainee, the name and address of the visitor, the reason for recording the visit and the date on which the Registrar made the relevant order.
- (B) A copy of each entry shall be given to the detainee in a language he understands.

Regulation 47

Details of all recorded visits shall be forwarded to the Registrar within twenty-four hours, who shall make a determination whether to listen to, or have transcribed and read, each individual recorded visit.

Regulation 48

If, having reviewed a recorded visit, the Registrar determines that there has been no breach of the Rules of Detention, these Regulations or an order of the Tribunal and the recorded visit does not provide any other reason for further action, the tape recording of the recorded visit shall be erased within forty-eight hours.

Regulation 49

- (A) If the Registrar finds there to have been a breach of the Rules of Detention, these Regulations or an Order of the Tribunal, the offending conversation will be transcribed by the Registry and, where necessary, translated into one of the working languages of the Tribunal.
- (B) The Registrar may notify the Prosecutor, the Commanding Officer and, if deemed necessary, the Dutch authorities of the nature of the breach.

Regulation 50

- (A) Any conversation which is transcribed under Regulation 49 shall be retained by the Registrar.
- (B) Such transcriptions shall not be handed over to the Prosecutor as evidence of contempt of the Tribunal pursuant to Rule 77(C) of the Rules of Procedure and Evidence without prior notice and disclosure to counsel for the defence.

Regulation 51

A detainee whose visits have been recorded by order of the Registrar may make a formal complaint in accordance with the Complaints Procedure.



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

IT38/Rev.8

Date: 22 November 1999

Original: French & English

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

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)

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

("RULES OF DETENTION")

PREAMBLE

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

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

DEFINITIONS

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

- Bureau:** the body comprised of the President, the Vice-President and the Presiding Judges of the Trial Chambers established pursuant to Rule 23 of the Rules of Procedure and Evidence;
- Commanding Officer:** the official of the United Nations appointed as the head of the staff responsible for the administration of the detention unit;
- Detainee:** any person detained awaiting trial or appeal before the Tribunal, or being held pending transfer to another institution, and any other person detained on the authority of the Tribunal;
- Detention unit:** the unit for detainees erected within the grounds of the host prison;
- General Director:** the head of the host prison appointed by the authorities of the Host State;
- Host prison:** the penitentiary complex maintained by the authorities of the Host State and located at*;
- Host State:** the Kingdom of the Netherlands;
- Medical officer:** the medical officer for the time being appointed by agreement between the Registrar and the General Director of the host prison;
- Prosecutor:** the Prosecutor appointed pursuant to Article 18 of the Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993, or any person authorized by him or acting under his direction;



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

IT38/Rev.8

Date: 22 November 1999

Original: French & English

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

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)



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

IT38/Rev.8

Date: 22 November 1999

Original: French & English

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

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)

CONTENTS

PREAMBLE

DEFINITIONS

BASIC PRINCIPLES (Rules 1 - 8)

MANAGEMENT OF THE DETENTION UNIT

Reception	(Rules 9 - 15)
Accommodation	(Rules 16 - 20)
Personal hygiene	(Rules 21 - 22)
Clothing	(Rules 23 - 24)
Food	(Rule 25)
Physical exercise and sport	(Rules 26 - 28)
Medical services	(Rules 29 - 36)
Discipline	(Rules 37 - 39)
Segregation	(Rules 40 - 44)
Isolation unit	(Rules 45 - 49)
Instruments of restraint and the use of force	(Rules 50 - 55)
Disturbances	(Rule 56)
Suspension of the Rules of Detention	(Rule 57)
Information to detainees	(Rules 58 - 59)

RIGHTS OF DETAINEES

Communications and visits	(Rules 60 - 66)
Legal assistance	(Rule 67)
Spiritual welfare	(Rules 68 - 71)
Work programme	(Rules 72 - 73)
Recreational activities	(Rules 74 - 77)
Personal possessions of detainees	(Rules 78 - 83)
Complaints	(Rules 84 - 88)

REMOVAL AND TRANSPORT OF DETAINEES (Rules 89 - 91)

AMENDMENT OF THE RULES OF DETENTION (Rule 92)

Registrar: the Registrar of the Tribunal appointed pursuant to Article 17(3) of the Statute of the Tribunal, or any person authorized by him or acting under his direction;

Rules of Procedure and Evidence: the Rules of Procedure and Evidence of the Tribunal as adopted on 11 February 1994 as subsequently amended;

Staff of the detention unit: the staff employed by the United Nations to run the detention unit;

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

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

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

* References to the location of the Host Prison and the Detention Unit have been deleted for security reasons.

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

("RULES OF DETENTION")

PREAMBLE

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

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

DEFINITIONS

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

- Bureau:** the body comprised of the President, the Vice-President and the Presiding Judges of the Trial Chambers established pursuant to Rule 23 of the Rules of Procedure and Evidence;
- Commanding Officer:** the official of the United Nations appointed as the head of the staff responsible for the administration of the detention unit;
- Detainee:** any person detained awaiting trial or appeal before the Tribunal, or being held pending transfer to another institution, and any other person detained on the authority of the Tribunal;
- Detention unit:** the unit for detainees erected within the grounds of the host prison;
- General Director:** the head of the host prison appointed by the authorities of the Host State;
- Host prison:** the penitentiary complex maintained by the authorities of the Host State and located at*;
- Host State:** the Kingdom of the Netherlands;
- Medical officer:** the medical officer for the time being appointed by agreement between the Registrar and the General Director of the host prison;
- Prosecutor:** the Prosecutor appointed pursuant to Article 18 of the Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993, or any person authorized by him or acting under his direction;

BASIC PRINCIPLES

Rule 1

These Rules of Detention are to be applied in conjunction with the relevant provisions of the Headquarters Agreement entered into between the Host State and the United Nations and, in particular, the Annex on matters relating to security and order.

Rule 2

The United Nations shall retain the ultimate responsibility and liability for all aspects of detention pursuant to these Rules of Detention. All detainees shall be subject to the sole jurisdiction of the Tribunal at all times that they are so detained, even though physically absent from the detention unit, until final release or transfer to another institution. Subject to the overriding jurisdiction of the Tribunal, the Commanding Officer shall have sole responsibility for all aspects of the day-to-day management of the detention unit, including security and order, and may make all decisions relating thereto, except where otherwise provided in these Rules of Detention.

Rule 3

These Rules of Detention shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, economic or other status.

Rule 4

A detainee is entitled to observe the religious beliefs and moral precepts of the group to which he belongs and that right shall be respected at all times.

Rule 5

All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.

Rule 6

- (A) The Bureau may, at any time, appoint a Judge or the Registrar of the Tribunal to inspect the detention unit and to report to the Tribunal on the general conditions of implementation of these Rules of Detention or of any particular aspect thereof with a view to ensuring that the detention unit is administered in accordance with the Rules of Detention.
- (B) There shall be regular and unannounced inspections by inspectors whose duty it is to examine the manner in which detainees are treated. The Bureau shall act upon all such reports as it sees fit, in consultation with the relevant authorities of the Host State where necessary.

Rule 7

These Rules of Detention and any regulations made hereunder shall be made readily available to the staff of the detention unit in the working languages of the Tribunal and that of the Host State.

Rule 8

These Rules of Detention and any regulations made hereunder shall be made readily available to each detainee in those languages and in the language of the detainee.

order for

tain the
ary to

tainee

, and

nt of

er to
final

ble
tall

th
o

s

2

t

.

MANAGEMENT OF THE DETENTION UNIT

Reception

Rule 9

No person shall be received in the detention unit without a warrant of arrest or an order for detention duly issued by a Judge or a Chamber of the Tribunal.

Rule 10

- (A) Upon being received in the detention unit, the Commanding Officer shall obtain the photograph and fingerprints of each detainee and any other information necessary to maintain the security and good order of the detention unit.
- (B) A complete, secure and current record shall be kept concerning each detainee received. It shall include:
 - (i) information concerning the identity of the detainee and his next of kin, and other information obtained pursuant to Sub-Rule 10(A);
 - (ii) the date of issue of the indictment against the detainee and of the warrant of arrest;
 - (iii) the date and time of admission;
 - (iv) the name of counsel, if known;
 - (v) the date, time and reason for all absences from the detention unit, whether to attend at the Tribunal, for medical or other approved reasons, or on final release or transfer to another institution.

Rule 11

All information concerning detainees shall be treated as confidential and made accessible only to the detainee, his counsel and persons authorized by the Registrar. The detainee shall be informed of this fact upon his arrival at the detention unit.

Rule 12

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

Rule 13

- (A) On arrival at the detention unit, the Commanding Officer shall order that a detainee's body and clothes be searched for articles that may constitute a danger to:

- (i) the security and proper running of the detention unit, or
- (ii) the detainee, any other detainee or any member of the staff of the detention unit.

(B) Such items shall be removed.

Rule 14

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

Rule 15

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

Accommodation

Rule 16

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

Rule 17

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

Rule 18

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

Rule 19

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

Rule 20

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

Personal hygiene

Rule 21

Detainees shall be required to keep themselves clean, and shall be provided with such toilet articles as are necessary for health and cleanliness.

Rule 22

Facilities shall be provided by the host prison for the proper care of the hair and beard, and male detainees shall be enabled to shave regularly.

Clothing

Rule 23

- (A) Detainees may wear their own civilian clothing if, in the opinion of the Commanding Officer, it is clean and suitable.
- (B) A detainee who lacks financial means, as determined by the Registrar, shall be provided with suitable and sufficient civilian clothing at the cost of the Tribunal.

Rule 24

All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene, in accordance with the regime of the host prison.

Food

Rule 25

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

Physical exercise and sport

Rule 26

- (A) Each detainee shall be allowed at least one hour of walking or other suitable exercise in the open air daily, if the weather permits.

- (B) Where possible, arrangements may be made with the General Director for use by detainees of indoor and outdoor sporting facilities outside the detention unit but within the host prison.

Rule 27

A properly organized programme of physical education, sport and other recreational activities shall be arranged by the Commanding Officer to ensure physical fitness, adequate exercise and recreational opportunities.

Rule 28

- (A) The Commanding Officer, acting on the advice of the medical officer, shall ensure that any detainee who participates in such a programme is physically fit to do so.
- (B) Special arrangements shall be made, under medical direction, for remedial or therapeutic treatment for any detainee who is unable to participate in the regular programme.

Medical services

Rule 29

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

Rule 30

- (A) Detainees may be visited by, and consult with, a doctor or dentist of their choice at their own expense. All such visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63.
- (B) The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.
- (C) Any treatment or medication recommended by such a doctor or dentist shall be administered solely by the medical officer or his deputy. The medical officer may, in his sole discretion, refuse to administer any such treatment or medication.

Rule 31

Detainees who require specialist or in-patient treatment shall be treated within the host prison to the fullest extent possible or transferred to a civil hospital.

Rule 32

- (A) The Registrar shall be informed immediately upon the death or serious illness or injury of a detainee. The Registrar shall immediately inform the spouse or nearest relative of the detainee and shall, in any event, inform any other person previously designated by the detainee.
- (B) In the event of the death of a detainee, an inquest will be conducted in accordance with the legal requirements of the Host State.
- (C) The President may order an inquiry into the circumstances surrounding the death or serious injury of any detainee.

Rule 33

The medical officer shall have the care of the physical and mental health of the detainees and shall see, on a daily basis or more often if necessary, all sick detainees, all who complain of illness and any detainee to whom his attention is specially directed.

Rule 34

- (A) The medical officer shall report to the Commanding Officer whenever he considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention.
- (B) The Commanding Officer shall immediately submit the report to the Registrar who, after consultation with the President, shall take all necessary action.

Rule 35

A competent authority appointed by the Tribunal pursuant to Rule 6 shall regularly inspect the detention unit and advise the Commanding Officer and the Registrar upon:

- (i) the quantity, quality, preparation and serving of food;
- (ii) the hygiene and cleanliness of the detention unit and of the detainees;
- (iii) the sanitation, heating, lighting and ventilation of the detention unit;
- (iv) the suitability and cleanliness of the detainees' clothing and bedding.

Rule 36

The Registrar shall, if he concurs with the recommendations made, take immediate steps to give effect to those recommendations; if he does not concur with them, he shall immediately submit both a personal report and a copy of the recommendations to the Tribunal.

Rule 36 *bis*

- (A) The Commanding Officer of the Detention Unit may decide upon the search of a detainee's cell if he suspects that the cell contains an item which constitutes a threat to the security or good order of the detention unit or the host prison, or the health and

safety of any person therein. Any such items found in the cell of the detainee shall be confiscated pursuant to Rule 78.

- (B) Following a search of a detainee's cell the Commanding Officer shall inform the detainee in writing that his cell was searched and shall specify any items that were confiscated. A copy of this letter shall be forwarded to the Registrar and to the President.

Rule 36 *ter*

- (A) In exceptional circumstances, in order to protect the health or the safety of the detainee, the Registrar, with the approval of the President, may order that the cell of the detainee be monitored by video surveillance equipment for a period not exceeding thirty days.
- (B) Renewals which shall not exceed a period of thirty days shall be reported to the President.
- (C) The detainee shall be notified of the Registrar's decision within twenty-four hours, and may at any time request the President to reverse any such decision by the Registrar.

Discipline

Rule 37

Discipline and order shall be maintained by the staff of the detention unit in the interests of safe custody and the well-ordered running of the detention unit.

Rule 38

The Commanding Officer, in consultation with the Registrar, shall issue regulations:

- (i) defining conduct constituting a disciplinary offence;
- (ii) regulating the type of punishment that can be imposed;
- (iii) specifying the authority that can impose such punishment;
- (iv) providing for a right of appeal to the President.

Rule 39

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

Segregation

Rule 40

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

circumstances:

ident; such an
1, including the

Rule 41

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

Rule 42

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

Rule 43

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

Rule 44

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

Isolation unit

Rule 45

- (A) A detainee may be confined to the isolation unit only in the following circumstances:
 - (i) by order of the Registrar, acting in consultation with the President; such an order may be based upon a request from any interested person, including the Prosecutor;

- (ii) by order of the Commanding Officer in order to prevent the detainee from inflicting injury on other detainees or to preserve the security and good order of the detention unit;
 - (iii) as a punishment pursuant to Rule 38.
- (B) A record shall be kept of all events concerning a detainee confined to the isolation unit.

Rule 46

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

Rule 47

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

Rule 48

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

Rule 49

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

Instruments of restraint and the use of force

Rule 50

- (A) Instruments of restraint, such as handcuffs, shall only be used in the following exceptional circumstances:
- (i) as a precaution against escape during transfer from the detention unit to any other place, including access to the premises of the host prison for any reason;
 - (ii) on medical grounds by direction and under the supervision of the medical officer;
 - (iii) to prevent a detainee from self-injury, injury to others or to prevent serious damage to property.

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

Rule 51

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

Rule 52

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

Rule 53

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

Rule 54

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

Rule 55

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

Disturbances

Rule 56

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

Suspension of the Rules of Detention

Rule 57

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

Information to detainees

Rule 58

In addition to the copies of these Rules of Detention and any regulations to be provided to each detainee pursuant to Rule 8, each detainee shall on admission be provided with written information in the working languages of the Tribunal or in his own language concerning:

- (i) the rights and treatment of detainees;
- (ii) the disciplinary requirements of the detention unit;
- (iii) the authorized methods of seeking information and making complaints; and,
- (iv) all other matters necessary to enable him to understand both his rights and obligations and to adapt himself to the routine of the detention unit.

Rule 59

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

RIGHTS OF DETAINEES

Communications and visits

Rule 60

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

Rule 61

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

Rule 62

A detainee shall be informed at once of the death or serious illness of any near relative.

Rule 63

- (A) Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rule 66 and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and supervision must be necessary in the interests of the administration of justice, or the security and good order of the host prison and the detention unit.
- (B) The Registrar may refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.
- (C) All visitors must comply with the separate requirements of the visiting regime of the host prison. These restrictions may include personal searches of clothing and X-ray examination of possessions on entry to either or both of the detention unit and the host prison.
- (D) Any person, including defence counsel for a detainee or a diplomatic or consular representative accredited to the Host State, who refuses to comply with such requirements, whether of the detention unit or of the host prison, may be refused access.

Rule 64

A detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.

Rule 65

Detainees shall be allowed to communicate with and receive visits from the diplomatic and consular representative accredited to the Host State of the State to which they belong or, in the case of detainees who are without diplomatic or consular representation in the Host State and refugees or stateless persons, with the diplomatic representative accredited to the Host State of the State which takes charge of their interests or of a national or international authority whose task it is to serve the interests of such persons.

Rule 66

- (A) The Prosecutor may request the Registrar or, in cases of emergency, the Commanding Officer, to prohibit, regulate or set conditions for contact between a detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact:
- (i) is for the purposes of attempting to arrange the escape of the detainee from the detention unit;
 - (ii) could prejudice or otherwise affect the outcome of:
 - (a) the proceedings against the detainee; or,
 - (b) any other investigation;
 - (iii) could be harmful to the detainee or any other person; or,
 - (iv) could be used by the detainee to breach an order for non-disclosure made by a Judge or a Chamber pursuant to Rule 53 or Rule 75 of the Rules of Procedure and Evidence.
- (B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.
- (C) A detainee may at any time request the President to deny or reverse a request for prohibition of contact made by the Prosecutor under this rule.

Legal assistance

Rule 67

- (A) Each detainee shall be entitled to communicate fully and without restraint with his defence counsel, with the assistance of an interpreter where necessary. All such correspondence and communications shall be privileged.
- (B) Unless such counsel and interpreter have been provided by the Tribunal on the basis of the indigency of the detainee, all such communications shall be at the expense of the detainee.

- (C) All visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63. The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.
- (D) Interviews with legal counsel and interpreters shall be conducted in the sight but not within the hearing, either direct or indirect, of the staff of the detention unit.

Spiritual welfare

Rule 68

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

Rule 69

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

Rule 70

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

Rule 71

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

Work programme

Rule 72

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

Rule 73

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

Recreational activities

Rule 74

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

Rule 75

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

Rule 76

- (A) If, in the opinion of the Prosecutor, the interests of justice would not be served by allowing a particular detainee unrestricted access to the news, or that such unrestricted access could prejudice the outcome of the proceedings against the detainee or of any other investigation, the Prosecutor may request the Registrar, or in cases of urgency, the Commanding Officer to restrict such access.
- (B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.
- (C) A detainee may at any time request the President to deny or reverse such a request for restriction of access.

Rule 77

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

Personal possessions of detainees

Rule 78

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

Rule 79

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

Rule 80

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

Rule 81

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

Rule 82

- (A) Each detainee shall be authorized to spend his own money to purchase items of a personal nature from the store operated by the host prison.
- (B) In the case of a detainee who lacks financial means, the Registrar may authorize the purchase of such items, within reason, for the account of the Tribunal.
- (C) Detainees shall have the right to purchase such items within seven days of arrival and at least once a week thereafter.

Rule 83

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

Complaints

Rule 84

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

Rule 85

A detainee, if not satisfied with the response from the Commanding Officer, has the right to make a written complaint, without censorship, to the Registrar, who shall forward it to the President.

Rule 86

Each detainee may freely communicate with the competent inspecting authority. During an inspection of the detention unit, the detainee shall have the opportunity to talk to the inspector out of the sight and hearing of the staff of the detention unit.

Rule 87

The right of complaint shall include confidential access to the relevant authority pursuant to Rule 85.

Rule 88

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

REMOVAL AND TRANSPORT OF DETAINEES

Rule 89

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

Rule 90

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

Rule 91

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

AMENDMENT OF THE RULES OF DETENTION

Rule 92

- (A) Proposals for amendment of the Rules of Detention may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than nine Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.
- (B) An amendment to the Rules of Detention may be otherwise adopted, provided it is unanimously approved by the Judges.
- (C) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment.

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

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS REVISED ON 14 JULY 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)

(IT/38/REV.8)

PREAMBLE

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

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

DEFINITIONS

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

Bureau:

the body comprised of the President, the Vice-President and the Presiding Judges of the Trial Chambers established pursuant to Rule 23 of the Rules of Procedure and Evidence;

Commanding Officer:

the official of the United Nations appointed as the head of the staff responsible for the administration of the detention unit;

Detainee:

any person detained awaiting trial or appeal before the Tribunal, or being held pending transfer to another institution, and any other person detained on the authority of the Tribunal;

Detention unit:

the unit for detainees erected within the grounds of the host prison;

General Director:

the head of the host prison appointed by the authorities of the Host State;

Host prison:

the penitentiary complex maintained by the authorities of the Host State and located at*;

Host State:

the Kingdom of the Netherlands;

Medical officer:

the medical officer for the time being appointed by agreement between the Registrar and the General Director of the host prison;

Prosecutor:

the Prosecutor appointed pursuant to Article 18 of the Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993, or any person authorized by him or acting under his direction;

Registrar:

the Registrar of the Tribunal appointed pursuant to Article 17(3) of the Statute of the Tribunal, or any person authorized by him or acting under his direction;

Rules of Procedure and Evidence:

the Rules of Procedure and Evidence of the Tribunal as adopted on 11 February 1994 as subsequently amended;

Staff of the detention unit:

the staff employed by the United Nations to run the detention unit;

Tribunal:

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

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

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

* References to the location of the Host Prison and the Detention Unit have been deleted for security reasons.

BASIC PRINCIPLES

Rule 1

These Rules of Detention are to be applied in conjunction with the relevant provisions of the Headquarters Agreement entered into between the Host State and the United Nations and, in particular, the Annex on matters relating to security and order.

Rule 2

The United Nations shall retain the ultimate responsibility and liability for all aspects of detention pursuant to these Rules of Detention. All detainees shall be subject to the sole jurisdiction of the Tribunal at all times that they are so detained, even though physically absent from the detention unit, until final release or transfer to another institution. Subject to the overriding jurisdiction of the Tribunal, the Commanding Officer shall have sole responsibility for all aspects of the day-to-day management of the detention unit, including security and order, and may make all decisions relating thereto, except where otherwise provided in these Rules of Detention.

Rule 3

These Rules of Detention shall be applied impartially. There shall be no discrimination on

grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, economic or other status.

Rule 4

A detainee is entitled to observe the religious beliefs and moral precepts of the group to which he belongs and that right shall be respected at all times.

Rule 5

All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.

Rule 6

(A) The Bureau may, at any time, appoint a Judge or the Registrar of the Tribunal to inspect the detention unit and to report to the Tribunal on the general conditions of implementation of these Rules of Detention or of any particular aspect thereof with a view to ensuring that the detention unit is administered in accordance with the Rules of Detention.

(B) There shall be regular and unannounced inspections by inspectors whose duty it is to examine the manner in which detainees are treated. The Bureau shall act upon all such reports as it sees fit, in consultation with the relevant authorities of the Host State where necessary.

Rule 7

These Rules of Detention and any regulations made hereunder shall be made readily available to the staff of the detention unit in the working languages of the Tribunal and that of the Host State.

Rule 8

These Rules of Detention and any regulations made hereunder shall be made readily available to each detainee in those languages and in the language of the detainee.

MANAGEMENT OF THE DETENTION UNIT

Reception

Rule 9

No person shall be received in the detention unit without a warrant of arrest or an order for detention duly issued by a Judge or a Chamber of the Tribunal.

Rule 10

A. Upon being received in the detention unit, the Commanding Officer shall obtain the photograph and fingerprints of each detainee and any other information necessary to maintain the security and good order of the detention unit.

(B) A complete, secure and current record shall be kept concerning each detainee received. It shall include:

- (i) information concerning the identity of the detainee and his next of

- kin, and other information obtained pursuant to Sub-Rule 10(A);
- (ii) the date of issue of the indictment against the detainee and of the warrant of arrest;
- (iii) the date and time of admission;
- (iv) the name of counsel, if known;
- (v) the date, time and reason for all absences from the detention unit, whether to attend at the Tribunal, for medical or other approved reasons, or on final release or transfer to another institution.

Rule 11

All information concerning detainees shall be treated as confidential and made accessible only to the detainee, his counsel and persons authorized by the Registrar. The detainee shall be informed of this fact upon his arrival at the detention unit.

Rule 12

(A) As soon as practicable after admission, each detainee shall be provided with information concerning legal, diplomatic and consular representation available to him.

(B) The detainee shall be given the opportunity at this time to notify, within reason, his family, his counsel, the appropriate diplomatic or consular representative and, at the discretion of the Commanding Officer, any other person, of his whereabouts, at the expense of the Tribunal. The detainee shall be asked at this time to name a person or authority to be notified of special events affecting him.

Rule 13

(A) On arrival at the detention unit, the Commanding Officer shall order that a detainee's body and clothes be searched for articles that may constitute a danger to:

- (i) the security and proper running of the detention unit, or
- (ii) the detainee, any other detainee or any member of the staff of the detention unit.

(B) Such items shall be removed.

Rule 14

(A) An inventory, which shall be signed by the detainee, shall be made of all money, valuables, clothing and other effects belonging to a detainee which, under these Rules of Detention or the rules of the host prison, he is not permitted to retain.

(B) All items which a detainee is not permitted to retain shall be placed in safe custody or, at the request and expense of the detainee, sent to an address provided by him.

(C) If the items are retained within the detention unit, all reasonable steps shall be taken by the staff of the detention unit to keep them in good condition.

D. If it is found necessary to destroy an item, this shall be recorded and the detainee informed accordingly.

Rule 15

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

Accommodation

Rule 16

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

Rule 17

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

Rule 18

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

Rule 19

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

Rule 20

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

Personal hygiene

Rule 21

Detainees shall be required to keep themselves clean, and shall be provided with such toilet articles as are necessary for health and cleanliness.

Rule 22

Facilities shall be provided by the host prison for the proper care of the hair and beard, and male detainees shall be enabled to shave regularly.

Clothing

Rule 23

- (A) Detainees may wear their own civilian clothing if, in the opinion of the Commanding Officer, it is clean and suitable.
- (B) A detainee who lacks financial means, as determined by the Registrar, shall be provided with suitable and sufficient civilian clothing at the cost of the Tribunal.

Rule 24

All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene, in accordance with the regime of the host prison.

Food**Rule 25**

Provide each detainee at the normal hours with food which is suitably and which satisfies in quality and quantity the standards of dietetics and takes into account the age, health, religious and, as far as possible, cultural needs of the detainee.

Physical exercise and sport**Rule 26**

Each detainee shall be allowed at least one hour of walking or other suitable physical exercise in the open air daily, if the weather permits. Where possible, arrangements may be made with the General Director for use by detainees of indoor and outdoor sporting facilities outside the detention unit but within the host prison.

Rule 27

There shall be organized a programme of physical education, sport and other recreational activities supervised by the Commanding Officer to ensure physical fitness, adequate exercise and opportunities for recreation.

Rule 28

The Commanding Officer, acting on the advice of the medical officer, shall ensure that every detainee who participates in such a programme is physically fit to do so. Special arrangements shall be made, under medical direction, for remedial or therapeutic treatment for any detainee who is unable to participate in the regular programme.

Medical services**Rule 29**

(A) The medical services of the host prison, including psychiatric and dental care, shall be fully available to detainees, subject to any practical arrangements made with the General Director.

(B) A person capable of providing first-aid shall be present at the detention unit at all times.

Rule 30

(A) Detainees may be visited by, and consult with, a doctor or dentist of their choice at their own expense. All such visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63.

(B) The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.

C. Any treatment or medication recommended by such a doctor or dentist shall be administered solely by the medical officer or his deputy. The medical officer may, in his sole discretion, refuse to administer any such treatment or medication.

Rule 31

Detainees who require specialist or in-patient treatment shall be treated within the host prison to the fullest extent possible or transferred to a civil hospital.

Rule 32

(A) The Registrar shall be informed immediately upon the death or serious illness or injury of a detainee. The Registrar shall immediately inform the spouse or nearest relative of the detainee and shall, in any event, inform any other person previously designated by the detainee.

(B) In the event of the death of a detainee, an inquest will be conducted in accordance with the legal requirements of the Host State.

C. The President may order an inquiry into the circumstances surrounding the death or serious injury of any detainee.

Rule 33

The medical officer shall have the care of the physical and mental health of the detainees and shall see, on a daily basis or more often if necessary, all sick detainees, all who complain of illness and any detainee to whom his attention is specially directed.

Rule 34

(A) The medical officer shall report to the Commanding Officer whenever he considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention.

(B) The Commanding Officer shall immediately submit the report to the Registrar who, after consultation with the President, shall take all necessary action.

Rule 35

A competent authority appointed by the Tribunal pursuant to Rule 6 shall regularly inspect the detention unit and advise the Commanding Officer and the Registrar upon:

- (i) the quantity, quality, preparation and serving of food;
- (ii) the hygiene and cleanliness of the detention unit and of the detainees;
- (iii) the sanitation, heating, lighting and ventilation of the detention unit;
- (iv) the suitability and cleanliness of the detainees' clothing and bedding.

Rule 36

The Registrar shall, if he concurs with the recommendations made, take immediate steps to give effect to those recommendations; if he does not concur with them, he shall immediately submit both a personal report and a copy of the recommendations to the Tribunal.

Rule 36 bis

(A) The Commanding Officer of the Detention Unit may decide upon the search of a detainee's cell if he suspects that the cell contains an item which constitutes a threat to the security or good order of the detention unit or the host prison, or the health and safety of any person therein. Any such items found in the cell of the detainee shall be confiscated pursuant to Rule 78.

(B) Following a search of a detainee's cell the Commanding Officer shall inform the detainee in writing that his cell was searched and shall specify any items that were confiscated. A copy of this letter shall be forwarded to the Registrar and to the President.

Rule 36 ter

(A) In exceptional circumstances, in order to protect the health or the safety of the detainee, the Registrar, with the approval of the President, may order that the cell of the detainee be monitored by video surveillance equipment for a period not exceeding thirty days.

Renewals which shall not exceed a period of thirty days shall be reported to the President.

The detainee shall be notified of the Registrar's decision within twenty-four hours, and may at any time request the President to reverse any such decision by the Registrar.

Discipline

Rule 37

Discipline and order shall be maintained by the staff of the detention unit in the interests of safety and the well-ordered running of the detention unit.

Rule 38

The Commanding Officer, in consultation with the Registrar, shall issue regulations:

- (i) defining conduct constituting a disciplinary offence;
- (ii) regulating the type of punishment that can be imposed;
- (iii) specifying the authority that can impose such punishment;
- (iv) providing for a right of appeal to the President.

Rule 39

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

Segregation

Rule 40

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

Rule 41

(A) At any time, the Commanding Officer may order that a detainee be segregated from some or all of the other detainees for

- (i) the preservation of security and good order in the detention unit; or,
- (ii) the protection of the detainee in question.

(B) The Commanding Officer shall report all incidents of segregation to the medical officer who shall confirm the physical and mental fitness of the detainee for such segregation.

(C) Segregation shall not be used as a disciplinary measure.

Rule 42

(A) A detainee may ask to be segregated from all or some of the other detainees.

(B) Upon receipt of such a request, the Commanding Officer shall consult the

medical officer to determine whether such segregation is medically acceptable. A request for segregation will be granted unless, in the opinion of the medical officer, such segregation would be injurious to the mental or physical health of the detainee.

Rule 43

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

Rule 44

(A) The Commanding Officer may organize the use of communal areas of the detention unit so as to segregate certain groups of detainees from others in the interests of the safety of the detainees and the proper conduct and operation of the detention unit.

(B) If such segregation is put into practice, care shall be taken to ensure that all such groupings are treated on an equal basis, having regard to the number of detainees falling within each group.

(C) All such segregations must be reported to the Tribunal, which may vary the nature, basis or conditions of such segregation.

Isolation unit

Rule 45

(A) A detainee may be confined to the isolation unit only in the following circumstances:

(i) by order of the Registrar, acting in consultation with the President; such an order may be based upon a request from any interested person, including the Prosecutor;

(ii) by order of the Commanding Officer in order to prevent the detainee from inflicting injury on other detainees or to preserve the security and good order of the detention unit;

(iii) as a punishment pursuant to Rule 38.

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

Rule 46

(A) All cases of use of the isolation unit shall be reported to the medical officer who shall confirm the physical and mental fitness of the detainee for such isolation.

(B) A detainee who has been confined to the isolation unit shall be visited by the medical officer or his deputy as often as the medical officer deems necessary.

Rule 47

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

Rule 48

(A) All cases of use of the isolation unit shall be reported to the Registrar immediately, who shall report the matter to the President.

(B) The President may order the release of a detainee from the isolation unit at any time.

Rule 49

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

Instruments of restraint and the use of force

Rule 50

(A) Instruments of restraint, such as handcuffs, shall only be used in the following exceptional circumstances:

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

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

Rule 51

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

Rule 52

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

Rule 53

(A) The staff of the detention unit shall not use force against a detainee except:

- (i) in self-defence; or,
- (ii) in cases of:
 - (a) attempted escape; or
 - (b) active or passive resistance to an order based upon these Rules of Detention or any regulations issued hereunder.

(B) Staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the Commanding Officer, who shall provide a report on the matter to the Registrar.

Rule 54

(A) A detainee against whom force has been used shall have the right to be examined immediately and treated, if necessary, by the medical officer. The medical examination shall be conducted in private and in the absence of any non-medical

staff.

(B) The results of the examination, including any relevant statement by the detainee and the medical officer's opinion, shall be formally recorded and made available to:

- (i) the detainee, in a language accessible to him;
- (ii) the Commanding Officer;
- (iii) the Registrar;
- (iv) the President; and,
- (v) the Prosecutor.

Rule 55

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

Disturbances

Rule 56

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

Suspension of the Rules of Detention

Rule 57

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

Information to detainees

Rule 58

In addition to the copies of these Rules of Detention and any regulations to be provided to each detainee pursuant to Rule 8, each detainee shall on admission be provided with written information in the working languages of the Tribunal or in his own language concerning:

- (i) the rights and treatment of detainees;
- (ii) the disciplinary requirements of the detention unit;
- (iii) the authorized methods of seeking information and making complaints; and,
- (iv) all other matters necessary to enable him to understand both his rights and obligations and to adapt himself to the routine of the detention unit.

Rule 59

At any time at which there is a detainee in the detention unit who speaks and understands neither

of the working languages of the Tribunal nor that spoken by any of the staff of the detention unit, arrangements shall be made for an interpreter to be available on reasonable notice and, in any event, in cases of emergency, to permit the detainee to communicate freely with the staff and administration of the detention unit.

RIGHTS OF DETAINEES

Communications and visits

Rule 60

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

Rule 61

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

Rule 62

A detainee shall be informed at once of the death or serious illness of any near relative.

Rule 63

- (A) Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rule 66 and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and supervision must be necessary in the interests of the administration of justice or the security and good order of the host prison and the detention unit.
- (B) The Registrar may refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.
- (C) All visitors must comply with the separate requirements of the visiting regime of the host prison. These restrictions may include personal searches of clothing and X-ray examination of possessions on entry to either or both of the detention unit and the host prison.
- D. Any person, including defence counsel for a detainee or a diplomatic or consular representative accredited to the Host State, who refuses to comply with such requirements, whether of the detention unit or of the host prison, may be refused access.

Rule 64

A detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.

Rule 65

Detainees shall be allowed to communicate with and receive visits from the diplomatic and consular representative accredited to the Host State of the State to which they belong or, in the case of detainees who are without diplomatic or consular representation in the Host State and refugees or stateless persons, with the diplomatic representative accredited to the Host State of the State which takes charge of their interests or of a national or international authority whose task it is to serve the interests of such persons.

Rule 66

(A) The Prosecutor may request the Registrar or, in cases of emergency, the Commanding Officer, to prohibit, regulate or set conditions for contact between a detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact:

- (i) is for the purposes of attempting to arrange the escape of the detainee from the detention unit;
- (ii) could prejudice or otherwise affect the outcome of:

- (a) the proceedings against the detainee; or,
- (b) any other investigation;

- (iii) could be harmful to the detainee or any other person; or,
- (iv) could be used by the detainee to breach an order for non-disclosure made by a Judge or a Chamber pursuant to Rule 53 or Rule 75 of the Rules of Procedure and Evidence.

(B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.

(C) A detainee may at any time request the President to deny or reverse a request for prohibition of contact made by the Prosecutor under this rule.

Legal assistance

Rule 67

(A) Each detainee shall be entitled to communicate fully and without restraint with his defence counsel, with the assistance of an interpreter where necessary. All such correspondence and communications shall be privileged.

(B) Unless such counsel and interpreter have been provided by the Tribunal on the basis of the indigency of the detainee, all such communications shall be at the expense of the detainee.

(C) All visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63. The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.

(D) Interviews with legal counsel and interpreters shall be conducted in the sight but not within the hearing, either direct or indirect, of the staff of the detention unit.

Spiritual welfare

Rule 68

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

Rule 69

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

Rule 70

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

Rule 71

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

Work programme

Rule 72

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

Rule 73

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

Recreational activities

Rule 74

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

Rule 75

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

Rule 76

(A) If, in the opinion of the Prosecutor, the interests of justice would not be served by allowing a particular detainee unrestricted access to the news, or that such unrestricted access could prejudice the outcome of the proceedings against the detainee or of any other investigation, the Prosecutor may request the Registrar, or in cases of urgency, the Commanding Officer to restrict such access.

(B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.

(C) A detainee may at any time request the President to deny or reverse such a request for restriction of access.

Rule 77

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

Personal possessions of detainees

Rule 78

(A) A detainee may keep in his possession all clothing and personal items for his own use or consumption unless, in the opinion of the Commanding Officer or the General Director, such items constitute a threat to the security or good order of the detention unit or the host prison, or to the health or safety of any person therein.

(B) All items so removed shall be retained by the staff of the detention unit as provided for in Rule 14.

Rule 79

(A) Any item received from outside, including any item introduced by any visitor to a detainee, shall be subject to separate security controls by both the detention unit and the host prison and may be transported through the host prison to the detention unit by staff of either the detention unit or of the host prison.

(B) The Commanding Officer or the General Director may refuse to receive any item intended for consumption by detainees.

Rule 80

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

Rule 81

(A) The possession and use of any medication shall be subject to the control and supervision of the medical officer.

(B) Detainees may possess cigarettes and smoke them at such times and places as the Commanding Officer permits.

(C) The possession or consumption of alcohol is not permitted.

Rule 82

(A) Each detainee shall be authorized to spend his own money to purchase items of a personal nature from the store operated by the host prison.

(B) In the case of a detainee who lacks financial means, the Registrar may authorize the purchase of such items, within reason, for the account of the Tribunal.

(C) Detainees shall have the right to purchase such items within seven days of arrival and at least once a week thereafter.

Rule 83

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

Complaints

Rule 84

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

Rule 85

A detainee, if not satisfied with the response from the Commanding Officer, has the right to make a written complaint, without censorship, to the Registrar, who shall forward it to the President.

Rule 86

Each detainee may freely communicate with the competent inspecting authority. During an inspection of the detention unit, the detainee shall have the opportunity to talk to the inspector out of the sight and hearing of the staff of the detention unit.

Rule 87

The right of complaint shall include confidential access to the relevant authority pursuant to Rule 85.

Rule 88

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

REMOVAL AND TRANSPORT OF DETAINEES

Rule 89

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

Rule 90

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

Rule 91

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

AMENDMENT OF THE RULES OF DETENTION

Rule 92

(A) Proposals for amendment of the Rules of Detention may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than nine Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.

(B) An amendment to the Rules of Detention may be otherwise adopted, provided it is unanimously approved by the Judges.

(C) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment.

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

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS REVISED ON 14 JULY 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)

(IT/38/REV.8)

CONTENTS

PREAMBLE

DEFINITIONS

BASIC PRINCIPLES

(Rules 1 - 8)

MANAGEMENT OF THE DETENTION UNIT

Reception

(Rules 9 - 15)

Accommodation

(Rules 16 - 20)

Personal hygiene

(Rules 21 - 22)

Clothing

(Rules 23 - 24)

Food

(Rule 25)

Physical exercise and sport

(Rules 26 - 28)

Medical services

(Rules 29 - 36 *ter*)

Discipline

(Rules 37 - 39)

Segregation

(Rules 40 - 44)

Isolation unit

(Rules 45 - 49)

Instruments of restraint and the use of force

(Rules 50 - 55)

Disturbances

(Rule 56)

Suspension of the Rules of Detention

(Rule 57)

Information to detainees

(Rules 58 - 59)

RIGHTS OF DETAINEES

Communications and visits

(Rules 60 - 66)

Legal assistance

(Rule 67)

Spiritual welfare

(Rules 68 - 71)

Work programme

(Rules 72 - 73)

Recreational activities

(Rules 74 - 77)

Personal possessions of detainees

(Rules 78 - 83)

Complaints

(Rules 84 - 88)

REMOVAL AND TRANSPORT OF DETAINEES

(Rules 89 - 91)

AMENDMENT OF THE RULES OF DETENTION

(Rule 92)

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

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS REVISED ON 14 JULY 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)

(IT/38/REV.8)

PREAMBLE

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

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

DEFINITIONS

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

Bureau:

the body comprised of the President, the Vice-President and the Presiding Judges of the Trial Chambers established pursuant to Rule 23 of the Rules of Procedure and Evidence;

Commanding Officer:

the official of the United Nations appointed as the head of the staff responsible for the administration of the detention unit;

Detainee:

any person detained awaiting trial or appeal before the Tribunal, or being held pending transfer to another institution, and any other person detained on the authority of the Tribunal;

Detention unit:

the unit for detainees erected within the grounds of the host prison;

General Director:

the head of the host prison appointed by the authorities of the Host State;

Host prison:

the penitentiary complex maintained by the authorities of the Host State and located at*;

Host State:

the Kingdom of the Netherlands;

Medical officer:

the medical officer for the time being appointed by agreement between the Registrar and the General Director of the host prison;

Prosecutor:

the Prosecutor appointed pursuant to Article 18 of the Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993, or any person authorized by him or acting under his direction;

Registrar:

the Registrar of the Tribunal appointed pursuant to Article 17(3) of the Statute of the Tribunal, or any person authorized by him or acting under his direction;

Rules of Procedure and Evidence:

the Rules of Procedure and Evidence of the Tribunal as adopted on 11 February 1994 as subsequently amended;

Staff of the detention unit:

the staff employed by the United Nations to run the detention unit;

Tribunal:

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

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

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

* References to the location of the Host Prison and the Detention Unit have been deleted for security reasons.

BASIC PRINCIPLES

Rule 1

These Rules of Detention are to be applied in conjunction with the relevant provisions of the Headquarters Agreement entered into between the Host State and the United Nations and, in particular, the Annex on matters relating to security and order.

Rule 2

The United Nations shall retain the ultimate responsibility and liability for all aspects of detention pursuant to these Rules of Detention. All detainees shall be subject to the sole jurisdiction of the Tribunal at all times that they are so detained, even though physically absent from the detention unit, until final release or transfer to another institution. Subject to the overriding jurisdiction of the Tribunal, the Commanding Officer shall have sole responsibility for all aspects of the day-to-day management of the detention unit, including security and order, and may make all decisions relating thereto, except where otherwise provided in these Rules of Detention.

Rule 3

These Rules of Detention shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, economic or other status.

Rule 4

A detainee is entitled to observe the religious beliefs and moral precepts of the group to which he belongs and that right shall be respected at all times.

Rule 5

All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.

Rule 6

(A) The Bureau may, at any time, appoint a Judge or the Registrar of the Tribunal to inspect the detention unit and to report to the Tribunal on the general conditions of implementation of these Rules of Detention or of any particular aspect thereof with a view to ensuring that the detention unit is administered in accordance with the Rules of Detention.

(B) There shall be regular and unannounced inspections by inspectors whose duty it is to examine the manner in which detainees are treated. The Bureau shall act upon all such reports as it sees fit, in consultation with the relevant authorities of the Host State where necessary.

Rule 7

These Rules of Detention and any regulations made hereunder shall be made readily available to the staff of the detention unit in the working languages of the Tribunal and that of the Host State.

Rule 8

These Rules of Detention and any regulations made hereunder shall be made readily available to each detainee in those languages and in the language of the detainee.

MANAGEMENT OF THE DETENTION UNIT

Reception

Rule 9

No person shall be received in the detention unit without a warrant of arrest or an order for detention duly issued by a Judge or a Chamber of the Tribunal.

Rule 10

A. Upon being received in the detention unit, the Commanding Officer shall obtain the photograph and fingerprints of each detainee and any other information necessary to maintain the security and good order of the detention unit.

(B) A complete, secure and current record shall be kept concerning each detainee received. It shall include:

- (i) information concerning the identity of the detainee and his next of kin, and other information obtained pursuant to Sub-Rule 10(A);
- (ii) the date of issue of the indictment against the detainee and of the warrant of arrest;
- (iii) the date and time of admission;
- (iv) the name of counsel, if known;
- (v) the date, time and reason for all absences from the detention unit, whether to attend at the Tribunal, for medical or other approved reasons, or on final release or transfer to another institution.

Rule 11

All information concerning detainees shall be treated as confidential and made accessible only to the detainee, his counsel and persons authorized by the Registrar. The detainee shall be informed of this fact upon his arrival at the detention unit.

Rule 12

(A) As soon as practicable after admission, each detainee shall be provided with information concerning legal, diplomatic and consular representation available to him.

(B) The detainee shall be given the opportunity at this time to notify, within reason, his family, his counsel, the appropriate diplomatic or consular representative and, at the discretion of the Commanding Officer, any other person, of his whereabouts, at the expense of the Tribunal. The detainee shall be asked at this time to name a person or authority to be notified of special events affecting him.

Rule 13

(A) On arrival at the detention unit, the Commanding Officer shall order that a detainee's body and clothes be searched for articles that may constitute a danger to:

- (i) the security and proper running of the detention unit, or
- (ii) the detainee, any other detainee or any member of the staff of the detention unit.

(B) Such items shall be removed.

Rule 14

(A) An inventory, which shall be signed by the detainee, shall be made of all money, valuables, clothing and other effects belonging

to a detainee which, under these Rules of Detention or the rules of the host prison, he is not permitted to retain.

(B) All items which a detainee is not permitted to retain shall be placed in safe custody or, at the request and expense of the detainee, sent to an address provided by him.

(C) If the items are retained within the detention unit, all reasonable steps shall be taken by the staff of the detention unit to keep them in good condition.

D. If it is found necessary to destroy an item, this shall be recorded and the detainee informed accordingly.

Rule 15

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

Accommodation

Rule 16

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

Rule 17

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

Rule 18

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

Rule 19

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

Rule 20

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

Personal hygiene

Rule 21

Detainees shall be required to keep themselves clean, and shall be provided with such toilet articles as are necessary for health and cleanliness.

Rule 22

Facilities shall be provided by the host prison for the proper care of the hair and beard, and male detainees shall be enabled to shave regularly.

Clothing

Rule 23

(A) Detainees may wear their own civilian clothing if, in the opinion of the Commanding Officer, it is clean and suitable.

(B) A detainee who lacks financial means, as determined by the Registrar, shall be provided with suitable and sufficient civilian clothing at the cost of the Tribunal.

Rule 24

All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene, in accordance with the regime of the host prison.

Food

Rule 25

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

Physical exercise and sport

Rule 26

- (A) Each detainee shall be allowed at least one hour of walking or other suitable exercise in the open air daily, if the weather permits.
- (B) Where possible, arrangements may be made with the General Director for use by detainees of indoor and outdoor sporting facilities outside the detention unit but within the host prison.

Rule 27

A properly organized programme of physical education, sport and other recreational activities shall be arranged by the Commanding Officer to ensure physical fitness, adequate exercise and recreational opportunities.

Rule 28

- A. The Commanding Officer, acting on the advice of the medical officer, shall ensure that any detainee who participates in such a programme is physically fit to do so.
- (B) Special arrangements shall be made, under medical direction, for remedial or therapeutic treatment for any detainee who is unable to participate in the regular programme.

Medical services

Rule 29

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

Rule 30

- (A) Detainees may be visited by, and consult with, a doctor or dentist of their choice at their own expense. All such visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63.
- (B) The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.
- C. Any treatment or medication recommended by such a doctor or dentist shall be administered solely by the medical officer or his deputy. The medical officer may, in his sole discretion, refuse to administer any such treatment or medication.

Rule 31

Detainees who require specialist or in-patient treatment shall be treated within the host prison to the fullest extent possible or transferred to a civil hospital.

Rule 32

- (A) The Registrar shall be informed immediately upon the death or serious illness or injury of a detainee. The Registrar shall immediately inform the spouse or nearest relative of the detainee and shall, in any event, inform any other person previously designated by the detainee.
- (B) In the event of the death of a detainee, an inquest will be conducted in accordance with the legal requirements of the Host State.
- C. The President may order an inquiry into the circumstances surrounding the death or serious injury of any detainee.

Rule 33

The medical officer shall have the care of the physical and mental health of the detainees and shall see, on a daily basis or more often if necessary, all sick detainees, all who complain of illness and any detainee to whom his attention is specially directed.

Rule 34

- (A) The medical officer shall report to the Commanding Officer whenever he considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention.
- (B) The Commanding Officer shall immediately submit the report to the Registrar who, after consultation with the President, shall take all necessary action.

Rule 35

A competent authority appointed by the Tribunal pursuant to Rule 6 shall regularly inspect the detention unit and advise the Commanding Officer and the Registrar upon:

- (i) the quantity, quality, preparation and serving of food;
- (ii) the hygiene and cleanliness of the detention unit and of the detainees;
- (iii) the sanitation, heating, lighting and ventilation of the detention unit;
- (iv) the suitability and cleanliness of the detainees' clothing and bedding.

Rule 36

The Registrar shall, if he concurs with the recommendations made, take immediate steps to give effect to those recommendations; if he does not concur with them, he shall immediately submit both a personal report and a copy of the recommendations to the Tribunal.

Rule 36 bis

- (A) The Commanding Officer of the Detention Unit may decide upon the search of a detainee's cell if he suspects that the cell contains an item which constitutes a threat to the security or good order of the detention unit or the host prison, or the health and safety of any person therein. Any such items found in the cell of the detainee shall be confiscated pursuant to Rule 78.
- (B) Following a search of a detainee's cell the Commanding Officer shall inform the detainee in writing that his cell was searched and shall specify any items that were confiscated. A copy of this letter shall be forwarded to the Registrar and to the President.

Rule 36 ter

- (A) In exceptional circumstances, in order to protect the health or the safety of the detainee, the Registrar, with the approval of the President, may order that the cell of the detainee be monitored by video surveillance equipment for a period not exceeding thirty days.
- (B) Renewals which shall not exceed a period of thirty days shall be reported to the President.
- (C) The detainee shall be notified of the Registrar's decision within twenty-four hours, and may at any time request the President to reverse any such decision by the Registrar.

Discipline

Rule 37

Discipline and order shall be maintained by the staff of the detention unit in the interests of safe custody and the well-ordered running of the detention unit.

Rule 38

The Commanding Officer, in consultation with the Registrar, shall issue regulations:

- (i) defining conduct constituting a disciplinary offence;
- (ii) regulating the type of punishment that can be imposed;
- (iii) specifying the authority that can impose such punishment;
- (iv) providing for a right of appeal to the President.

Rule 39

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

Segregation

Rule 40

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

Rule 41

(A) At any time, the Commanding Officer may order that a detainee be segregated from some or all of the other detainees for

- (i) the preservation of security and good order in the detention unit; or,
- (ii) the protection of the detainee in question.

(B) The Commanding Officer shall report all incidents of segregation to the medical officer who shall confirm the physical and mental fitness of the detainee for such segregation.

(C) Segregation shall not be used as a disciplinary measure.

Rule 42

(A) A detainee may ask to be segregated from all or some of the other detainees.

(B) Upon receipt of such a request, the Commanding Officer shall consult the medical officer to determine whether such segregation is medically acceptable. A request for segregation will be granted unless, in the opinion of the medical officer, such segregation would be injurious to the mental or physical health of the detainee.

Rule 43

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

Rule 44

(A) The Commanding Officer may organize the use of communal areas of the detention unit so as to segregate certain groups of detainees from others in the interests of the safety of the detainees and the proper conduct and operation of the detention unit.

(B) If such segregation is put into practice, care shall be taken to ensure that all such groupings are treated on an equal basis, having regard to the number of detainees falling within each group.

(C) All such segregations must be reported to the Tribunal, which may vary the nature, basis or conditions of such segregation.

Isolation unit

Rule 45

(A) A detainee may be confined to the isolation unit only in the following circumstances:

- (i) by order of the Registrar, acting in consultation with the President; such an order may be based upon a request from any interested person, including the Prosecutor;
- (ii) by order of the Commanding Officer in order to prevent the detainee from inflicting injury on other detainees or to preserve the security and good order of the detention unit;
- (iii) as a punishment pursuant to Rule 38.

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

Rule 46

(A) All cases of use of the isolation unit shall be reported to the medical officer who shall confirm the physical and mental fitness of the detainee for such isolation.

(B) A detainee who has been confined to the isolation unit shall be visited by the medical officer or his deputy as often as the medical officer deems necessary.

Rule 47

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

Rule 48

(A) All cases of use of the isolation unit shall be reported to the Registrar immediately, who shall report the matter to the President.

(B) The President may order the release of a detainee from the isolation unit at any time.

Rule 49

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

Instruments of restraint and the use of force

Rule 50

(A) Instruments of restraint, such as handcuffs, shall only be used in the following exceptional circumstances:

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

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

Rule 51

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

Rule 52

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

Rule 53

(A) The staff of the detention unit shall not use force against a detainee except:

- (i) in self-defence; or,
- (ii) in cases of:
 - (a) attempted escape; or
 - (b) active or passive resistance to an order based upon these Rules of Detention or any regulations issued hereunder.

(B) Staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the Commanding Officer, who shall provide a report on the matter to the Registrar.

Rule 54

(A) A detainee against whom force has been used shall have the right to be examined immediately and treated, if necessary, by the medical officer. The medical examination shall be conducted in private and in the absence of any non-medical staff.

(B) The results of the examination, including any relevant statement by the detainee and the medical officer's opinion, shall be formally recorded and made available to:

- (i) the detainee, in a language accessible to him;
- (ii) the Commanding Officer;
- (iii) the Registrar;
- (iv) the President; and,
- (v) the Prosecutor.

Rule 55

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

Disturbances

Rule 56

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

Suspension of the Rules of Detention

Rule 57

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

Information to detainees

Rule 58

In addition to the copies of these Rules of Detention and any regulations to be provided to each detainee pursuant to Rule 8, each detainee shall on admission be provided with written information in the working languages of the Tribunal or in his own language concerning:

- (i) the rights and treatment of detainees;
- (ii) the disciplinary requirements of the detention unit;
- (iii) the authorized methods of seeking information and making complaints; and,
- (iv) all other matters necessary to enable him to understand both his rights and obligations and to adapt himself to the routine of the detention unit.

Rule 59

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

RIGHTS OF DETAINEES

Communications and visits

Rule 60

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

Rule 61

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

Rule 62

A detainee shall be informed at once of the death or serious illness of any near relative.

Rule 63

- (A) Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rule 66 and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and

supervision must be necessary in the interests of the administration of justice or the security and good order of the host prison and the detention unit.

(B) The Registrar may refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.

(C) All visitors must comply with the separate requirements of the visiting regime of the host prison. These restrictions may include personal searches of clothing and X-ray examination of possessions on entry to either or both of the detention unit and the host prison.

D. Any person, including defence counsel for a detainee or a diplomatic or consular representative accredited to the Host State, who refuses to comply with such requirements, whether of the detention unit or of the host prison, may be refused access.

Rule 64

A detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.

Rule 65

Detainees shall be allowed to communicate with and receive visits from the diplomatic and consular representative accredited to the Host State of the State to which they belong or, in the case of detainees who are without diplomatic or consular representation in the Host State and refugees or stateless persons, with the diplomatic representative accredited to the Host State of the State which takes charge of their interests or of a national or international authority whose task it is to serve the interests of such persons.

Rule 66

(A) The Prosecutor may request the Registrar or, in cases of emergency, the Commanding Officer, to prohibit, regulate or set conditions for contact between a detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact:

- (i) is for the purposes of attempting to arrange the escape of the detainee from the detention unit;
- (ii) could prejudice or otherwise affect the outcome of:

- (a) the proceedings against the detainee; or,
- (b) any other investigation;

- (iii) could be harmful to the detainee or any other person; or,
- (iv) could be used by the detainee to breach an order for non-disclosure made by a Judge or a Chamber pursuant to Rule 53 or Rule 75 of the Rules of Procedure and Evidence,

(B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.

(C) A detainee may at any time request the President to deny or reverse a request for prohibition of contact made by the Prosecutor under this rule.

Legal assistance

Rule 67

(A) Each detainee shall be entitled to communicate fully and without restraint with his defence counsel, with the assistance of an interpreter where necessary. All such correspondence and communications shall be privileged.

(B) Unless such counsel and interpreter have been provided by the Tribunal on the basis of the indigency of the detainee, all such communications shall be at the expense of the detainee.

(C) All visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63. The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.

(D) Interviews with legal counsel and interpreters shall be conducted in the sight but not within the hearing, either direct or indirect, of the staff of the detention unit.

Spiritual welfare

Rule 68

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

Rule 69

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

Rule 70

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

Rule 71

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

Work programme

Rule 72

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

Rule 73

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

Recreational activities

Rule 74

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

Rule 75

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

Rule 76

- (A) If, in the opinion of the Prosecutor, the interests of justice would not be served by allowing a particular detainee unrestricted access to the news, or that such unrestricted access could prejudice the outcome of the proceedings against the detainee or of any other investigation, the Prosecutor may request the Registrar, or in cases of urgency, the Commanding Officer to restrict such access.
- (B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.
- (C) A detainee may at any time request the President to deny or reverse such a request for restriction of access.

Rule 77

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

Personal possessions of detainees

Rule 78

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

Rule 79

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

Rule 80

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

Rule 81

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

Rule 82

- (A) Each detainee shall be authorized to spend his own money to purchase items of a personal nature from the store operated by the host prison.
- (B) In the case of a detainee who lacks financial means, the Registrar may authorize the purchase of such items, within reason, for the account of the Tribunal.
- (C) Detainees shall have the right to purchase such items within seven days of arrival and at least once a week thereafter.

Rule 83

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

Complaints

Rule 84

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

Rule 85

A detainee, if not satisfied with the response from the Commanding Officer, has the right to make a written complaint, without censorship, to the Registrar, who shall forward it to the President.

Rule 86

Each detainee may freely communicate with the competent inspecting authority. During an inspection of the detention unit, the detainee shall have the opportunity to talk to the inspector out of the sight and hearing of the staff of the detention unit.

Rule 87

The right of complaint shall include confidential access to the relevant authority pursuant to Rule 85.

Rule 88

Every complaint made to the Registrar shall be acknowledged within twenty-four hours. Each complaint shall be dealt with promptly and replied to

without delay and, in any event, no later than two weeks of receipt.

REMOVAL AND TRANSPORT OF DETAINEES

Rule 89

When detainees are being removed to or from the detention unit, they shall be exposed to public view as little as possible and all proper safeguards shall be adopted to protect them from insult, injury, curiosity and publicity in any form.

Rule 90

Detainees shall at all times be transported in vehicles with adequate ventilation and light and in such a way as will not subject them to unnecessary physical hardship or indignity.

Rule 91

The transport of detainees through the host prison shall be conducted jointly by personnel of the detention unit and of the host prison.

AMENDMENT OF THE RULES OF DETENTION

Rule 92

(A) Proposals for amendment of the Rules of Detention may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than nine Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.

(B) An amendment to the Rules of Detention may be otherwise adopted, provided it is unanimously approved by the Judges.

(C) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment.

RULES GOVERNING THE DETENTION OF PERSONS AWAITING TRIAL OR APPEAL BEFORE THE TRIBUNAL OR OTHERWISE DETAINED ON THE AUTHORITY OF THE TRIBUNAL ("RULES OF DETENTION")

(ADOPTED ON 5 MAY 1994)
(AS AMENDED ON 16 MARCH 1995)
(AS REVISED ON 14 JULY 1995)
(AS AMENDED ON 3 DECEMBER 1996)
(AS AMENDED ON 25 JULY 1997)
(AS AMENDED ON 17 NOVEMBER 1997)
(AS AMENDED ON 29 NOVEMBER 1999)

(IT/38/REV.8)

PREAMBLE

The purpose of these Rules of Detention is to govern the administration of the detention unit for detainees awaiting trial or appeal at the Tribunal or any other person detained on the authority of the Tribunal and to ensure the continued application and protection of their individual rights while in detention. The primary principles on which these Rules of Detention rest reflect the overriding requirements of humanity, respect for human dignity and the presumption of innocence.

In particular, these Rules of Detention are intended to regulate, in general terms, the rights and obligations of detainees at all stages from reception to release, and to provide the basic criteria for management of the detention unit.

DEFINITIONS

(i) In these Rules of Detention the following terms shall mean:

Bureau:
the body comprised of the President, the Vice-President and the Presiding Judges of the Trial Chambers established pursuant to Rule 23 of the Rules of Procedure and Evidence;

Commanding Officer:
the official of the United Nations appointed as the head of the staff responsible for the administration of the detention unit;

Detainee:
any person detained awaiting trial or appeal before the Tribunal, or being held pending transfer to another institution, and any other person detained on the authority of the Tribunal;

Detention unit:
the unit for detainees erected within the grounds of the host prison;

General Director:
the head of the host prison appointed by the authorities of the Host State;

Host prison:
the penitentiary complex maintained by the authorities of the Host State and located at*;

Host State:
the Kingdom of the Netherlands;

Medical officer:
the medical officer for the time being appointed by agreement between the Registrar and the General Director of the host prison;

Prosecutor:
the Prosecutor appointed pursuant to Article 18 of the Statute of the Tribunal adopted by Security Council resolution 827 of 25 May 1993, or any person authorized by him or acting under his direction;

Registrar:

the Registrar of the Tribunal appointed pursuant to Article 17(3) of the Statute of the Tribunal, or any person authorized by him or acting under his direction;

Rules of Procedure and Evidence:
the Rules of Procedure and Evidence of the Tribunal as adopted on 11 February 1994 as subsequently amended;

Staff of the detention unit:
the staff employed by the United Nations to run the detention unit,

Tribunal:
the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by Security Council resolution 827 of 25 May 1993.

(ii) In these Rules of Detention, the masculine shall include the feminine and the singular the plural and vice-versa.

(iii) These Rules of Detention shall enter into force as of 1 August 1994.

* References to the location of the Host Prison and the Detention Unit have been deleted for security reasons.

BASIC PRINCIPLES

Rule 1

These Rules of Detention are to be applied in conjunction with the relevant provisions of the Headquarters Agreement entered into between the Host State and the United Nations and, in particular, the Annex on matters relating to security and order.

Rule 2

The United Nations shall retain the ultimate responsibility and liability for all aspects of detention pursuant to these Rules of Detention. All detainees shall be subject to the sole jurisdiction of the Tribunal at all times that they are so detained, even though physically absent from the detention unit, until final release or transfer to another institution. Subject to the overriding jurisdiction of the Tribunal, the Commanding Officer shall have sole responsibility for all aspects of the day-to-day management of the detention unit, including security and order, and may make all decisions relating thereto, except where otherwise provided in these Rules of Detention.

Rule 3

These Rules of Detention shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, economic or other status.

Rule 4

A detainee is entitled to observe the religious beliefs and moral precepts of the group to which he belongs and that right shall be respected at all times.

Rule 5

All detainees, other than those who have been convicted by the Tribunal, are presumed to be innocent until found guilty and are to be treated as such at all times.

Rule 6

(A) The Bureau may, at any time, appoint a Judge or the Registrar of the Tribunal to inspect the detention unit and to report to the Tribunal on the general conditions of implementation of these Rules of Detention or of any particular aspect thereof with a view to ensuring that the detention unit is administered in accordance with the Rules of Detention.

(B) There shall be regular and unannounced inspections by inspectors whose duty it is to examine the manner in which detainees are treated. The Bureau shall act upon all such reports as it sees fit, in consultation with the relevant authorities of the Host State where necessary.

Rule 7

These Rules of Detention and any regulations made hereunder shall be made readily available to the staff of the detention unit in the working languages of the Tribunal and that of the Host State.

Rule 8

These Rules of Detention and any regulations made hereunder shall be made readily available to each detainee in those languages and in the language of the detainee.

MANAGEMENT OF THE DETENTION UNIT

Reception

Rule 9

No person shall be received in the detention unit without a warrant of arrest or an order for detention duly issued by a Judge or a Chamber of the Tribunal.

Rule 10

A. Upon being received in the detention unit, the Commanding Officer shall obtain the photograph and fingerprints of each detainee and any other information necessary to maintain the security and good order of the detention unit.

(13) A complete, secure and current record shall be kept concerning each detainee received. It shall include:

- (i) information concerning the identity of the detainee and his next of kin, and other information obtained pursuant to Sub-Rule 10(A);
- (ii) the date of issue of the indictment against the detainee and of the warrant of arrest;
- (iii) the date and time of admission;
- (iv) the name of counsel, if known;
- (v) the date, time and reason for all absences from the detention unit, whether to attend at the Tribunal, for medical or other approved reasons, or on final release or transfer to another institution.

Rule 11

All information concerning detainees shall be treated as confidential and made accessible only to the detainee, his counsel and persons authorized by the Registrar. The detainee shall be informed of this fact upon his arrival at the detention unit.

Rule 12

(A) As soon as practicable after admission, each detainee shall be provided with information concerning legal, diplomatic and consular representation available to him.

(13) The detainee shall be given the opportunity at this time to notify, within reason, his family, his counsel, the appropriate diplomatic or consular representative and, at the discretion of the Commanding Officer, any other person, of his whereabouts, at the expense of the Tribunal. The detainee shall be asked at this time to name a person or authority to be notified of special events affecting him.

Rule 13

(A) On arrival at the detention unit, the Commanding Officer shall order that a detainee's body and clothes be searched for articles that may constitute a danger to:

- (i) the security and proper running of the detention unit, or
- (ii) the detainee, any other detainee or any member of the staff of the detention unit.

(13) Such items shall be removed.

Rule 14

(A) An inventory, which shall be signed by the detainee, shall be made of all money, valuables, clothing and other effects belonging

- to a detainee which, under these Rules of Detention or the rules of the host prison, he is not permitted to retain.
- (B) All items which a detainee is not permitted to retain shall be placed in safe custody or, at the request and expense of the detainee, sent to an address provided by him.
- (C) If the items are retained within the detention unit, all reasonable steps shall be taken by the staff of the detention unit to keep them in good condition.
- D. If it is found necessary to destroy an item, this shall be recorded and the detainee informed accordingly.

Rule 15

Each detainee shall be examined by the medical officer or his deputy on the day of admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures for medical treatment and the segregation of detainees suspected of infectious or contagious conditions.

Accommodation

Rule 16

Each detainee shall occupy a cell unit by himself except in exceptional circumstances or in cases where the Commanding Officer, with the approval of the Registrar, considers that there are advantages in sharing accommodation.

Rule 17

Each detainee shall be provided with a separate bed and with appropriate bedding which shall be kept in good order and changed on a regular basis so as to ensure its cleanliness.

Rule 18

The detention unit shall, at all times, meet all requirements of health and hygiene, due regard being paid to climatic conditions, lighting, heating and ventilation.

Rule 19

Each detainee shall be permitted unrestricted access to the sanitary, hygiene and drinking water arrangements in his cell unit.

Rule 20

All parts of the detention unit shall be properly maintained and kept clean at all times. In particular, each detainee shall be expected to keep his cell unit clean and tidy at all times.

Personal hygiene

Rule 21

Detainees shall be required to keep themselves clean, and shall be provided with such toilet articles as are necessary for health and cleanliness.

Rule 22

Facilities shall be provided by the host prison for the proper care of the hair and beard, and male detainees shall be enabled to shave regularly.

Clothing

Rule 23

- (A) Detainees may wear their own civilian clothing if, in the opinion of the Commanding Officer, it is clean and suitable.
- (B) A detainee who lacks financial means, as determined by the Registrar, shall be provided with suitable and sufficient civilian clothing at the cost of the Tribunal.

Rule 24

All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene, in accordance with the regime of the host prison.

Food

Rule 25

The host prison shall provide each detainee at the normal hours with food which is suitably prepared and presented, and which satisfies in quality and quantity the standards of dietetics and modern hygiene and takes into account the age, health, religious and, as far as possible, cultural requirements of the detainee.

Physical exercise and sport

Rule 26

- (A) Each detainee shall be allowed at least one hour of walking or other suitable exercise in the open air daily, if the weather permits.
- (B) Where possible, arrangements may be made with the General Director for use by detainees of indoor and outdoor sporting facilities outside the detention unit but within the host prison.

Rule 27

A properly organized programme of physical education, sport and other recreational activities shall be arranged by the Commanding Officer to ensure physical fitness, adequate exercise and recreational opportunities.

Rule 28

- A. The Commanding Officer, acting on the advice of the medical officer, shall ensure that any detainee who participates in such a programme is physically fit to do so.
- (B) Special arrangements shall be made, under medical direction, for remedial or therapeutic treatment for any detainee who is unable to participate in the regular programme.

Medical services

Rule 29

- (A) The medical services of the host prison, including psychiatric and dental care, shall be fully available to detainees, subject to any practical arrangements made with the General Director.
- (B) A person capable of providing first-aid shall be present at the detention unit at all times.

Rule 30

- (A) Detainees may be visited by, and consult with, a doctor or dentist of their choice at their own expense. All such visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63.
- (B) The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.
- C. Any treatment or medication recommended by such a doctor or dentist shall be administered solely by the medical officer or his deputy. The medical officer may, in his sole discretion, refuse to administer any such treatment or medication.

Rule 31

Detainees who require specialist or in-patient treatment shall be treated within the host prison to the fullest extent possible or transferred to a civil hospital.

Rule 32

- (A) The Registrar shall be informed immediately upon the death or serious illness or injury of a detainee. The Registrar shall immediately inform the spouse or nearest relative of the detainee and shall, in any event, inform any other person previously designated by the detainee.
- (B) In the event of the death of a detainee, an inquest will be conducted in accordance with the legal requirements of the Host State.
- C. The President may order an inquiry into the circumstances surrounding the death or serious injury of any detainee.

Rule 33

The medical officer shall have the care of the physical and mental health of the detainees and shall see, on a daily basis or more often if necessary, all sick detainees, all who complain of illness and any detainee to whom his attention is specially directed.

Rule 34

- (A) The medical officer shall report to the Commanding Officer whenever he considers that the physical or mental health of a detainee has been or will be adversely affected by any condition of his detention.
- (B) The Commanding Officer shall immediately submit the report to the Registrar who, after consultation with the President, shall take all necessary action.

Rule 35

A competent authority appointed by the Tribunal pursuant to Rule 6 shall regularly inspect the detention unit and advise the Commanding Officer and the Registrar upon:

- (i) the quantity, quality, preparation and serving of food;
- (ii) the hygiene and cleanliness of the detention unit and of the detainees;
- (iii) the sanitation, heating, lighting and ventilation of the detention unit;
- (iv) the suitability and cleanliness of the detainees' clothing and bedding.

Rule 36

The Registrar shall, if he concurs with the recommendations made, take immediate steps to give effect to those recommendations; if he does not concur with them, he shall immediately submit both a personal report and a copy of the recommendations to the Tribunal.

Rule 36 bis

- (A) The Commanding Officer of the Detention Unit may decide upon the search of a detainee's cell if he suspects that the cell contains an item which constitutes a threat to the security or good order of the detention unit or the host prison, or the health and safety of any person therein. Any such items found in the cell of the detainee shall be confiscated pursuant to Rule 78.
- (B) Following a search of a detainee's cell the Commanding Officer shall inform the detainee in writing that his cell was searched and shall specify any items that were confiscated. A copy of this letter shall be forwarded to the Registrar and to the President.

Rule 36 ter

- (A) In exceptional circumstances, in order to protect the health or the safety of the detainee, the Registrar, with the approval of the President, may order that the cell of the detainee be monitored by video surveillance equipment for a period not exceeding thirty days.
- (B) Renewals which shall not exceed a period of thirty days shall be reported to the President.
- (C) The detainee shall be notified of the Registrar's decision within twenty-four hours, and may at any time request the President to reverse any such decision by the Registrar.

Discipline

Rule 37

Discipline and order shall be maintained by the staff of the detention unit in the interests of safe custody and the well-ordered running of the detention unit.

Rule 38

The Commanding Officer, in consultation with the Registrar, shall issue regulations:

- (i) defining conduct constituting a disciplinary offence;
- (ii) regulating the type of punishment that can be imposed;
- (iii) specifying the authority that can impose such punishment;
- (iv) providing for a right of appeal to the President.

Rule 39

The disciplinary regulations shall provide a detainee with the right to be heard on the subject of any offence which he is alleged to have committed.

Segregation

Rule 40

The Registrar, acting on the request of the Prosecutor, or on his own initiative, and after seeking medical advice, may order that a detainee be segregated from all or some of the other detainees so as to avoid any potential conflict within the detention unit, or danger to the detainee in question.

Rule 41

- (A) At any time, the Commanding Officer may order that a detainee be segregated from some or all of the other detainees for
- (i) the preservation of security and good order in the detention unit; or,
 - (ii) the protection of the detainee in question.
- (B) The Commanding Officer shall report all incidents of segregation to the medical officer who shall confirm the physical and mental fitness of the detainee for such segregation.
- (C) Segregation shall not be used as a disciplinary measure.

Rule 42

- (A) A detainee may ask to be segregated from all or some of the other detainees.
- (B) Upon receipt of such a request, the Commanding Officer shall consult the medical officer to determine whether such segregation is medically acceptable. A request for segregation will be granted unless, in the opinion of the medical officer, such segregation would be injurious to the mental or physical health of the detainee.

Rule 43

- Commanding Officer shall review all cases of individual segregation of detainees at least once a week and report to the Registrar thereon.

Rule 44

- (A) The Commanding Officer may organize the use of communal areas of the detention unit so as to segregate certain groups of detainees from others in the interests of the safety of the detainees and the proper conduct and operation of the detention unit.
- (B) If such segregation is put into practice, care shall be taken to ensure that all such groupings are treated on an equal basis, having regard to the number of detainees falling within each group.
- (C) All such segregations must be reported to the Tribunal, which may vary the nature, basis or conditions of such segregation.

Isolation unit

Rule 45

- (A) A detainee may be confined to the isolation unit only in the following circumstances:
- (i) by order of the Registrar, acting in consultation with the President; such an order may be based upon a request from any interested person, including the Prosecutor;
 - (ii) by order of the Commanding Officer in order to prevent the detainee from inflicting injury on other detainees or to preserve the security and good order of the detention unit;
 - (iii) as a punishment pursuant to Rule 38.
- (B) A record shall be kept of all events concerning a detainee confined to the isolation unit.

Rule 46

- (A) All cases of use of the isolation unit shall be reported to the medical officer who shall confirm the physical and mental fitness of the detainee for such isolation.
- (B) A detainee who has been confined to the isolation unit shall be visited by the medical officer or his deputy as often as the medical officer deems necessary.

Rule 47

A detainee who has been confined to the isolation unit may at any time request a visit from the medical officer, such visit to be made as soon as possible and, in any event, within twenty-four hours of the request.

Rule 48

- (A) All cases of use of the isolation unit shall be reported to the Registrar immediately, who shall report the matter to the President.
- (B) The President may order the release of a detainee from the isolation unit at any time.

Rule 49

In principle, no detainee may be kept in the isolation unit for more than seven consecutive days. If further isolation is necessary, the Commanding Officer shall report the matter to the Registrar before the end of the seven-day period and the medical officer shall confirm the physical and mental fitness of the detainee to continue such isolation for a further period not to exceed seven days. Each and every extension of use of the isolation unit shall be subject to the same procedure.

Instruments of restraint and the use of force

Rule 50

(A) Instruments of restraint, such as handcuffs, shall only be used in the following exceptional circumstances:

- (i) as a precaution against escape during transfer from the detention unit to any other place, including access to the premises of the host prison for any reason;
- (ii) on medical grounds by direction and under the supervision of the medical officer;
- (iii) to prevent a detainee from self-injury, injury to others or to prevent serious damage to property.

(B) In all incidents involving the use of instruments of restraint, the Commanding Officer shall consult the medical officer and report to the Registrar, who may report the matter to the President.

Rule 51

Instruments of restraint shall be removed at the earliest possible opportunity.

Rule 52

If the use of any instrument of restraint is required under Rule 50, the restrained detainee shall be kept under constant and adequate supervision.

Rule 53

(A) The staff of the detention unit shall not use force against a detainee except:

- (i) in self-defence; or,
- (ii) in cases of:
 - (a) attempted escape; or
 - (b) active or passive resistance to an order based upon these Rules of Detention or any regulations issued hereunder.

(B) Staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the Commanding Officer, who shall provide a report on the matter to the Registrar.

Rule 54

(A) A detainee against whom force has been used shall have the right to be examined immediately and treated, if necessary, by the medical officer. The medical examination shall be conducted in private and in the absence of any non-medical staff.

(B) The results of the examination, including any relevant statement by the detainee and the medical officer's opinion, shall be formally recorded and made available to:

- (i) the detainee, in a language accessible to him;
- (ii) the Commanding Officer;
- (iii) the Registrar;
- (iv) the President; and,
- (v) the Prosecutor.

Rule 55

A record shall be kept of every instance of the use of force against a detainee.

Disturbances

Rule 56

- (A) If, in the opinion of the Commanding Officer, a situation exists or is developing which threatens the security and good order of the detention unit, the Commanding Officer shall contact the General Director who will request the immediate assistance of the authorities of the Host State to maintain control within the detention unit.
- (B) All such requests shall be reported to the Registrar and the President immediately.

Suspension of the Rules of Detention

Rule 57

- (A) If there is serious danger of disturbances occurring within the detention unit or the host prison, the Commanding Officer or the General Director, as appropriate, may temporarily suspend the operation of all or part of these Rules of Detention for a maximum of two days.
- (B) Any such suspension must be reported to the Registrar immediately, who shall in turn report the matter to the President.
- (C) Thereupon, the President, acting in consultation with the Bureau, shall consult with the relevant authorities of the Host State and take such action in connection therewith as may be seen fit at the time.

Information to detainees

Rule 58

In addition to the copies of these Rules of Detention and any regulations to be provided to each detainee pursuant to Rule 8, each detainee shall on admission be provided with written information in the working languages of the Tribunal or in his own language concerning:

- (i) the rights and treatment of detainees;
- (ii) the disciplinary requirements of the detention unit;
- (iii) the authorized methods of seeking information and making complaints; and,
- (iv) all other matters necessary to enable him to understand both his rights and obligations and to adapt himself to the routine of the detention unit.

Rule 59

At any time at which there is a detainee in the detention unit who speaks and understands neither of the working languages of the Tribunal nor that spoken by any of the staff of the detention unit, arrangements shall be made for an interpreter to be available on reasonable notice and, in any event, in cases of emergency, to permit the detainee to communicate freely with the staff and administration of the detention unit.

RIGHTS OF DETAINEES

Communications and visits

Rule 60

- (A) Subject to the provisions of Rule 66, detainees shall be entitled, under such conditions of supervision and time-restraints as the Commanding Officer deems necessary, to communicate with their families and other persons with whom it is in their legitimate interest to correspond by letter and by telephone at their own expense.
- (B) In the case of a detainee who lacks financial means, the Registrar may agree that the Tribunal will bear such expenses within reason.

Rule 61

- (A) All correspondence and mail, including packages, shall be inspected for explosives or other irregular material.
- (B) The Commanding Officer, in consultation with the Registrar, shall lay down conditions as to the inspection of correspondence, mail and packages in the interests of maintaining order in the detention unit and to obviate the danger of escape.

Rule 62

A detainee shall be informed at once of the death or serious illness of any near relative.

Rule 63

- (A) Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rule 66 and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and

supervision must be necessary in the interests of the administration of justice or the security and good order of the host prison and the detention unit.

(B) The Registrar may refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.

(C) All visitors must comply with the separate requirements of the visiting regime of the host prison. These restrictions may include personal searches of clothing and X-ray examination of possessions on entry to either or both of the detention unit and the host prison.

D. Any person, including defence counsel for a detainee or a diplomatic or consular representative accredited to the Host State, who refuses to comply with such requirements, whether of the detention unit or of the host prison, may be refused access.

Rule 64

A detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.

Rule 65

Detainees shall be allowed to communicate with and receive visits from the diplomatic and consular representative accredited to the Host State of the State to which they belong or, in the case of detainees who are without diplomatic or consular representation in the Host State and refugees or stateless persons, with the diplomatic representative accredited to the Host State of the State which takes charge of their interests or of a national or international authority whose task it is to serve the interests of such persons.

Rule 66

(A) The Prosecutor may request the Registrar or, in cases of emergency, the Commanding Officer, to prohibit, regulate or set conditions for contact between a detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact:

- (i) is for the purposes of attempting to arrange the escape of the detainee from the detention unit;
- (ii) could prejudice or otherwise affect the outcome of:

- (a) the proceedings against the detainee; or,
- (b) any other investigation;

- (iii) could be harmful to the detainee or any other person; or,
- (iv) could be used by the detainee to breach an order for non-disclosure made by a Judge or a Chamber pursuant to Rule 53 or Rule 75 of the Rules of Procedure and Evidence.

(B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.

(C) A detainee may at any time request the President to deny or reverse a request for prohibition of contact made by the Prosecutor under this rule.

Legal assistance

Rule 67

(A) Each detainee shall be entitled to communicate fully and without restraint with his defence counsel, with the assistance of an interpreter where necessary. All such correspondence and communications shall be privileged.

(B) Unless such counsel and interpreter have been provided by the Tribunal on the basis of the indigency of the detainee, all such communications shall be at the expense of the detainee.

(C) All visits shall be made by prior arrangement with the Commanding Officer as to the time and duration of the visit and shall be subject to the same security controls as are imposed under Rule 63. The Commanding Officer shall not refuse a request for such a visit without reasonable grounds.

(D) Interviews with legal counsel and interpreters shall be conducted in the sight but not within the hearing, either direct or indirect, of the staff of the detention unit.

Spiritual welfare

Rule 68

Every detainee shall be entitled to indicate, on arrival at the detention unit or thereafter, whether he wishes to establish contact with any of the ministers or spiritual advisers of the host prison.

Rule 69

- (A) A qualified representative of each religion or system of beliefs held by any detainee shall be appointed and approved by the Bureau.
- (B) Such representative shall be permitted to hold regular services and activities within the detention unit and to pay pastoral visits to any detainee of his religion, subject to the same considerations of the security and good order of the detention unit and of the host prison as apply to other visits.

Rule 70

- (A) Access to a representative of any religion shall not be refused to any detainee, subject only to the same restrictions and conditions provided for in Rule 63.
- (B) A detainee may refuse to see any such religious representative.

Rule 71

- (A) So far as is practicable, every detainee shall be allowed to satisfy the needs of his religious, spiritual and moral life by attending services or meetings held in the detention unit and having in his possession any necessary books or literature.
- (B) By arrangement with the General Director, a detainee may, on request, be permitted to visit any religious facility within the grounds of the host prison.

Work programme

Rule 72

The Commanding Officer, after consultation with the General Director, and as far as is practicable, shall institute a work programme to be performed by detainees either in the individual cell units or in the communal areas of the detention unit.

Rule 73

- (A) Detainees shall be offered the opportunity to enrol in such work programme but shall not be required to work.
- (B) A detainee who chooses to work shall be paid for his work at rates to be established by the Commanding Officer in consultation with the Registrar and may use part of his earnings to purchase articles for his own use pursuant to Rule 82. The balance of any monies earned shall be held to his account in accordance with Rule 14.

Recreational activities

Rule 74

Detainees shall be allowed to procure at their own expense books, newspapers, reading and writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the detention unit and of the host prison.

Rule 75

- (A) In particular, detainees shall be entitled to keep themselves regularly informed of the news by reading newspapers, periodicals and other publications and by radio and television broadcasts, all necessary equipment to be provided at their own expense.
- (B) The Commanding Officer may refuse the installation of any such equipment which he considers to be a potential risk to the safety and good order of the detention unit or to any of the detainees.

Rule 76

- (A) If, in the opinion of the Prosecutor, the interests of justice would not be served by allowing a particular detainee unrestricted access to the news, or that such unrestricted access could prejudice the outcome of the proceedings against the detainee or of any other investigation, the Prosecutor may request the Registrar, or in cases of urgency, the Commanding Officer to restrict such access.
- (B) If the request is made to the Commanding Officer on grounds of urgency, the Prosecutor shall immediately inform the Registrar of the request, together with the reasons therefor. The detainee shall immediately be informed of the fact of any such request.
- (C) A detainee may at any time request the President to deny or reverse such a request for restriction of access.

Rule 77

By arrangement with the General Director, detainees may use the library and such vocational or other facilities of the host prison as may be made available.

Personal possessions of detainees

Rule 78

- (A) A detainee may keep in his possession all clothing and personal items for his own use or consumption unless, in the opinion of the Commanding Officer or the General Director, such items constitute a threat to the security or good order of the detention unit or the host prison, or to the health or safety of any person therein.
- (B) All items so removed shall be retained by the staff of the detention unit as provided for in Rule 14.

Rule 79

- (A) Any item received from outside, including any item introduced by any visitor to a detainee, shall be subject to separate security controls by both the detention unit and the host prison and may be transported through the host prison to the detention unit by staff of either the detention unit or of the host prison.
- (B) The Commanding Officer or the General Director may refuse to receive any item intended for consumption by detainees.

Rule 80

As far as practicable, any item received for a detainee from outside shall be treated as provided for in Rule 14 unless intended and permitted under these Rules of Detention and the rules of the host prison for use during imprisonment.

Rule 81

- (A) The possession and use of any medication shall be subject to the control and supervision of the medical officer.
- (B) Detainees may possess cigarettes and smoke them at such times and places as the Commanding Officer permits.
- (C) The possession or consumption of alcohol is not permitted.

Rule 82

- (A) Each detainee shall be authorized to spend his own money to purchase items of a personal nature from the store operated by the host prison.
- (B) In the case of a detainee who lacks financial means, the Registrar may authorize the purchase of such items, within reason, for the account of the Tribunal.
- (C) Detainees shall have the right to purchase such items within seven days of arrival and at least once a week thereafter.

Rule 83

On release of the detainee from the detention unit, or transfer to another institution, all articles and money retained within the detention unit shall be returned to the detainee except in so far as he has been authorized to spend money or send such property out of the detention unit, or it has been found necessary on hygienic grounds to destroy any article of clothing. The detainee shall sign a receipt for the articles and money returned to him.

Complaints

Rule 84

Each detainee may make a complaint to the Commanding Officer or his representative at any time.

Rule 85

A detainee, if not satisfied with the response from the Commanding Officer, has the right to make a written complaint, without censorship, to the Registrar, who shall forward it to the President.

Rule 86

Each detainee may freely communicate with the competent inspecting authority. During an inspection of the detention unit, the detainee shall have the opportunity to talk to the inspector out of the sight and hearing of the staff of the detention unit.

Rule 87

The right of complaint shall include confidential access to the relevant authority pursuant to Rule 85.

Rule 88

Every complaint made to the Registrar shall be acknowledged within twenty-four hours. Each complaint shall be dealt with promptly and replied to

without delay and, in any event, no later than two weeks of receipt.

REMOVAL AND TRANSPORT OF DETAINEES

Rule 89

When detainees are being removed to or from the detention unit, they shall be exposed to public view as little as possible and all proper safeguards shall be adopted to protect them from insult, injury, curiosity and publicity in any form.

Rule 90

Detainees shall at all times be transported in vehicles with adequate ventilation and light and in such a way as will not subject them to unnecessary physical hardship or indignity.

Rule 91

The transport of detainees through the host prison shall be conducted jointly by personnel of the detention unit and of the host prison.

AMENDMENT OF THE RULES OF DETENTION

Rule 92

(A) Proposals for amendment of the Rules of Detention may be made by a Judge, the Prosecutor or the Registrar and shall be adopted if agreed to by not less than nine Judges at a plenary meeting of the Tribunal convened with notice of the proposal addressed to all Judges.

(B) An amendment to the Rules of Detention may be otherwise adopted, provided it is unanimously approved by the Judges.

(C) An amendment shall enter into force seven days after the date of issue of an official Tribunal document containing the amendment.

UNITED NATIONS DETENTION UNIT

REGULATIONS FOR THE ESTABLISHMENT OF A DISCIPLINARY PROCEDURE FOR DETAINEES

ISSUED BY THE REGISTRAR IN
APRIL 1995

(IT 97)

Regulations for the establishment of a disciplinary procedure for detainees

Issued by the Commanding Officer and the Registrar pursuant to Rules 38 - 39 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention").

Disciplinary Procedures

These Regulations are subject to the provisions of the Rules of Detention of the Tribunal and, where applicable, its Rules of Procedure and Evidence.

1. No detainee may be punished except in accordance with these Regulations and never twice for the same act.

2. The following conduct shall constitute a disciplinary offence:

failure to obey an order or instruction given by a member of the staff of the detention unit;
verbal abuse directed against a member of the staff of the detention unit, another detainee or any lawful visitor to the detention unit;
violent behaviour or aggression towards a member of the staff of the detention unit, another detainee or any lawful visitor to the detention unit;
possession of any illegal object or substance;
repeated misconduct after a warning has been given pursuant to paragraph 7 of these Regulations.

3. If a detainee refuses to obey any order or instruction given by a member of the staff of the detention unit, the Commanding Officer shall be called immediately and, in accordance with these Regulations, shall determine whether the detainee is justified in refusing to obey such order or instruction. The Commanding Officer's determination may be formally challenged by way of the complaints procedure.

4. All instances of misconduct shall be reported to the Commanding Officer immediately and a record shall be kept of the time and full details of the offence.

5. The member of staff who has witnessed or been involved in the alleged incident may impose temporary punishment, such as restriction to the detainee's cell or removal of the offending item, until the Commanding Officer or the senior officer on duty can be summoned, such period not to exceed one hour during daytime or eight hours at night. The Commanding Officer or senior officer on duty may continue, vary or revoke any such temporary punishment pending completion of examination of the incident pursuant to Regulation 6 of these Regulations, provided however, that the period of such temporary punishment shall not exceed twelve hours in total.

6. The Commanding Officer shall conduct a thorough examination of the incident before imposing any punishment other than a temporary punishment pursuant to Regulation 5 of these Regulations. As part of such examination, the alleged incident of misconduct shall be explained to the detainee by the Commanding Officer, through an interpreter if necessary, and the detainee shall be given the opportunity to explain his behaviour.

7. The Commanding Officer may impose any of the following punishments, or all or any combination thereof, as he thinks fit:

confiscation of an offending item;
removal or reduction of privileges or use of personal possessions, e.g., television, radio, books, for a period not exceeding one week;
oral or written warning;
written notice of suspended punishment to come into effect immediately upon a further breach of these regulations within a period of not more than two weeks from the date of the initial offence;
monetary fine, to be paid from the detainee's personal funds;
confinement in isolation, subject to the express provisions of Rules 45 - 49 of the Rules of Detention.

8. Each punishment shall be recorded and explained to the detainee in a language he understands. A written copy of the punishment and the reasons therefor shall be given to the detainee in one of the working languages of the Tribunal forthwith; if he does not understand the language in which the statement of punishment is written, a translation into a language he understands shall be provided to the detainee as soon as possible and, in any event, not later than twelve hours after the imposition of the punishment.

9. A detainee may appeal to the President of the Tribunal both against the determination of a disciplinary offence and against the punishment imposed. The detainee must advise the Commanding Officer of his wish to appeal within twenty-four hours of the incident or of the punishment being imposed, whichever is later. Such notice may be given orally and the Commanding Officer shall record the request and notify the Registrar immediately. The Registrar shall forward details of the appeal to the President within twenty-four hours. The appeal proceedings may be conducted orally or in writing, as the President may determine.

10. Counsel for the detainee may assist the detainee in connection with any such appeal.

11. Any punishment imposed by the Commanding Officer shall continue in full force and effect pending appeal.

12. The President shall notify the detainee of the outcome of the appeal in writing, in a language he understands, within three days of receipt by him. The President may order the restoration of confiscated articles or privileges, repayment of any fine imposed, cancellation of any warning or suspended sentence or immediate release from isolation. The President may take any other action he sees fit in the circumstances.

UNITED NATIONS DETENTION UNIT

REGULATIONS FOR THE ESTABLISHMENT OF A COMPLAINTS PROCEDURE FOR DETAINEES

ISSUED BY THE REGISTRAR IN
APRIL 1995

(IT/96)

Regulations for the Establishment of a Complaints Procedure for Detainees

Issued by the Registrar pursuant to Rules 84 - 88 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention").

Complaints Procedure

1. A detainee may make an oral or written complaint or request concerning the conditions of his detention direct to the Commanding Officer or his representative at any time. A daily log shall be kept of all such complaints and of the action taken in respect thereof.
2. If, in the opinion of the Commanding Officer, the complaint is justified and it is within the power of the Commanding Officer to rectify the matter complained of, the Commanding Officer shall advise the detainee accordingly and shall take action to rectify the matter as soon as practicable.
3. If, in the opinion of the Commanding Officer, the complaint is justified but the power to rectify it does not lie with the Commanding Officer or the Commanding Officer does not believe the complaint is justified, the Commanding Officer shall advise the detainee accordingly. The detainee may then make a formal complaint to the Registrar in accordance with these Regulations.
4. A detainee may make a formal complaint concerning the conditions of his detention, including an alleged breach of the Rules of Detention or of any Regulations adopted thereunder, to the Registrar at any time, whether or not such complaint has already been raised with the Commanding Officer, provided that not more than two weeks have elapsed since the incident complained of. The complaint shall not be read or censored by the staff of the prison unit and shall be passed to the Registrar without delay.
5. Counsel for the detainee may assist the detainee in connection with any formal complaint.
6. The Registrar shall acknowledge receipt of all formal complaints within twenty-four hours of receipt.
7. The Registrar shall examine the substance of the complaint and determine whether it should be dealt with by the Registrar, being a complaint about an administrative matter or a matter of general concern, or whether it relates to an alleged breach of the rights of the individual detainee, in which case it shall be referred to the President for consideration. The Registrar shall, in any event, forward a copy of each and every complaint to the President. The Registrar shall advise the detainee of his decision and shall inform the detainee of the time-frame, being not more than two weeks, in which he may expect determination of the complaint. If the detainee is not satisfied with the Registrar's classification of the matter, he may, within one week of receipt of the Registrar's determination, request the Registrar to put the matter to the President for a final decision as to who should handle the complaint.
8. The Registrar or the President shall investigate the complaint promptly and efficiently and shall seek the views of all relevant persons or bodies, including the Commanding Officer. The detainee shall be permitted to communicate freely and without censorship on the matter with the Registrar during this period and the Registrar shall, where appropriate, pass all such communications to the President without delay.
9. The Registrar shall respond to the complaint on his own behalf or on behalf of the President within one week of receipt where possible and, in any event, not more than two weeks from receipt. If the complaint is justified, action to rectify it shall be taken within that two-week period if possible and the detainee advised accordingly. If the complaint is justified but will take longer than two weeks to rectify, the Registrar shall notify both the detainee and the President and shall keep them informed, on a weekly basis, of the action that is being taken.
10. If the complaint is found to be justified and is capable of rectification, the Registrar shall implement such rectification as soon as practicable. Rectification may include cancellation, reversal or revision of a previous decision relating to the conditions of detention of the detainee. If the complaint is found to be justified but is not susceptible to practical rectification, the Registrar may, in consultation with the President, take whatever action he sees fit and is empowered to exercise.
11. If the Registrar or the President finds the complaint to be unfounded, the Registrar shall notify the detainee in writing, giving reasons for rejection of the complaint.
12. Rejection of a complaint by the Registrar or the President does not bar the detainee from raising such complaint again. In such cases, the

Regulations for the Establishment of a Complaints Procedure for Detainees

Registrar, in consultation with the President, may reject the complaint without further enquiry if it reveals no additional matters not already considered.

13. In addition to the above, a detainee may, at any time during an inspection of the detention unit by inspectors appointed by the Tribunal, raise a complaint concerning the conditions of his detention with the inspectors and shall be entitled to talk with such inspectors out of the sight and hearing of the staff of the detention unit.

2

UNITED NATIONS DETENTION UNIT
REGULATIONS FOR THE ESTABLISHMENT OF A COMPLAINTS
PROCEDURE FOR DETAINEES

(ISSUED APRIL 1995)

QUARTIER PÉNITENTIAIRE DES NATIONS UNIES
RÈGLEMENT FIXANT LES MODALITÉS DE DÉPÔT
D'UNE PLAINTÉ PAR UN DÉTENU

(ETABLI EN AVRIL 1995)

(IT/96)

UNITED NATIONS DETENTION UNIT
REGULATIONS FOR THE ESTABLISHMENT OF A COMPLAINTS
PROCEDURE FOR DETAINEES

(IT/96)

*Issued by the Registrar
April 1995*

Regulations for the Establishment of a Complaints Procedure for Detainees

Issued by the Registrar pursuant to Rules 84 - 88 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention").

Complaints Procedure

1. A detainee may make an oral or written complaint or request concerning the conditions of his detention direct to the Commanding Officer or his representative at any time. A daily log shall be kept of all such complaints and of the action taken in respect thereof.
2. If, in the opinion of the Commanding Officer, the complaint is justified and it is within the power of the Commanding Officer to rectify the matter complained of, the Commanding Officer shall advise the detainee accordingly and shall take action to rectify the matter as soon as practicable.
3. If, in the opinion of the Commanding Officer, the complaint is justified but the power to rectify it does not lie with the Commanding Officer or the Commanding Officer does not believe the complaint is justified, the Commanding Officer shall advise the detainee accordingly. The detainee may then make a formal complaint to the Registrar in accordance with these Regulations.
4. A detainee may make a formal complaint concerning the conditions of his detention, including an alleged breach of the Rules of Detention or of any Regulations adopted thereunder, to the Registrar at any time, whether or not such complaint has already been raised with the Commanding Officer, provided that not more than two weeks have elapsed since the incident complained of. The complaint shall not be read or censored by the staff of the prison unit and shall be passed to the Registrar without delay.
5. Counsel for the detainee may assist the detainee in connection with any formal complaint.
6. The Registrar shall acknowledge receipt of all formal complaints within twenty-four hours of receipt.
7. The Registrar shall examine the substance of the complaint and determine whether it should be dealt with by the Registrar, being a complaint about an administrative matter or a matter of general concern, or whether it relates to an alleged breach of the rights of the individual detainee, in which case it shall be referred to the President for consideration. The Registrar shall, in any event, forward a copy of each and every complaint to the President. The Registrar shall advise the detainee of his decision and shall inform the detainee of the time-frame, being not more than two weeks, in which he may expect determination of the complaint. If the detainee is not satisfied with the Registrar's classification

of the matter, he may, within one week of receipt of the Registrar's determination, request the Registrar to put the matter to the President for a final decision as to who should handle the complaint.

8. The Registrar or the President shall investigate the complaint promptly and efficiently and shall seek the views of all relevant persons or bodies, including the Commanding Officer. The detainee shall be permitted to communicate freely and without censorship on the matter with the Registrar during this period and the Registrar shall, where appropriate, pass all such communications to the President without delay.

9. The Registrar shall respond to the complaint on his own behalf or on behalf of the President within one week of receipt where possible and, in any event, not more than two weeks from receipt. If the complaint is justified, action to rectify it shall be taken within that two-week period if possible and the detainee advised accordingly. If the complaint is justified but will take longer than two weeks to rectify, the Registrar shall notify both the detainee and the President and shall keep them informed, on a weekly basis, of the action that is being taken.

10. If the complaint is found to be justified and is capable of rectification, the Registrar shall implement such rectification as soon as practicable. Rectification may include cancellation, reversal or revision of a previous decision relating to the conditions of detention of the detainee. If the complaint is found to be justified but is not susceptible to practical rectification, the Registrar may, in consultation with the President, take whatever action he sees fit and is empowered to exercise.

11. If the Registrar or the President finds the complaint to be unfounded, the Registrar shall notify the detainee in writing, giving reasons for rejection of the complaint.

12. Rejection of a complaint by the Registrar or the President does not bar the detainee from raising such complaint again. In such cases, the Registrar, in consultation with the President, may reject the complaint without further enquiry if it reveals no additional matters not already considered.

13. In addition to the above, a detainee may, at any time during an inspection of the detention unit by inspectors appointed by the Tribunal, raise a complaint concerning the conditions of his detention with the inspectors and shall be entitled to talk with such inspectors out of the sight and hearing of the staff of the detention unit.

UNITED NATIONS DETENTION UNIT

REGULATIONS TO GOVERN THE SUPERVISION OF VISITS TO AND COMMUNICATIONS WITH DETAINEES

(ISSUED BY THE REGISTRAR IN APRIL 1995)
(AS AMENDED JUNE 1995)
(AS AMENDED JANUARY 1997)
(AS AMENDED SEPTEMBER 1997)
(AS AMENDED NOVEMBER 1997)
(AS AMENDED JULY 1999)

(IT/98/REV. 3)

REGULATIONS TO GOVERN THE SUPERVISION OF VISITS TO AND COMMUNICATIONS WITH THE DETAINEES

PREAMBLE

Issued by the Registrar of the Tribunal and the Commanding Officer pursuant to Rules 61 and 63 of the Rules Governing the Detention of Persons waiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal ("Rules of Detention").

These Regulations are subject to the provisions of the Rules of Detention of the Tribunal and, where applicable, to its Rules of Procedure and Evidence. In particular, the rights of a detainee in respect of visits or communications are subject to any order prohibiting contact between the detainee and any other person made pursuant to Rule 66 of the Rules of Detention.

MAIL

Regulation 1

A detainee has the right to send and receive mail to or from any person, subject to the following Regulations.

Regulation 2

All mail entering or leaving the detention unit shall be inspected for explosives or irregular material by using X-ray and metal and explosives detectors.

Regulation 3

Incoming mail will be inspected both on delivery to the host prison and to the United Nations detention unit.

Regulation 4

(A) The Commanding Officer may confiscate any item which, in his opinion, constitutes a threat to:

- (i) the security or good order of the detention unit or the host prison; or,
- (ii) the health or safety of any person therein.

(B) Any such item confiscated by the Commanding Officer shall be retained or disposed of in accordance with Rule 14 of the Rules of Detention.

Regulation 5

(A) Materials for outgoing mail, including postage, shall be for the cost of the detainee or, in the case of a detainee who lacks financial means as determined by the Registrar, shall be provided upon confirmation from the Registrar that such costs shall be borne by the Tribunal.

(B) The Registrar may impose reasonable limits on the amount and weight of correspondence sent by any detainee who lacks financial means as determined by the Registrar.

(C) A detainee who lacks financial means as determined by the Registrar may at any time request the President to vary any such restrictions imposed by the Registrar.

Regulation 6

All incoming and outgoing mail shall be subject to review by the Registrar, other than items addressed to or sent by:

- (i) counsel for the detainee;
- (ii) the Tribunal;
- (iii) the Inspecting Authority; or,
- (iv) the diplomatic or consular representative accredited to the Host State of the State to which the detainee belongs or which takes charge of his interests.

Regulation 7

(A) The Commanding Officer shall forward to the Registrar all incoming and outgoing mail to or from a detainee, other than that addressed to or from:

- (i) counsel for the detainee;
- (ii) the Tribunal;
- (iii) the Inspecting Authority; or,
- (iv) the diplomatic or consular representative accredited to the Host State of the State to which the detainee belongs or which takes charge of his interests.

(B) A log of all such mail shall be kept by the Commanding Officer, with details of the name of the detainee, the name of the sender (if known) or of the addressee and the date on which it was sent to the Registrar.

(C) A copy of each entry shall be given to the detainee in a language he understands.

Regulation 8

(A) The Registrar, or a person authorised by him, shall, within twenty-four hours of receipt, open and read, or have read, each item of mail.

(B) Items of opened mail shall be delivered to the detainee or posted to the addressee immediately thereafter and the detainee informed accordingly unless the item:

- (i) is in breach of:
 - (a) the Rules of Detention;
 - (b) these Regulations; or,
 - (c) an Order of the Tribunal;
- (ii) gives reasonable grounds to the Registrar, or a person authorised by him, to believe that the detainee may be attempting to:
 - (a) arrange escape;
 - (b) interfere with or intimidate a witness;
 - (c) interfere with the administration of justice; or,
 - (d) otherwise disturb the security and good order of the detention unit.

Regulation 9

(A) If the Registrar, or a person authorised by him, finds there to have been a breach of the Rules of Detention, these Regulations or an Order of the Tribunal, an offending item of:

(i) outgoing mail shall be returned to the detainee together with a note from the Registrar, in a language the detainee understands, giving the reasons for refusal to post the offending item;

(ii) incoming mail shall, in the sole discretion of the Registrar, either be returned to the sender or retained by the Registrar and the detainee shall be informed accordingly.

(B) Detainees shall be given the opportunity to rewrite items of outgoing mail omitting the offending part.

(C) A copy shall be kept by the Registrar of all offending items and any offending enclosure may be confiscated.

(D) The Registrar may also notify the Prosecutor, the Commanding Officer and, if deemed necessary, the Dutch authorities of the breach and of the nature of the offending item.

Regulation 10

 detainee may at any time request the President to reverse any decision by the Registrar taken under Regulation 9(A).

Regulation 11

(A) Correspondence addressed to or from counsel for the detainee shall not be interfered with in any manner unless the Commanding Officer or the Registrar has reasonable grounds for believing that this facility is being abused in an attempt to:

(i) arrange escape;

(ii) interfere with or intimidate a witness;

(iii) interfere with the administration of justice; or,

(iv) otherwise disturb the good order of the detention unit.

(B) In any such case, the Commanding Officer shall immediately forward the item in question to the Registrar, unopened, and shall enter details of the interception in the log referred to above and notify the detainee accordingly.

 (C) The Registrar shall contact the counsel to whom the item is addressed or by whom it was sent and request counsel to open the item in his presence.

(D) Counsel may be required to explain to the Registrar, in one of the working languages of the Tribunal, the nature of the item and to hand over any offending item or enclosure.

Regulation 12

(A) Any item which is copied or confiscated under Regulation 9(C) shall be retained by the Registrar.

(B) Such items shall not be handed over to the Prosecutor as evidence of contempt of the Tribunal pursuant to Rule 77(C) of the Rules of Procedure and Evidence without prior notice and disclosure to counsel for the detainee.

Regulation 13

A detainee whose mail has been intercepted or confiscated may make a formal complaint in accordance with the Complaints Procedure.

Regulation 14

(A) A detainee may receive parcels which will also be inspected in accordance with these Regulations.

(B) Limits may be imposed by the Registrar as to the quantity and weight of parcels received.

(C) Parcels containing items that, in the sole discretion of the Commanding Officer, pose a threat to the safety and good order of the detention unit shall be confiscated and their contents retained or disposed of in accordance with Rule 14 of the Rules of Detention and the detainee informed accordingly.

TELEPHONE CALLS

Regulation 15

The Commanding Officer may, in consultation with the Registrar, place such restrictions upon the time that a detainee may spend on any one telephone call as are reasonable for the good order of the detention unit.

Regulation 16

(A) All incoming calls for a detainee shall be received by the Commanding Officer or a member of the staff of the detention unit. Details of the call, including the name and contact telephone number of the caller and the time and date of the call shall be noted by the Commanding Officer or member of staff and passed to the detainee.

(B) The Commanding Officer may, at his sole discretion, permit a detainee to receive an incoming call in an emergency.

Regulation 17

(A) Outgoing calls may be made by a detainee, on request to the Commanding Officer, at any time from 9 a.m. to 5 p.m. on working days, subject to the reasonable demands of the daily schedule of the detention unit.

(B) In exceptional circumstances, the Commanding Officer, at his sole discretion, may permit a detainee to make calls outside these times, unless the calls of the detainee are being monitored by order of the Registrar made in accordance with Regulation 21.

Regulation 18

(A) Outgoing calls shall be for the expense of the detainee or, in the case of a detainee who lacks financial means as determined by the Registrar, upon confirmation from the Registrar that such costs shall be borne by the Tribunal.

(B) The Registrar may impose reasonable limits on the number and duration of calls made by any detainee who lacks financial means as determined by the Registrar.

(C) A detainee who lacks financial means as determined by the Registrar may at any time request the President to vary any such restrictions imposed by the Registrar.

Regulation 19

If the Commanding Officer believes that he has reasonable grounds for intervention, he may immediately terminate a call and advise the detainee of his reasons for so doing. The Commanding Officer shall also report the matter to the Registrar.

Regulation 20

Telephone conversations will not be recorded or monitored unless:

(A) the Commanding Officer or the Registrar has reasonable grounds for believing that the detainee may be attempting to:

- (i) arrange escape;
- (ii) interfere with or intimidate a witness;
- (iii) interfere with the administration of justice; or,
- (iv) otherwise disturb the maintenance of good order in the detention unit;

(B) an Order for non-disclosure has been made by a Judge or a Chamber pursuant to Rule 53 and Rule 75 of the Rules of Procedure and Evidence;

(C) specifically requested by the Prosecutor following the disclosure to the defence of the names of witnesses pursuant to Rule 67 of the Rules of Procedure and Evidence.

Regulation 21

(A) If one of the situations listed in Regulation 20 arises, the Registrar may order all telephone calls to and from that detainee, other than with counsel and diplomatic representatives, to be recorded or monitored for a period not exceeding thirty days.

(B) Renewals of the period, which shall not exceed thirty days, shall be reported to the President.

(C) The detainee and his counsel shall be notified of the Registrar's decision within twenty-four hours.

Regulation 22

The detainee may at any time request the President to reverse any decision of the Registrar taken under Regulation 21.

Regulation 23

(A) A log of all recorded or monitored calls shall be kept by the Commanding Officer, with details of the name of the detainee, the number called, the name of the other party if known, the reason for recording or monitoring and the date on which the Registrar made the relevant order.

(B) A copy of each entry shall be given to the detainee in a language he understands.

Regulation 24

Details of all recorded or monitored calls shall be forwarded to the Registrar within twenty-four hours, who shall make a determination whether to listen to, or have transcribed and read, each individual recorded call.

Regulation 25

If, having reviewed a call, the Registrar determines that there has been no breach of the Rules of Detention, these Regulations or an Order of the Tribunal and the call does not provide any other reason for further action, the tape recording of the call shall be erased within forty-eight hours.

Regulation 26

(A) If the Registrar finds there to have been a breach of the Rules of Detention, these Regulations or an Order of the Tribunal, the offending call will be transcribed by the Registry and, where necessary, translated into one of the working languages of the Tribunal.

(B) The Registrar may notify the Prosecutor, the Commanding Officer and, if deemed necessary, the Dutch authorities of the nature of the breach.

Regulation 27

(A) Any offending call which is transcribed shall be retained by the Registrar.

(B) Such transcriptions shall not be handed over to the Prosecutor as evidence of contempt of the Tribunal pursuant to Rule 77(C) of the Rules of Procedure and Evidence without prior notice and disclosure to counsel for the detainee.

Regulation 28

A detainee whose calls have been monitored may make a formal complaint in accordance with the Complaints Procedure.

VISITS

Regulation 29

The Commanding Officer shall, in consultation with the Registrar, fix the daily visiting hours for all visitors, taking into account the reasonable demands of the daily schedule of the detention unit and the facilities and staff available.

Regulation 30

(A) Subject to the regulations below, counsel may make arrangements by telephone with the Commanding Officer to visit a detainee from Monday through Friday from 9 a.m. to 5 p.m.

(B) A detainee may request a visit from his counsel outside these hours or at the weekend. Such a request shall be granted at the sole discretion of the Commanding Officer.

Regulation 31

(A) The Registrar shall automatically issue defence counsel with a written regular permit as soon as such counsel is entered on the record or assigned by the Tribunal.

(B) The Registrar may issue permits to counsel for one-time visits prior to the initial appearance of the detainee based on a written request from the detainee, identifying the counsel in question.

Regulation 32

All visitors, other than counsel or a representative of the Tribunal, shall first apply to the Registrar for permission to visit a named detainee.

Other than in exceptional circumstances, permission shall be applied for in writing in one of the working languages of the Tribunal, not later than ten working days prior to the day a visit is requested.

Regulation 33

(A) Permission shall be granted for such visits unless the Registrar or the Commanding Officer has reasonable grounds for believing that the detainee may be attempting to:

- (i) arrange escape;
- (ii) interfere with or intimidate a witness;
- (iii) interfere with the administration of justice; or,
- (iv) otherwise disturb the maintenance of good order in the detention unit.

(B) Permission may be denied if the Registrar has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media.

(C) Where permission has been granted, the Registrar shall issue the visitor with a written permit for a one-time visit. At his discretion, the Registrar may issue a visitor with a written permit for regular visits.

(D) The Commanding Officer shall be given a copy of all permits issued.

Regulation 34

Both the detainee and the visitor shall be notified in writing, by the Registrar, of any request for permission to visit which is denied, giving reasons for such refusal.

Regulation 35

The detainee may request the President to reverse any decision of the Registrar taken under paragraphs A and B of Regulation 33.

Regulation 36

The detainee must be informed of the identity of each visitor and may refuse to see any visitor other than a representative of the Prosecutor.

Regulation 37

The written permission of the Registrar, together with some official identification bearing a current photograph, must be produced by all visitors in order to gain access to the premises of the host prison and of the detention unit.

Regulation 38

All persons, including counsel and diplomatic representatives, are subject to the security requirements of the host prison, including personal searches of clothing and X-ray examination of possessions on entry, pursuant to the Agreement on Security and Order.

Regulation 39

(A) All persons, including counsel and diplomatic representatives, are also subject to personal searches of clothing, X-ray examination of possessions and other security measures as determined by the Commanding Officer, on entry to the United Nations detention unit.

(B) Searches of counsel shall not extend to reading or copying documents brought to the detention unit by counsel.

Regulation 40

(A) No visitor, other than counsel, may pass any item to a detainee during a visit.

(B) Any items intended for a detainee must be handed to the staff of the detention unit on entry and shall be dealt with as provided for in Rules 79 and 80 of the Rules of Detention.

Regulation 41

(A) Counsel may pass documents to and from a detainee during a visit. Any quantity of documents which is too large to be physically passed over by counsel to the detainee at the visiting facility shall be handed to the Commanding Officer who shall pass them unopened and unread to the detainee.

(B) All documents passed to and from a detainee in this manner shall be treated as mail for the purposes of these regulations and, in particular, Regulation 11 concerning incoming mail shall apply.

Regulation 42

(A) If the Commanding Officer believes that he has reasonable grounds for intervention, or that these Regulations are being breached in any way, he may immediately terminate the visit and advise the detainee and the visitor of his reasons for so doing.

(B) The visitor may be required to leave the detention unit and the Commanding Officer shall report the matter to the Registrar.

(C) This provision applies equally to visits by counsel.

Regulation 43

(A) All visits shall be conducted within the sight of the staff of the detention unit, save in exceptional circumstances and at the discretion of the Commanding Officer in consultation with the Registrar.

(B) Discussions between the detainee and the visitor shall not be recorded unless:

(i) the Commanding Officer has reasonable grounds for believing that the detainee may be attempting to:

(a) arrange escape;

(b) interfere with or intimidate a witness;

(c) interfere with the administration of justice; or,

(d) otherwise disturb the maintenance of good order in the detention unit;

(ii) an Order for non-disclosure has been made by a Judge or a Chamber pursuant to Rule 53 or Rule 75 of the Rules of Procedure and Evidence.

(iii) specifically requested by the Prosecutor following the disclosure to the defence of the names of witnesses pursuant to Rule 67 of the Rules of Procedure and Evidence.

Regulation 44

(A) If one of the situations listed in Regulation 43(B) arises, the Registrar may, at the request of the Commanding Officer or otherwise, order that all visits to that detainee, other than by counsel and diplomatic representatives, be recorded for a period not exceeding seven days.

(B) Renewal of the period, which shall not exceed seven days, shall be reported to the President.

(C) The detainee and his counsel shall be notified of the request and of the Registrar's decision within twenty-four hours.

Regulation 45

The detainee may at any time request the President to reverse any decision of the Registrar taken under Regulation 44.

Regulation 46

(A) A log of all recorded visits shall be kept by the Commanding Officer, with details of the name of the detainee, the name and address of the visitor, the reason for recording the visit and the date on which the Registrar made the relevant order.

(B) A copy of each entry shall be given to the detainee in a language he understands.

Regulation 47

Details of all recorded visits shall be forwarded to the Registrar within twenty-four hours, who shall make a determination whether to listen to, or have transcribed and read, each individual recorded visit.

Regulation 48

If, having reviewed a recorded visit, the Registrar determines that there has been no breach of the Rules of Detention, these Regulations or an order of the Tribunal and the recorded visit does not provide any other reason for further action, the tape recording of the recorded visit shall be erased within forty-eight hours.

Regulation 49

(A) If the Registrar finds there to have been a breach of the Rules of Detention, these Regulations or an Order of the Tribunal, the offending conversation will be transcribed by the Registry and, where necessary, translated into one of the working languages of the Tribunal.

(B) The Registrar may notify the Prosecutor, the Commanding Officer and, if deemed necessary, the Dutch authorities of the nature of the breach.

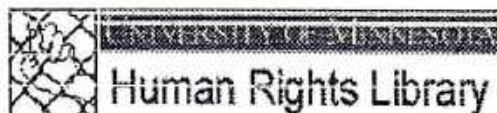
Regulation 50

(A) Any conversation which is transcribed under Regulation 49 shall be retained by the Registrar.

(B) Such transcriptions shall not be handed over to the Prosecutor as evidence of contempt of the Tribunal pursuant to Rule 77(C) of the Rules of Procedure and Evidence without prior notice and disclosure to counsel for the defence.

Regulation 51

A detainee whose visits have been recorded by order of the Registrar may make a formal complaint in accordance with the Complaints Procedure.



Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990).

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

HOME TREATIES SEARCH LINKS

van holst en steijnen

From: TARGETS - Newspaper <redactie@targets.org>
To: <n.h.van.holst@freeler.nl>
Cc: <vlada@sps.org.yu>; <Jaredl@aol.com>; <bar@idirect.com>
Sent: dinsdag 7 augustus 2001 07:12
Subject: basic rights of the prisoners

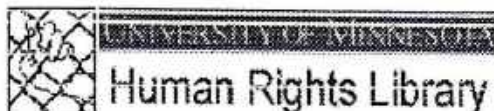
http://www.unhchr.ch/html/menu3/b/h_comp35.htm

Basic Principles for the Treatment of Prisoners

Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

© Copyright 1997 - 2000
 Office of the United Nations High Commissioner
 for Human Rights
 Geneva, Switzerland



Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

SCOPE OF THE BODY OF PRINCIPLES

These principles apply for the protection of all persons under any form of detention or imprisonment.

USE OF TERMS

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;
- (d) "Detention" means the condition of detained persons as defined above;
- (e) "Imprisonment" means the condition of imprisoned persons as defined above;
- (f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women

and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:

(a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.
3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.
4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

footnotes

* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

HOME TREATIES SEARCH LINKS



Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4.

(1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5.

(1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I

RULES OF GENERAL APPLICATION

Basic principle

6.

(1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7.

(1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register. Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

- (a) Men and women shall so far as possible be detained in separate institutions, in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

Accommodation

9.

(1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17.

(1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.



Food

20.

(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21.

(1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.



Medical services

22.

(1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23.

(1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a

nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25.

(1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26.

(1) The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;

(b) The hygiene and cleanliness of the institution and the prisoners;

(c) The sanitation, heating, lighting and ventilation of the institution;

(d) The suitability and cleanliness of the prisoners' clothing and bedding;

(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28.

(1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

(a) Conduct constituting a disciplinary offence;

(b) The types and duration of punishment which may be inflicted;

(c) The authority competent to impose such punishment.

30.

(1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a

proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32.

(1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer; (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35.

(1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36.

(1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38.

(1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41.

(1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43.

(1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition. p(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44.

(1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

- (3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45.

- (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
- (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
- (3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

46.

- (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends
- (2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
- (3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47.

- (1) The personnel shall possess an adequate standard of education and intelligence.
- (2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
- (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49.

- (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
- (2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50.

- (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.
- (2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.
- (3) He shall reside on the premises of the institution or in its immediate vicinity.

- (4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51.

(1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52.

(1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53.

(1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54.

(1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional

PART II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. PRISONERS UNDER SENTENCE

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation I of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as

incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60.

(1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63.

(1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66.

(1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

Work

71.

(1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72.

(1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73.

(1) Preferably institutional industries and farms should be operated directly by the administration and not by private

contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74.

(1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75.

(1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.

(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76.

(1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77.

(1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81.

(1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

04-09-01

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

B. INSANE AND MENTALLY ABNORMAL PRISONERS

82.

(1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

C. PRISONERS UNDER ARREST OR AWAITING TRIAL

84.

(1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners," hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85.

(1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88.

(1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security

04-09-01

and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

D. CIVIL PRISONERS

94. In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

HOME TREATIES SEARCH LINKS

Press Release . Communiqué de presse

(Exclusively for the use of the media. Not an official document)



CC/PTU/339-E

The Hague, 12 August 1998

**OPEN LETTER FROM THE DETAINEES REGARDING
THEIR CONDITIONS AT THE ICTY'S DETENTION UNIT**

At their initiative, a delegation of the detainees of the International Criminal Tribunal for the former Yugoslavia (ICTY) met with the Tribunal's Spokesman in the United Nations Detention Unit on Monday 10 and Wednesday 12 August 1998.

This delegation consisted of Mr. Zejnil Delalic, Mr. Tihomir Blaskic, Mr. Dario Kordic and Mr. Simo Zaric. They expressed the wish to be able to publicly set the record straight about their conditions of detention by issuing an open letter to the ICTY President signed by all the detainees.

The Registrar of the Tribunal agreed to this request and the President of the Tribunal approved the release of the attached letter.

**OPEN LETTER TO THE PRESIDENT OF THE ICTY
FROM THE DETAINEES AT THE UN DETENTION UNIT**

"We have become aware of recent reports in the media picturing us among other things as depressed and preparing for riots. These reports do not have any substance: we are in a better position than anyone else to say that reports of this kind are complete nonsense and lies.

These reports reflect neither the atmosphere within the Detention Unit nor our state of mind. They are the result of malicious disinformation and harm us by trivializing the core of our real concerns about our conditions of detention.

The deaths of Mr. Dokmanovic and Mr. Kovacevic have had a heavy impact on all of us. Every one of us has reacted to these tragic events in his own way. But they have also brought about something positive: we have become closer to each other.

Putting aside the emotional aspects of our situation, we discussed collectively our conditions of detention and decided to suggest improvements: notwithstanding the efforts made by the current management of the Detention Unit and in spite of the decent and fair treatment given to all of us by the management, there are in our view still important shortcomings.

Wishing to express our real concerns in a fair and open manner, we discussed them with the Commanding Officer of the Detention Unit and on 3 August 1998 we set them forth in a letter to the President and the Registrar of the ICTY. This letter was signed without hesitation by all of us.

The key remarks in this letter concern our request for a daily adequate medical care, for more fresh air and exercise, for more and better food, for a better accommodation of the visits by our immediate family and lawyers, and for the possibility to receive TV and radio programs from our own countries. We have invited the President and the Registrar to visit us and to meet us in person in order to discuss these issues.

We have also prepared a separate document which has been forwarded by the Registry of the Tribunal to the President of the Tribunal, the Security Council, the General Assembly, the International Committee of the Red Cross, Amnesty International, Human Rights Watch as well as to the Dutch authorities (Ministry of Justice and Ministry of Foreign Affairs). In this document we identified five "crucial issues": the need for fair and speedy trials, the inequality of resources available to the prosecution over the defence, the biased publicity given to our cases by concentrating on the prosecution, the improvement of our conditions of detention and the lack of care in examining indictments before issuing arrest warrants.

Far from being depressed, we are seeking ways to increase our hope and faith that it is worth fighting for justice and truth".

Signed by:

Zejnir Delalic

Tihomir Blaskic

Dario Kordic

Simo Zaric

Zoran Kupreskic

Dusko Tadic

Vlatko Kupreskic

Mario Cerkez

Vladimir Santic

Mirjan Kupreskic

Hazim Delic

Zoran Zigic

Drago Josipovic

Zdravko Mucic

Zlatko Aleksovski

Miroslav Tadic

Esad Landzo

Anto Furundzija

Dragan Papic

Dragoljub Kunarac

Milorad Krnojelac

Miroslav Kvocka

Mlado Radic

Milojica Kos

Goran Jelusic

Drazen Erdemovic

The signed original document has been filed with the Registry. The Hague 12-08-1998

DIRECTIVE ON ASSIGNMENT OF DEFENCE COUNSEL

(DIRECTIVE NO. 1/94)

(AS AMENDED 30 JANUARY 1995)

(AS AMENDED 25 JUNE 1996)

(AS AMENDED 1 AUGUST 1997)

(AS REVISED 17 NOVEMBER 1997)

(AS AMENDED 10 JULY 1998)

(AS AMENDED 19 JULY 1999)

(AS AMENDED 15 DECEMBER 2000)

(IT/73/REV. 8)

TABLE OF CONTENTS

I - PREAMBLE

II - GENERAL PROVISIONS

Article 1 Entry into force

Article 2 Definitions

Article 3 Authentic texts

Article 4 Amendment of the Directive

III - RIGHT TO HAVE COUNSEL ASSIGNED

Chapter 1 : Basic principles

Article 5 Right to counsel

Article 6 Right to assigned counsel

Chapter 2 : Procedure for assignment of counsel

Article 7 Request for assignment of counsel

Article 8 Determination of the means of suspect and accused

Article 9 Certification of the declaration of means

Article 10 Information

Chapter 3 : The decision

Article 11 Decision by the Registrar

Article 12 Notification of the decision

Chapter 4 : Remedy

Article 13 Remedy against the Registrar's decision

IV - PREREQUISITES FOR ASSIGNMENT AS COUNSEL

Article 14 Qualifications and standing of counsel

Article 15 Professional certification

V - SCOPE OF ASSIGNMENT

Article 16 Basic principles

Article 17 Assignment of counsel away from the seat of the Tribunal

VI - WITHDRAWAL OF ASSIGNMENT

Article 18 Ability of suspects or accused to remunerate counsel

Article 19 Withdrawal of counsel

Article 20 Replacement of counsel

Article 21 Payment *pro rata temporis*

VII - COSTS OF REPRESENTATION

Article 22 Responsibility for remuneration and expenses

Article 23 Remuneration paid to assigned counsel

Article 24 Fixed rate

Article 25 Fees

Article 26 Travel expenses

Article 27 Daily allowances

Article 28 Statement of remuneration

Article 29 Provisional payment

Article 30 Responsibility for payments

Article 31 Settlement of disputes

VIII - ADVISORY PANEL

Article 32 Advisory panel

Annex

Annex I Fixed gross hourly rate for Counsel, Legal Assistants and Investigators

I - PREAMBLE

The Registrar of the Tribunal,

Considering the Statute of the Tribunal as adopted by the Security Council under resolution 827 (1993) of 25 May 1993, as subsequently amended, and in particular Articles 18 and 21 thereof;

Considering the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended, and in particular Rules 42, 45 and 55 thereof;

Considering the host country agreement between the United Nations and the Kingdom of the Netherlands concerning the seat of the Tribunal signed at New York on 29 July 1994, and in particular Articles XIX and XX thereof;

Considering the Directive on the Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended, and as last amended on 19 July 1999;

ISSUES REVISION 8 OF THE DIRECTIVE ON THE ASSIGNMENT OF

DEFENCE COUNSEL AS FOLLOWS:

II - GENERAL PROVISIONS

Article 1 Entry into force

This Directive establishes the conditions and arrangements for assignment of counsel and shall enter into force on the first day of August nineteen hundred and ninety four (1 August 1994).

Article 2 Definitions

Under this Directive, the following terms shall mean:

Accused: a person against whom one or more counts in an indictment have been confirmed in accordance with Rule 47 of the Rules of Procedure and Evidence;

Code of Professional Conduct: the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal as promulgated by the Registrar on 12 June 1997;

Counsel: a person eligible to be assigned pursuant to Rules 44, 45 and 45 *bis* of the Rules;

Directive: Directive No. 1/94 on the Assignment of Defence Counsel as latest amended;

President: the President of the Tribunal;

Prosecutor: the Prosecutor appointed pursuant to Article 16 of the Statute;

Registrar: the Registrar of the Tribunal;

Rules: the Rules of Procedure and Evidence adopted by the Tribunal on 11 February 1994, and as subsequently amended;

Stage of procedure: each of the stages of procedure laid down by the Rules in which the suspect or the accused may be involved (investigation, indictment, proceedings in the Trial Chamber, appeal, review).

Statute: the Statute of the Tribunal adopted by the Security Council under Resolution 827 (1993) of 25 May 1993, as subsequently amended;

Suspect: a person concerning whom the Prosecutor possesses reliable information which tends to show that the person may have committed a crime over which the Tribunal has jurisdiction;

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.

In this Directive, the masculine shall include the feminine and the singular the plural, and vice versa. All references in this Directive to suspects or accused shall also be understood to apply to any persons detained on the authority of the Tribunal.

Article 3 Authentic texts

The English and French texts of the Directive shall be equally authentic. In case of discrepancy, the version which is more consonant with the spirit of the Statute, Rules and the Directive shall prevail.

Article 4 Amendment of the Directive

(A) Proposals for amendment of the Directive may be made by a Judge, the Registrar or the Advisory Panel. Amendments shall be promulgated by the Registrar in accordance with Rule 45 of the Rules.

(B) Without prejudice to the rights of the accused in any pending case, an amendment of the Directive shall enter into force seven days after the day of issue of an official Tribunal document containing the amendment.

III - RIGHT TO HAVE COUNSEL ASSIGNED

Chapter 1 : Basic principles

Article 5 Right to counsel

Without prejudice to the right of an accused to conduct his own defence:

- (i) a suspect who is to be questioned by the Prosecutor during an investigation;
 - (ii) an accused upon whom personal service of the indictment has been effected; and
 - (iii) any person detained on the authority of the Tribunal, including any person detained in accordance with Rule 90 *bis*;
- shall have the right to be assisted by counsel.

Article 6 Right to assigned counsel

(A) Suspects or accused who lack the means to remunerate counsel shall be entitled to assignment of counsel paid for by the Tribunal.

(B) A suspect or accused lacks the means to remunerate counsel if he does not dispose of means, which would allow him to remunerate counsel at the rates provided for by this Directive. For the purposes of Section III of this Directive, the remuneration of counsel also includes counsel's expenses.

(C) For suspects or accused who dispose of means to partially remunerate counsel, the Tribunal shall pay that portion, which the suspect or accused does not have sufficient means to pay for.

Chapter 2 : Procedure for assignment of counsel

Article 7 Request for assignment of counsel

(A) Subject to the provisions of Article 17, a suspect or accused who wishes to be assigned counsel shall make a request to the Registrar of the Tribunal on the form provided by the Registry. A request shall be lodged with the Registry, or transmitted to it, by the suspect or accused himself or by a person authorised by him to do so on his behalf.

(B) The Registrar shall, for the purposes of Article 8, invite a suspect or accused requesting the assignment of counsel to make a declaration of his means on the form provided by the Registry.

Article 8 Determination of the means of suspects and accused

(A) A suspect or accused who requests the assignment of counsel must produce evidence that he is unable to remunerate counsel.

(B) In order to determine whether the suspect or accused is unable to remunerate counsel, there shall be taken into account means of all kinds

of which he has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a suspect or accused, as well as those of persons with whom he habitually resides.

(C) Account may also be taken of the apparent lifestyle of a suspect or accused, and of his enjoyment of any property, movable or immovable, and whether or not he derives income from it.

Article 9 **Certification of the declaration of means**

A declaration must, so far as possible, be certified by an appropriate authority, either that of the place where the suspect or accused resides or is found or that of any other place considered appropriate in the circumstances which it shall be for the Registrar to assess.

Article 10 **Information**

For the purpose of establishing whether the suspect or accused satisfies the requisite conditions for assignment of counsel, the Registrar may inquire into his means, request the gathering of any information, hear the suspect or accused, consider any representation, or request the production of any documents likely to verify the request.

Chapter 3 : The decision

Article 11 **Decision by the Registrar**

(A) After examining the declaration of means laid down in Article 7 and relevant information obtained pursuant to Article 10, the Registrar shall determine how far the suspect or accused lacks means to remunerate counsel, and shall decide, providing reasons for his decision:

- (i) without prejudice to Article 18, to assign counsel and choose for this purpose a name from the list drawn up in accordance with Article 14; or,
- (ii) without prejudice to Article 18, that the suspect or accused disposes of means to partially remunerate counsel in which case the decision shall indicate which costs shall be borne by the Tribunal; or
- (iii) not to grant the request for assignment of counsel.

(B) To ensure that the right to counsel is not affected while the Registrar examines the declaration of means laid down in Article 7 and the information obtained pursuant to Article 10 the Registrar may temporarily assign counsel to a suspect or an accused for a period not exceeding 120 days.

(C) If a suspect or an accused, either

- (i) requests an assignment of counsel but does not comply with the requirements set out above within a reasonable time; or
- (ii) fails to obtain or to request assignment of counsel; or
- (iii) fails to elect in writing that he intends to conduct his own defence;

the Registrar may nevertheless assign him counsel in the interests of justice in accordance with Rule 45 of the Rules and without prejudice to Article 18.

Article 12 **Notification of the decision**

The Registrar shall notify the suspect or accused of his decision, and shall also notify the counsel so assigned and his professional or governing body of his decision.

Chapter 4 : Remedy

Article 13 **Remedy against the Registrar's decision**

(A) The suspect whose request for assignment of counsel has been denied may, within fifteen days of the date of notification to him, seek the President's review of the decision of the Registrar. The President may either confirm the Registrar's decision or decide that a counsel should be assigned.

(B) The accused whose request for assignment of counsel has been denied, may, within two weeks of the date of notification to him, make a motion to the Chamber before which he is due to appear for immediate review of the Registrar's decision. The Chamber may

(i) confirm the Registrar's decision; or

(ii) rule that the suspect or accused has means to partially remunerate counsel, in which case it shall refer the matter again to the Registrar for determination of which parts shall be borne by the Tribunal; or

(iii) rule that a counsel should be assigned.

IV - PREREQUISITES FOR ASSIGNMENT AS COUNSEL

Article 14

Qualifications and standing of counsel

(A) Any person may be assigned as counsel if the Registrar is satisfied that he fulfils the following pre-requisites:

(i) he is admitted to the practice of law in a State, or is a university professor of law;

(ii) he speaks one of the two working languages of the Tribunal;

(iii) he possesses reasonable experience in criminal and/or international law;

(iv) he agrees to be assigned as counsel by the Tribunal to represent any indigent suspect or accused;

(v) his name has been included in the list envisaged in Rule 45 (B) of the Rules.

(B) In particular circumstances, upon the request of a suspect or accused, the Registrar may assign counsel who does not speak either of the two working languages of the Tribunal, but speaks the language of the suspect or the accused.

(C) The Registrar may refuse a request for assignment of a counsel where a procedure pursuant to Rule 77 of the Rules has been initiated against that counsel. Counsel may seek recourse against the Registrar's decision before the President within two weeks of having been notified of that decision.

(D) The Registrar must remove the name of counsel from the list referred to in Rule 45 (B) where counsel no-longer satisfies the requirements of Article 14 (A). He may remove the name upon a decision by a Chamber to refuse audience to assigned counsel for misconduct under Rule 46 (A) or where counsel has been found to be in contempt pursuant to Rule 77 of the Rules, in which case the counsel may seek the President's review within two weeks from the notification of the decision to counsel.

Article 15

Professional certification

In support of the pre-requisites provided for in Article 14 (A), the Registrar shall be supplied with a certificate of professional qualification issued by the competent professional or governing body and such other documentation the Registrar deems necessary.

V - SCOPE OF ASSIGNMENT

Article 16

Basic principles

(A) A suspect or accused shall be entitled to have one counsel assigned to him and that counsel shall handle all stages of the procedure and all matters arising out of the conduct of the suspect's or accused's defence, including where two or more crimes are joined in one indictment.

(B) Where persons accused of the same or different crimes are jointly charged or tried, each accused shall be entitled to request assignment of separate counsel.

(C) In the interests of justice and at the request of the person assigned as counsel, the Registrar may, in accordance with Article 14 above, assign a second counsel to assist the lead counsel. The counsel first assigned shall be called the lead counsel.

(D) Under the authority of lead counsel, who is responsible for the defence, co-counsel may deal with all stages of the procedure and all matters arising out of the representation of the accused or of the conduct of his defence. Lead counsel shall sign all documents submitted to the Tribunal unless he authorises co-counsel, in writing, to sign on his behalf.

(E) No counsel shall be assigned to more than one suspect or accused at a time, unless an assignment to more than one suspect or accused would neither cause prejudice to the defence of either accused, nor a potential conflict of interest.

Article 17 **Assignment of counsel away from the seat of the Tribunal**

(A) Away from the seat of the Tribunal, and in a case of urgency, a suspect who, during the investigation, requests assignment of counsel, may indicate the name of counsel if he knows one who may be assigned in accordance with the provisions of this Directive.

(B) Where the suspect fails to indicate a name, the Prosecutor, or a person authorised by him or acting under his direction, may contact the local Bar Association and obtain the name of counsel who may be assigned in accordance with the provisions of this Directive.

(C) In the situations envisaged in paragraphs (A) and (B), the procedure for assignment of counsel as set out in this Directive shall apply mutatis mutandis but shall be accelerated where necessary.

VI - WITHDRAWAL OF ASSIGNMENT

Article 18 **Ability of suspects or accused to remunerate counsel**

(A) Assignment of counsel or partial remuneration of counsel and/or payment of counsel's expenses may be withdrawn by the Registrar if:

- (i) after his decision, the suspect or accused comes into means which, had they been available at the time the request in Article 7 was made, would have caused the Registrar not to grant the request;

- (ii) information is obtained which establishes that the suspect or accused has sufficient means to allow him to pay for the cost of his defence.

(B) The Registrar's decision shall be reasoned and notified to the suspect or accused and to the counsel assigned, and shall take effect from the date of receipt of the notification.

(C) The provisions of Article 13 shall apply mutatis mutandis where a suspect or accused seeks a review of the Registrar's decision.

Article 19 **Withdrawal of counsel**

(A) In the interests of justice, the Registrar may:

- (i) at the request of the accused, or his counsel, withdraw the assignment of counsel;
- (ii) at the request of lead counsel withdraw the assignment of co-counsel.

(B) The Registrar shall withdraw the assignment of counsel:

- (i) upon the decision by a Chamber to refuse audience to assigned counsel for misconduct under Rule 46 (A);
- (ii) where counsel no longer satisfies the requirements of Article 14 (A); or
- (iii) where counsel has been found to be in contempt pursuant to Rule 77 of the Rules.

(C) In such cases the withdrawal shall be notified to the accused, to the counsel concerned and to his professional or governing body.

(D) The Registrar shall immediately assign a new counsel to the suspect or accused.

(E) Where a request for withdrawal, made pursuant to paragraph A, has been denied the person making the request may seek the President's review of the decision of the Registrar within two weeks from the notification of the decision to him.

Article 20 Replacement of counsel

(A) Where the assignment of counsel is withdrawn by the Registrar or where the services of assigned counsel are discontinued, the counsel assigned may not withdraw from acting until either a replacement counsel has been provided by the Tribunal or by the suspect or accused, or the suspect or accused has declared his intention in writing to conduct his own defence.

(B) In the interests of justice, the withdrawn counsel may continue to represent the suspect or the accused for a period of not exceeding 30 days after the date on which the replacement is assigned. During this period, the costs necessarily and reasonably incurred by both counsel shall be met by the Tribunal.

Article 21 Payment *pro rata temporis*

When, during engagement, an assigned counsel is replaced in the same capacity by another assigned counsel for whatever reason, the remuneration shall be paid to each of them *pro rata temporis*.

VII - COSTS OF REPRESENTATION

Article 22 Responsibility for remuneration and expenses

(A) Where counsel has been assigned, the costs of legal representation of the suspect or accused necessarily and reasonably incurred shall be met by the Tribunal subject to the budgetary provisions, rules and regulations, and practice set by the United Nations. All costs are subject to prior authorization by the Registrar. If authorization was not obtained, the Registrar may refuse to meet costs.

(B) Such costs to be met by the Tribunal shall include all remuneration due to counsel in accordance with Article 23. They shall also include expenses relating to legal assistance, investigative assistance, expenses relating to the production of evidence for the defence, to the ascertainment of facts, expenses relating to temporary consultancy on specific questions, expert opinion paid at the rates established in Annex I, and accommodation and transportation of witnesses. They shall include travel expenses, travel taxes and similar duties. General office costs are included in the remuneration for counsel. This embraces in any case, but not exclusively costs for phone and mail or express mail, photocopies, books and journals, lease of office space, purchase of office equipment, office supplies and secretarial support.

(C) The Registrar shall reimburse the sums claimed by assigned counsel for the remuneration and expenses as provided in paragraphs (A) and (B) above on receipt of a statement of expenses made out using the form provided by the Registry which must be presented within six months and be approved by the Registrar.

Article 23 Remuneration paid to assigned counsel

(A) Without prejudice to Article 6 (C), the remuneration paid to assigned counsel for any one case and at any one stage of the procedure shall include:

- (i) a fixed rate;
- (ii) fees calculated on the basis of a fixed hourly rate applied at any stage of the procedure to the number of hours of work.

(B) Without prejudice to Article 6 (C), assigned counsel who receives remuneration from the Tribunal shall not accept remuneration for the assignment from any other source.

Article 24 Fixed rate

The fixed rate envisaged in Article 23 (A) (i) shall be equivalent to two thousand United States Dollars.

Article 25 Fees

The fixed hourly rate for fees envisaged in Article 23 (A) (ii) shall be assessed by the Registrar on the basis of the seniority and experience of counsel, according to Annex I. This rate includes general office costs.

Article 26 Travel expenses

(A) Travel expenses shall be reimbursed for an assigned counsel who does not usually reside in the territory of the host country or in the country where the particular stage of the procedure is being conducted, on the basis of one economy class round trip air ticket by the shortest route or within limits laid down by and subject to prior authorization of the Registrar, on presentation of a statement of travel expenses using the form provided by the Registry, accompanied by the original counterfoil of the ticket and the ticket stubs.

(B) Travel expenses shall be reimbursed to assigned counsel residing in the territory of the host country but not in the town where he is serving, on the basis of either first class public transportation tickets or fixed rates as established by the United Nations Schedule of Rates of Reimbursement for Travel by Private Motor Vehicle applicable to different groups of Countries and Territories, per kilometre travelled on the outward and return journeys by the shortest route, on presentation of a statement of travel expenses using the form provided by the Registry.

(C) Counsel shall submit all travel requests to the Registry at least one week before their scheduled travel, unless they can demonstrate that circumstances beyond their control prevent them from complying with this requirement. The Registry reserves the right to deduct cancellation fees, arising from changes in travel arrangement, from counsel's remuneration in cases where changes are not sufficiently related to his professional obligations as assigned counsel.

Article 27 **Daily allowances**

(A) Counsel shall be entitled to a daily allowance calculated on the basis of fixed rates as established by the United Nations Schedule of Daily Subsistence Allowance Rates applied to the number of days of work. Counsel is not entitled to subsistence allowance while staying at his place of residence.

(B) The rate for daily allowance shall be calculated on the basis of the current daily subsistence allowance rates applicable in the country where he is acting as an assigned counsel.

(C) In accordance with the regulations in force at the United Nations, the applicable rate shall be lowered by twenty-five percent when counsel has spent more than 60 days in total from the date of his assignment in the country where he is acting as an assigned counsel.

Article 28 **Statement of remuneration**

(A) Subject to the provisions of Article 28, payment of the fees envisaged in Article 22 (A) shall be made at the conclusion of the relevant stage of procedure, on presentation by counsel of a detailed statement using the form provided by the Registry.

(B) The statement shall indicate, inter alia, the name of the suspect or the accused, the registration number in the Record Book, the stage of the procedure at which assigned counsel was involved and the number of hours of work.

Article 29 **Provisional payment**

In exceptional circumstances and with the authorisation of the Registrar, a provisional payment of the daily allowance set out in Article 27 above or expenses of counsel may be made on presentation by counsel of a provisional statement using the forms provided by the Registry whether applicable covering the corresponding period or the expenses.

Article 30 **Responsibility for payments**

(A) All sums payable to assigned counsel under the provisions of this Directive shall be paid by the Financial Officer of the Registry.

(B) The statement of remuneration and the statement of travel or other expenses, envisaged under Articles 23, 26, and 27, must receive the prior approval of the Registrar.

Article 31 **Settlement of disputes**

In the event of disagreement on questions relating to calculation and payment of remuneration or to reimbursement of expenses, the Registrar shall make a decision, after consulting the President and, if necessary, the Advisory Panel.

VIII - ADVISORY PANEL

Article 32 **Advisory panel**

(A) An Advisory Panel shall be set up consisting of two members chosen by the President by ballot from the list referred to in Article 14 and who have appeared before the Tribunal, two members proposed by the International Bar Association, two members proposed by the Union Internationale des Avocats, and the President of the Nederlandse Orde van Advokaten or his representative. Each member of the Advisory Panel must have a minimum of 10 years legal experience.

(B) The President of the Advisory Panel will be the President of the Nederlandse Orde van Advokaten or his representative. The membership of the Advisory Panel shall come up for appointment every two years on the anniversary date of the entry into force of this Directive.

(C) The Advisory Panel may be consulted as and when necessary by the Registrar or the President on matters relating to assignment of counsel.

(D) The Advisory Panel may also of its own initiative refer to the Registrar, or to the Registrar and the President, any matter relating to the assignment of counsel.

ANNEX I

Fixed gross hourly rate for Counsel in US \$

(general office costs are included in this sum)

Lead Counsel / Counsel

20 years' professional experience or more 110 US\$

15-19 years' professional experience 100 US\$

10-14 years' professional experience 90 US\$

0-9 years' professional experience 80 US\$

Co-counsel

Fixed rate of 80 US\$

Fixed gross hourly rate for allotments to

Legal Assistants and Investigators in German Marks

(general office costs are included in this sum)

10 years' professional experience or more 50 DM

5-9 years' professional experience 40 DM

0-4 years' professional experience 30 DM

THE CODE OF PROFESSIONAL CONDUCT FOR DEFENCE COUNSEL APPEARING BEFORE THE INTERNATIONAL TRIBUNAL

(IT/125)

DECISION

THE REGISTRAR

CONSIDERING Rules 44 to 46 of the Rules of Procedure of Evidence ("the Rules") concerning Counsel, which confer on the Registrar the responsibility for ensuring that only Counsel who are qualified to do so appear before the Tribunal,

CONSIDERING that being subject to a professional Code of Conduct is an essential attribute of being qualified as Counsel,

CONSIDERING that Counsel appearing before the Tribunal come from jurisdictions from all over the world, and that it is in the interests of the Tribunal that they all be subject to the same Code of Conduct,

CONSIDERING that a Draft Code of Conduct, prepared by the Registry, has been circulated to the Judges of the Tribunal and that they have voiced no objections to its promulgation,

CONSIDERING that the same Draft Code of Conduct has been submitted to the Advisory Panel established under Article 32 of the Directive on the Assignment of Defence Counsel, and that they have voiced no objections to its promulgation,

TAKING NOTE of the Advisory Panel's comments on the Draft Code of Conduct,

PURSUANT TO Rules 44 to 46 of the Rules,

HEREBY PROMULGATES the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, attached as Annex 1,

DONE in English and French, the English text being authoritative,

Dorothee de Sampayo Garrido-Nijgh
Registrar

Dated this twelfth day of June 1997
At The Hague
The Netherlands

ANNEX 1

THE CODE OF PROFESSIONAL CONDUCT FOR DEFENCE COUNSEL APPEARING BEFORE THE INTERNATIONAL TRIBUNAL

PREAMBLE

This Code is made in the belief that:

1. As legal practitioners, Counsel must maintain high standards of professional conduct.
2. The role of Counsel as specialist advocates in the administration of justice requires them to act honestly, fairly, skilfully, diligently and courageously.

3. Counsel have an overriding duty to defend their client's interests, to the extent that they can do so without acting dishonestly or by improperly prejudicing the administration of justice.

4. Counsel may be subject to disciplinary proceedings under Rule 46 of the Rules of Procedure and Evidence of the Tribunal. It is therefore necessary that Counsel be aware of their rights and obligations toward the Tribunal.

To these ends, this Code and its Articles of conduct have been formulated.

PRELIMINARY

Article 1. Definitions

(1) In this Code, unless a different interpretation is required by the provisions of the Code or the context in which they appear, the following terms shall mean:

-  "Client" an Accused, Suspect, Detainee, Witness or other Person who has engaged Counsel for the purposes of his legal representation before the Tribunal.
- "Counsel" any person who has satisfied the Registrar that he is admitted to the practice of law in a State, or is a University professor of law, and
 - (a) has filed his or her power of attorney with the Registrar, or
 - (b) has been assigned under the Rules to a Suspect, Accused, Detainee, Witness or other Person.

Any reference to Counsel includes a reference to any co-counsel jointly and to each of them severally.

"Directive" the directive entitled "Directive on Assignment of Defence Counsel". This is Directive No. 1/94 (UN Doc IT/73/REV.4) as amended.

"Rules" means the Rules of Procedure and Evidence of the Tribunal adopted on 11 February 1994, as amended.

"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.

(2) In the event of any inconsistency between this Code and the Directive, the terms and provisions of the Directive prevail.

 (3) Any term not defined in this Code has the same meaning given to it by the Statute or by the Rules.

(4) While Counsel is bound by this Code, it is not, and should not be read as if it were, a complete or detailed code of conduct for Counsel. Other standards and requirements may be imposed on the conduct of Counsel by virtue of the Tribunal's inherent jurisdiction and the code of conduct of any national body to which Counsel belongs.

(5) This Code must be read and applied so as to most effectively attain the objects and uphold the values expressed in the Preamble.

(6) General provisions of this Code should not be read or applied in a restrictive way by reason of any particular or illustrative provisions.

(7) The singular includes the plural and vice versa.

Article 2. Entry into Force

This Code enters into force on 12 June 1997.

Article 3. General Purpose and Application

(1) The general purpose of this Code is to provide for standards of conduct on the part of Counsel which are appropriate in the interests of the fair and proper administration of justice.

- (2) This Code applies to Counsel as defined in Article 1(1) of this Code.

GENERAL OBLIGATIONS OF COUNSEL TO CLIENTS

Article 4.

Scope and Termination of Representation

- (1) Counsel must advise and represent their Client until the Client duly terminates that Counsel's position, or the Counsel is otherwise withdrawn with the consent of the Tribunal.
- (2) When representing a Client, Counsel must:
- (a) abide by a Client's decisions concerning the objectives of representation if not inconsistent with Counsel's ethical duties; and
 - (b) consult with the Client about the means by which those objectives are to be pursued.
- (3) Counsel must not advise or assist a Client to engage in conduct which Counsel knows is in breach of the Statute, the Rules or this Code and, where Counsel has been assigned to the Client, the Directive.

Article 5.

Competence and Independence

In providing representation to a Client, Counsel must:

- (a) act with competence, skill, care, honesty and loyalty;
- (b) exercise independent professional judgement and render open and honest advice;
- (c) never be influenced by improper or patently dishonest behaviour on the part of a Client;
- (d) preserve their own integrity and that of the legal profession as a whole;
- (e) never permit their independence, integrity and standards to be compromised by external pressures.

Article 6.

Diligence

Counsel must represent a Client diligently in order to protect the Client's best interests. Unless the representation is terminated, Counsel must carry through to conclusion all matters undertaken for a Client within the scope of his legal representation.

Article 7.

Communication

Counsel must keep a Client informed about the status of a matter before the Tribunal in which the Client is an interested party and must promptly comply with all reasonable requests for information.

Article 8.

Confidentiality

- (1) Whether or not the relation of Counsel and client continues, Counsel must preserve the confidentiality of his client's affairs and, subject to sub-article (2), must not reveal to any other person, other than to any assistants who need to know it for the performance of their duties, information which has been entrusted to him in confidence or use such information to his client's detriment or to his own or another client's advantage.
- (2) Notwithstanding sub-article (1), and subject to Article 19 ("Conflicts"), Counsel may reveal information which has been entrusted to him in confidence in any one of the following circumstances:
- (a) when the Client has been fully consulted and knowingly consents; or
 - (b) when the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure; or
 - (c) when essential to establish a defence to a criminal or disciplinary charge or civil claim formally instituted against Counsel; or
 - (d) to prevent an act which Counsel reasonably believes:

- (i) is, or may be, criminal within the territory in which it may occur or under the Statute or the Rules; and
- (ii) may result in death or substantial bodily harm to any person unless the information is disclosed.

- (3) For the purposes of this Article, Counsel includes employees or associates of Counsel and all others whose services are used by Counsel.

Article 9. Conflict of Interest

- (1) Counsel owes a duty of loyalty to his or her Client. Counsel must at all times act in the best interests of the Client and must put those interests before their own interests or those of any other person.
- (2) In the course of representing a Client, Counsel must exercise all care to ensure that no conflict of interest arises.
- (3) Without limiting the generality of sub-articles (1) and (2), Counsel must not represent a Client with respect to a matter if:
- (a) such representation will be or is likely to be adversely affected by representation of another Client;
 - (b) representation of another Client will be or is likely to be adversely affected by such representation;
 - (c) the Counsel's professional judgement on behalf of the Client will be, or may reasonably be expected to be, adversely affected by:
 - (i) the Counsel's responsibilities to, or interests in, a third party; or
 - (ii) the Counsel's own financial, business, property or personal interests; or
 - (iii) the matter is the same or substantially related to another matter in which Counsel had formerly represented another client ("the former client"), and the interests of the Client are materially adverse to the interests of the former client, unless the former client consents after consultation.
- (4) Counsel must not accept compensation for representing a Client from a source other than that Client or, if assigned by the Tribunal, from a source other than the Tribunal, unless:
- (a) that Client consents after consultation; and
 - (b) there is no interference thereby with the Counsel's independence of professional judgement nor with the Client-Counsel relationship.
- (5) Where a conflict of interest does arise, Counsel must:
- (a) promptly and fully inform each potentially affected Client of the nature and extent of the conflict; and
 - (b) either:
 - (i) take all steps necessary to remove the conflict; or
 - (ii) obtain the full and informed consent of all potentially affected Clients to continue the representation, so long as Counsel is able to fulfil all other obligations under this Code.

Article 10. Client under a Disability

When a Client's ability to make adequately considered decisions in connection with their representation is impaired because of minority, mental disability or any other reason, Counsel must:

- (a) inform the Judge or Chamber of the Tribunal hearing the matter, if any, of the disability;
- (b) take such steps as are necessary to ensure the adequate legal representation of that Client; and
- (c) as far as reasonably possible maintain a normal Counsel-Client relationship with the Client.

Article 11. Accounting for time

Counsel should account in good faith for the time spent working on a case and maintain and preserve detailed records of time spent.

CONDUCT BEFORE THE TRIBUNAL

Article 12. Rules of the Tribunal

- (1) Counsel must at all times comply with the Rules and such rulings as to conduct and procedure as may be applied by the Tribunal in its proceedings. Counsel must at all times have due regard to the fair conduct of proceedings.

(2) Counsel must not, unless permitted by the Rules or this Code or the Judge or Chamber hearing the matter:

- (a) make contact with a Judge or Chamber of the Tribunal without first or concurrently informing counsel acting for any other party to the proceedings;
- (b) submit exhibits, notes or documents to the Judge without communicating them within first or concurrently to counsel acting for any other party to the proceedings.

Article 13. Candour Toward the Tribunal

(1) Counsel is personally responsible for the conduct and presentation of their Client's case, and must exercise personal judgement upon the substance and purpose of statements made and questions asked.

(2) Counsel must not knowingly:

- (a) make an incorrect statement of material fact to the Tribunal; or
- (b) offer evidence which the Counsel knows to be incorrect.

(3) Despite sub-article (2)(a), Counsel will not have made an incorrect statement to another party to the proceedings or to the Tribunal simply by failing to correct an error on any matter stated to Counsel or to the Tribunal during proceedings.

(4) Counsel must take all necessary steps to correct an incorrect statement made by Counsel in proceedings before the Tribunal as soon as possible after Counsel becomes aware that the statement was incorrect.

Article 14. Integrity of Evidence

Counsel must at all times maintain the integrity of evidence, whether in written, oral or any other form, which is or may be submitted to the Tribunal.

Article 15. Impartiality of the Tribunal

(1) Counsel must take all necessary steps to ensure that their actions do not bring proceedings before the Tribunal into disrepute.

(2) Counsel must not seek to influence a Judge or other official of the Tribunal by means prohibited by the Statute, the Rules or this Code.

Article 16. Counsel as witness

Counsel must not act as advocate in a trial in which the Counsel is likely to be a necessary witness except where the testimony relates to an uncontested issue or where substantial hardship would be caused to the Client if that Counsel does not so act.

DUTY OF COUNSEL TO OTHERS

Article 17. Fairness and Courtesy to Opposing Party and Counsel

(1) Counsel must recognise all other Counsel appearing or acting in relation to proceedings before the Tribunal as professional colleagues and must act fairly, honestly and courteously towards them and their Clients.

(2) Counsel must not communicate with the Client of another Counsel except through or with the permission of that Client's Counsel.

Article 18. Dealing with Unrepresented Persons

(1) If, on behalf of a Client, Counsel is dealing with a person who is not represented by counsel, Counsel:

- (a) must not give advice to this unrepresented person if the interests of the person are, or have a reasonable possibility of being, in conflict with the interests of the Counsel's Client; but
- (b) may advise the unrepresented person to secure legal representation.

(2) Counsel must inform the unrepresented person of the role Counsel plays in the matter, the person's right to counsel under the Rules, and the nature of legal representation in general.

This information must be given whether or not a conflict exists or may exist with the interests of Counsel's Client.

MAINTENANCE OF THE INTEGRITY OF THE PROFESSION

Article 19. Conflicts

If there is any inconsistency between this Code and any other code which Counsel is bound to honour, the terms of this Code prevail in respect of Counsel's conduct before the Tribunal.

Article 20. Misconduct

It is professional misconduct for Counsel, *inter alia*, to:

- (a) violate or attempt to violate this Code or to knowingly assist or induce another person to do so, or to do so through the acts of another person;
- (b) commit a criminal act which reflects adversely on Counsel's honesty, trustworthiness or fitness as Counsel;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct which is prejudicial to the proper administration of justice before the Tribunal; or
- (e) attempt to influence an officer of the Tribunal in an improper manner.

Article 21. Reporting Misconduct

(1) If:

- (a) Counsel knows that another Counsel has breached this Code or has otherwise engaged in professional misconduct; and
- (b) that violation or conduct raises a substantial question as to the other Counsel's honesty, trustworthiness or fitness as Counsel

Counsel may inform the Judge or Chamber of the Tribunal before which Counsel is appearing.

Article 22. Enforcement

Counsel must abide by and voluntarily submit to any enforcement and disciplinary procedures as may be established by the Tribunal in accordance with the Rules.

Article 23. Amendment

This Code may be amended by the Registrar, after consultation with the Judges.

SOURCES

The following Codes of Professional Conduct and related sources have been Consulted:

1. Australia, New South Wales Bar Association, Barristers' Rules

2. Belgium, Code Judiciaire
3. Bosnia & Herzegovina, Bar Association Code of Legal Ethics, 1989
4. England, Code of Conduct of the Bar of England and Wales
5. European Community, Commission Consultative des Barreaux de la Communauté Européenne (CCBE), Code of Conduct for Lawyers in the European Community
6. France, Règlement intérieur de l'ordre des Avocats à la cour de Versailles", délibéré par le Conseil de l'Ordre en sa séance du 7 décembre 1992, (mise à jour le 01/01/93)
Code de Procédure Civile, Décr. 27, Nov. 1991, Titre III
7. International Association of Penal Law and International Commission of Jurists, 1982 Draft Principles on the Independence of the Legal Profession ("Noto Principles")
8. Netherlands Bar Association, Rules of Conduct
9. Spain, Estatuto General de la Abogacia, Real Decreto 2090/1982
10. Union Internationale des Avocats, International Charter of Defence Rights
11. United States of America, American Bar Association, Model Rules of Professional Conduct (1992)



THE CODE OF PROFESSIONAL CONDUCT FOR DEFENCE COUNSEL APPEARING BEFORE THE INTERNATIONAL TRIBUNAL

(IT/125)

DECISION

THE REGISTRAR

CONSIDERING Rules 44 to 46 of the Rules of Procedure of Evidence ("the Rules") concerning Counsel, which confer on the Registrar the responsibility for ensuring that only Counsel who are qualified to do so appear before the Tribunal,

CONSIDERING that being subject to a professional Code of Conduct is an essential attribute of being qualified as Counsel,

CONSIDERING that Counsel appearing before the Tribunal come from jurisdictions from all over the world, and that it is in the interests of the Tribunal that they all be subject to the same Code of Conduct,

CONSIDERING that a Draft Code of Conduct, prepared by the Registry, has been circulated to the Judges of the Tribunal and that they have voiced no objections to its promulgation,

CONSIDERING that the same Draft Code of Conduct has been submitted to the Advisory Panel established under Article 32 of the Directive on the Assignment of Defence Counsel, and that they have voiced no objections to its promulgation,

TAKING NOTE of the Advisory Panel's comments on the Draft Code of Conduct,

PURSUANT TO Rules 44 to 46 of the Rules,

HEREBY PROMULGATES the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, attached as Annex 1,

DONE in English and French, the English text being authoritative,

Dorothee de Sampayo Garrido-Nijgh
Registrar

Dated this twelfth day of June 1997
At The Hague
The Netherlands

ANNEX 1

THE CODE OF PROFESSIONAL CONDUCT FOR DEFENCE COUNSEL APPEARING BEFORE THE INTERNATIONAL TRIBUNAL

PREAMBLE

This Code is made in the belief that:

1. As legal practitioners, Counsel must maintain high standards of professional conduct.
2. The role of Counsel as specialist advocates in the administration of justice requires them to act honestly, fairly, skilfully, diligently and courageously.

3. Counsel have an overriding duty to defend their client's interests, to the extent that they can do so without acting dishonestly or by improperly prejudicing the administration of justice.

4. Counsel may be subject to disciplinary proceedings under Rule 46 of the Rules of Procedure and Evidence of the Tribunal. It is therefore necessary that Counsel be aware of their rights and obligations toward the Tribunal.

To these ends, this Code and its Articles of conduct have been formulated.

PRELIMINARY

Article 1. Definitions

(1) In this Code, unless a different interpretation is required by the provisions of the Code or the context in which they appear, the following terms shall mean:

"Client" an Accused, Suspect, Detainee, Witness or other Person who has engaged Counsel for the purposes of his legal representation before the Tribunal.

"Counsel" any person who has satisfied the Registrar that he is admitted to the practice of law in a State, or is a University professor of law, and

(a) has filed his or her power of attorney with the Registrar, or

(b) has been assigned under the Rules to a Suspect, Accused, Detainee, Witness or other Person.

Any reference to Counsel includes a reference to any co-counsel jointly and to each of them severally.

"Directive" the directive entitled "Directive on Assignment of Defence Counsel". This is Directive No. 1/94 (UN Doc IT/73/REV.4) as amended.

"Rules" means the Rules of Procedure and Evidence of the Tribunal adopted on 11 February 1994, as amended.

"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.

(2) In the event of any inconsistency between this Code and the Directive, the terms and provisions of the Directive prevail.

Any term not defined in this Code has the same meaning given to it by the Statute or by the Rules.

(4) While Counsel is bound by this Code, it is not, and should not be read as if it were, a complete or detailed code of conduct for Counsel. Other standards and requirements may be imposed on the conduct of Counsel by virtue of the Tribunal's inherent jurisdiction and the code of conduct of any national body to which Counsel belongs.

(5) This Code must be read and applied so as to most effectively attain the objects and uphold the values expressed in the Preamble.

(6) General provisions of this Code should not be read or applied in a restrictive way by reason of any particular or illustrative provisions.

(7) The singular includes the plural and vice versa.

Article 2. Entry into Force

This Code enters into force on 12 June 1997.

Article 3. General Purpose and Application

(1) The general purpose of this Code is to provide for standards of conduct on the part of Counsel which are appropriate in the interests of the fair and proper administration of justice.

(2) This Code applies to Counsel as defined in Article 1(1) of this Code.

GENERAL OBLIGATIONS OF COUNSEL TO CLIENTS

Article 4.

Scope and Termination of Representation

(1) Counsel must advise and represent their Client until the Client duly terminates that Counsel's position, or the Counsel is otherwise withdrawn with the consent of the Tribunal.

(2) When representing a Client, Counsel must:

- (a) abide by a Client's decisions concerning the objectives of representation if not inconsistent with Counsel's ethical duties; and
- (b) consult with the Client about the means by which those objectives are to be pursued.

(3) Counsel must not advise or assist a Client to engage in conduct which Counsel knows is in breach of the Statute, the Rules or this Code and, where Counsel has been assigned to the Client, the Directive.

Article 5.

Competence and Independence

In providing representation to a Client, Counsel must:

- (a) act with competence, skill, care, honesty and loyalty;
- (b) exercise independent professional judgement and render open and honest advice;
- (c) never be influenced by improper or patently dishonest behaviour on the part of a Client;
- (d) preserve their own integrity and that of the legal profession as a whole;
- (e) never permit their independence, integrity and standards to be compromised by external pressures.

Article 6.

Diligence

Counsel must represent a Client diligently in order to protect the Client's best interests. Unless the representation is terminated, Counsel must carry through to conclusion all matters undertaken for a Client within the scope of his legal representation.

Article 7.

Communication

Counsel must keep a Client informed about the status of a matter before the Tribunal in which the Client is an interested party and must promptly comply with all reasonable requests for information.

Article 8.

Confidentiality

(1) Whether or not the relation of Counsel and client continues, Counsel must preserve the confidentiality of his client's affairs and, subject to sub-article (2), must not reveal to any other person, other than to any assistants who need to know it for the performance of their duties, information which has been entrusted to him in confidence or use such information to his client's detriment or to his own or another client's advantage.

(2) Notwithstanding sub-article (1), and subject to Article 19 ("Conflicts"), Counsel may reveal information which has been entrusted to him in confidence in any one of the following circumstances:

- (a) when the Client has been fully consulted and knowingly consents; or
- (b) when the client has voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure; or
- (c) when essential to establish a defence to a criminal or disciplinary charge or civil claim formally instituted against Counsel; or
- (d) to prevent an act which Counsel reasonably believes:

- (i) is, or may be, criminal within the territory in which it may occur or under the Statute or the Rules; and
- (ii) may result in death or substantial bodily harm to any person unless the information is disclosed.

(3) For the purposes of this Article, Counsel includes employees or associates of Counsel and all others whose services are used by Counsel.

Article 9. Conflict of Interest

(1) Counsel owes a duty of loyalty to his or her Client. Counsel must at all times act in the best interests of the Client and must put those interests before their own interests or those of any other person.

(2) In the course of representing a Client, Counsel must exercise all care to ensure that no conflict of interest arises.

(3) Without limiting the generality of sub-articles (1) and (2), Counsel must not represent a Client with respect to a matter if:

- (a) such representation will be or is likely to be adversely affected by representation of another Client;
- (b) representation of another Client will be or is likely to be adversely affected by such representation;
- (c) the Counsel's professional judgement on behalf of the Client will be, or may reasonably be expected to be, adversely affected by:

- (i) the Counsel's responsibilities to, or interests in, a third party; or
- (ii) the Counsel's own financial, business, property or personal interests; or
- (iii) the matter is the same or substantially related to another matter in which Counsel had formerly represented another client ("the former client"), and the interests of the Client are materially adverse to the interests of the former client, unless the former client consents after consultation.

(4) Counsel must not accept compensation for representing a Client from a source other than that Client or, if assigned by the Tribunal, from a source other than the Tribunal, unless:

- (a) that Client consents after consultation; and
- (b) there is no interference thereby with the Counsel's independence of professional judgement nor with the Client-Counsel relationship.

(5) Where a conflict of interest does arise, Counsel must-

- (a) promptly and fully inform each potentially affected Client of the nature and extent of the conflict; and
- (b) either:
 - (i) take all steps necessary to remove the conflict; or
 - (ii) obtain the full and informed consent of all potentially affected Clients to continue the representation, so long as Counsel is able to fulfil all other obligations under this Code.

Article 10. Client under a Disability

When a Client's ability to make adequately considered decisions in connection with their representation is impaired because of minority, mental disability or any other reason, Counsel must:

- (a) inform the Judge or Chamber of the Tribunal hearing the matter, if any, of the disability;
- (b) take such steps as are necessary to ensure the adequate legal representation of that Client; and
- (c) as far as reasonably possible maintain a normal Counsel-Client relationship with the Client.

Article 11. Accounting for time

Counsel should account in good faith for the time spent working on a case and maintain and preserve detailed records of time spent.

CONDUCT BEFORE THE TRIBUNAL

Article 12. Rules of the Tribunal

(1) Counsel must at all times comply with the Rules and such rulings as to conduct and procedure as may be applied by the Tribunal in its proceedings. Counsel must at all times have due regard to the fair conduct of proceedings.

- (2) Counsel must not, unless permitted by the Rules or this Code or the Judge or Chamber hearing the matter:
- (a) make contact with a Judge or Chamber of the Tribunal without first or concurrently informing counsel acting for any other party to the proceedings;
 - (b) submit exhibits, notes or documents to the Judge without communicating them within first or concurrently to counsel acting for any other party to the proceedings.

**Article 13.
Candour Toward the Tribunal**

- (1) Counsel is personally responsible for the conduct and presentation of their Client's case, and must exercise personal judgement upon the substance and purpose of statements made and questions asked.
- (2) Counsel must not knowingly:
- (a) make an incorrect statement of material fact to the Tribunal; or
 - (b) offer evidence which the Counsel knows to be incorrect.
- (3) Despite sub-article (2)(a), Counsel will not have made an incorrect statement to another party to the proceedings or to the Tribunal simply by failing to correct an error on any matter stated to Counsel or to the Tribunal during proceedings.
- (4) Counsel must take all necessary steps to correct an incorrect statement made by Counsel in proceedings before the Tribunal as soon as possible after Counsel becomes aware that the statement was incorrect.

**Article 14.
Integrity of Evidence**

Counsel must at all times maintain the integrity of evidence, whether in written, oral or any other form, which is or may be submitted to the Tribunal.

**Article 15.
Impartiality of the Tribunal**

- (1) Counsel must take all necessary steps to ensure that their actions do not bring proceedings before the Tribunal into disrepute.
- (2) Counsel must not seek to influence a Judge or other official of the Tribunal by means prohibited by the Statute, the Rules or this Code.

**Article 16.
Counsel as witness**

Counsel must not act as advocate in a trial in which the Counsel is likely to be a necessary witness except where the testimony relates to an contested issue or where substantial hardship would be caused to the Client if that Counsel does not so act.

DUTY OF COUNSEL TO OTHERS

**Article 17.
Fairness and Courtesy to Opposing Party and Counsel**

- (1) Counsel must recognise all other Counsel appearing or acting in relation to proceedings before the Tribunal as professional colleagues and must act fairly, honestly and courteously towards them and their Clients.
- (2) Counsel must not communicate with the Client of another Counsel except through or with the permission of that Client's Counsel.

**Article 18.
Dealing with Unrepresented Persons**

- (1) If, on behalf of a Client, Counsel is dealing with a person who is not represented by counsel, Counsel:

- (a) must not give advice to this unrepresented person if the interests of the person are, or have a reasonable possibility of being, in conflict with the interests of the Counsel's Client; but
- (b) may advise the unrepresented person to secure legal representation.

(2) Counsel must inform the unrepresented person of the role Counsel plays in the matter, the person's right to counsel under the Rules, and the nature of legal representation in general.

This information must be given whether or not a conflict exists or may exist with the interests of Counsel's Client.

MAINTENANCE OF THE INTEGRITY OF THE PROFESSION

Article 19. Conflicts

If there is any inconsistency between this Code and any other code which Counsel is bound to honour, the terms of this Code prevail in respect of Counsel's conduct before the Tribunal.

Article 20. Misconduct

It is professional misconduct for Counsel, *inter alia*, to:

- (a) violate or attempt to violate this Code or to knowingly assist or induce another person to do so, or to do so through the acts of another person;
- (b) commit a criminal act which reflects adversely on Counsel's honesty, trustworthiness or fitness as Counsel;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct which is prejudicial to the proper administration of justice before the Tribunal; or
- (e) attempt to influence an officer of the Tribunal in an improper manner.

Article 21. Reporting Misconduct

(1) If:

- (a) Counsel knows that another Counsel has breached this Code or has otherwise engaged in professional misconduct; and
- (b) that violation or conduct raises a substantial question as to the other Counsel's honesty, trustworthiness or fitness as Counsel

Counsel may inform the Judge or Chamber of the Tribunal before which Counsel is appearing.

Article 22. Enforcement

Counsel must abide by and voluntarily submit to any enforcement and disciplinary procedures as may be established by the Tribunal in accordance with the Rules.

Article 23. Amendment

This Code may be amended by the Registrar, after consultation with the Judges.

SOURCES

The following Codes of Professional Conduct and related sources have been Consulted:

1. Australia, New South Wales Bar Association, Barristers' Rules

2. Belgium, Code Judiciaire
3. Bosnia & Herzegovina, Bar Association Code of Legal Ethics, 1989
4. England, Code of Conduct of the Bar of England and Wales
5. European Community, Commission Consultative des Barreaux de la Communauté Européenne (CCBE), Code of Conduct for Lawyers in the European Community
6. France, Règlement intérieur de l'ordre des Avocats à la cour de Versailles", délibéré par le Conseil de l'Ordre en sa séance du 7 décembre 1992, (mise à jour le 01/01/93)
Code de Procédure Civile, Décr. 27, Nov. 1991, Titre III
7. International Association of Penal Law and International Commission of Jurists, 1982 Draft Principles on the Independence of the Legal Profession ("Noto Principles")
8. Netherlands Bar Association, Rules of Conduct
9. Spain, Estatuto General de la Abogacia, Real Decreto 2090/1982
10. Union Internationale des Avocats, International Charter of Defence Rights
11. United States of America, American Bar Association, Model Rules of Professional Conduct (1992)



Français

European Agreement relating to persons participating in Proceedings of the European Commission and Court of Human Rights

London, 6.V.1969

The member States of the Council of Europe, signatory hereto,
Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention");
Considering that it is expedient for the better fulfilment of the purposes of the Convention that persons taking part in proceedings before the European Commission of Human Rights (hereinafter referred to as "the Commission") or the European Court of Human Rights (hereinafter referred to as "the Court") shall be accorded certain immunities and facilities;
Desiring to conclude an Agreement for this purpose,
Have agreed as follows:

Article 1

1. The persons to whom this Agreement applies are:
 - a. agents of the Contracting Parties and advisers and advocates assisting them;
 - b. persons taking part in proceedings instituted before the Commission under Article 25 of the Convention, whether in their own name or as representatives of one of the applicants enumerated in the said Article 25;
 - c. barristers, solicitors or professors of law, taking part in proceedings in order to assist one of the persons enumerated in sub-paragraph b above;
 - d. persons chosen by the delegates of the Commission to assist them in proceedings before the Court;
 - e. witnesses, experts and other persons called upon by the Commission or the Court to take part in proceedings before the Commission or the Court.
2. For the purposes of this Agreement, the terms "Commission" and "Court" shall include a Sub-Commission or Chamber, or members of either body carrying out their duties under the terms of the Convention or of the rules of the Commission or of the Court, as the case may be, and the term "taking part in proceedings" shall include making communications with a view to a complaint against a State which has recognised the right of individual petition under Article 25 of the Convention.
3. If, in the course of the exercise by the Committee of Ministers of its functions under Article 32 of the Convention, any person mentioned in paragraph 1 of this article is called upon to appear before, or to submit written statements to the Committee of Ministers, the provisions of this Agreement shall apply in relation to him.

Article 2

1. The persons referred to in paragraph 1 of Article 1 of this Agreement shall have immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted by them before or to the Commission or the Court.
2. This immunity does not apply to the communication, outside the Commission or the Court, by or on behalf of any person entitled to immunity under the preceding paragraph, of any such statements, documents or evidence or any part thereof submitted by that person to the Commission or the Court.

Article 3

1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Commission and the Court.
2. As regards persons under detention, the exercise of this right shall in particular imply that:
 - a. if their correspondence is examined by the competent authorities, its despatch and delivery shall nevertheless take place without undue delay and without alteration;
 - b. such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Commission or the Court;
 - c. such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Commission, or any proceedings resulting therefrom.
3. In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.

Council of Europe
Conseil de l'Europe



Convention for the Protection
of Human Rights
and Fundamental Freedoms
as amended by Protocol No. 11

with Protocol Nos. 1, 4, 6 and 7

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed.

Registry of the European Court of Human Rights
November 1998

Article 4

1.
 - a. The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Commission or the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement whose presence has in advance been authorised by the Commission or the Court.
 - b. No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
2.
 - a. Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.
 - b. Any Contracting Party may at the time of signature or ratification of this Agreement declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.
3. The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.
4. The provisions of paragraphs 1 and 2 of this article shall cease to apply when the person concerned has had for a period of 15 consecutive days from the date when his presence is no longer required by the Commission or the Court the opportunity of returning to the country from which his journey commenced.
5. Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this article and those resulting from a Council of Europe Convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this article shall prevail.

Article 5

1. Immunities and facilities are accorded to the persons referred to in paragraph 1 of Article 1 of this Agreement solely in order to ensure for them the freedom of speech and the independence necessary for the discharge of their functions, tasks or duties, or the exercise of their rights in relation to the Commission and the Court.
2.
 - a. The Commission or the Court, as the case may be, shall alone be competent to waive, in whole or in part, the immunity provided for in paragraph 1 of Article 2 of this Agreement, they have not only the right but the duty to waive immunity in any case where, in their opinion, such immunity would impede the course of justice and waiver in whole or in part would not prejudice the purpose defined in paragraph 1 of this article.
 - b. The immunity may be waived by the Commission or by the Court, either ex officio or at the request, addressed to the Secretary General of the Council of Europe, of any Contracting Party or of any person concerned.
 - c. Decisions waiving immunity or refusing the waiver shall be accompanied by a statement of reasons.
3. If a Contracting Party certifies that waiver of the immunity provided for in paragraph 1 of Article 2 of this Agreement is necessary for the purpose of proceedings in respect of an offence against national security, the Commission or the Court shall waive immunity to the extent specified in the certificate.
4. In the event of the discovery of a fact which might, by its nature, have a decisive influence and which at the time of the decision refusing waiver of immunity was unknown to the author of the request, the latter may make a new request to the Commission or the Court.

Article 6

Nothing in this Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention.

Article 7

1. This Agreement shall be open to signature by the member States of the Council of Europe, who may become Parties to it either by:
 - a. signature without reservation in respect of ratification or acceptance, or
 - b. signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.
2. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

Article 8

1. This Agreement shall enter into force one month after the date on which five member States of the Council shall have become Parties to the Agreement, in accordance with the provisions of Article 7.
2. As regards any member States who shall subsequently sign the Agreement without reservation in respect of ratification or acceptance or who shall ratify or accept it, the Agreement shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification or acceptance.

Article 9

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification or acceptance, specify the territory or

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend,

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 – Right to life

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a in defence of any person from unlawful violence;
 - b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term "forced or compulsory labour" shall not include:
 - a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

territories to which this Agreement shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification or acceptance or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Agreement to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 10 of this Agreement.

Article 10

1. This Agreement shall remain in force indefinitely.
2. Any Contracting Party may, insofar as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. Such a denunciation shall not have the effect of releasing the Contracting Parties concerned from any obligation which may have arisen under this Agreement in relation to any person referred to in paragraph 1 of Article 1.

Article 11

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature without reservation in respect of ratification or acceptance;
- b. any signature with reservation in respect of ratification or acceptance;
- c. the deposit of any instrument of ratification or acceptance;
- d. any date or entry into force of this Agreement in accordance with Article 8 thereof;
- e. any declaration received in pursuance of the provisions of paragraph 2 of Article 4 and of paragraphs 2 and 3 of Article 9;
- f. any notification of withdrawal of a declaration in pursuance of the provisions of paragraph 2 of Article 4 and any notification received in pursuance of the provisions of Article 10 and the date on which any denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at London, this 6th day of May 1969, in the English and French languages, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.



Français

European Agreement relating to persons participating in Proceedings of the European Commission and Court of Human Rights

London, 6.V.1969

The member States of the Council of Europe, signatory hereto,
Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention");
Considering that it is expedient for the better fulfilment of the purposes of the Convention that persons taking part in proceedings before the European Commission of Human Rights (hereinafter referred to as "the Commission") or the European Court of Human Rights (hereinafter referred to as "the Court") shall be accorded certain immunities and facilities;
Desiring to conclude an Agreement for this purpose,
Have agreed as follows:

Article 1

1. The persons to whom this Agreement applies are:
 - a. agents of the Contracting Parties and advisers and advocates assisting them;
 - b. persons taking part in proceedings instituted before the Commission under Article 25 of the Convention, whether in their own name or as representatives of one of the applicants enumerated in the said Article 25;
 - c. barristers, solicitors or professors of law, taking part in proceedings in order to assist one of the persons enumerated in sub-paragraph b above;
 - d. persons chosen by the delegates of the Commission to assist them in proceedings before the Court;
 - e. witnesses, experts and other persons called upon by the Commission or the Court to take part in proceedings before the Commission or the Court.
2. For the purposes of this Agreement, the terms "Commission" and "Court" shall include a Sub-Commission or Chamber, or members of either body carrying out their duties under the terms of the Convention or of the rules of the Commission or of the Court, as the case may be; and the term "taking part in proceedings" shall include making communications with a view to a complaint against a State which has recognised the right of individual petition under Article 25 of the Convention.
3. If, in the course of the exercise by the Committee of Ministers of its functions under Article 32 of the Convention, any person mentioned in paragraph 1 of this article is called upon to appear before, or to submit written statements to the Committee of Ministers, the provisions of this Agreement shall apply in relation to him.

Article 2

1. The persons referred to in paragraph 1 of Article 1 of this Agreement shall have immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted by them before or to the Commission or the Court.
2. This immunity does not apply to the communication, outside the Commission or the Court, by or on behalf of any person entitled to immunity under the preceding paragraph, of any such statements, documents or evidence or any part thereof submitted by that person to the Commission or the Court.

Article 3

1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Commission and the Court.
2. As regards persons under detention, the exercise of this right shall in particular imply that:
 - a. if their correspondence is examined by the competent authorities, its despatch and delivery shall nevertheless take place without undue delay and without alteration;
 - b. such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Commission or the Court;
 - c. such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Commission, or any proceedings resulting therefrom.
3. In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.

Article 4

1.
 - a. The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Commission or the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement whose presence has in advance been authorised by the Commission or the Court.
 - b. No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
2.
 - a. Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.
 - b. Any Contracting Party may at the time of signature or ratification of this Agreement declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.
3. The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.
4. The provisions of paragraphs 1 and 2 of this article shall cease to apply when the person concerned has had for a period of 15 consecutive days from the date when his presence is no longer required by the Commission or the Court the opportunity of returning to the country from which his journey commenced.
5. Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this article and those resulting from a Council of Europe Convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this article shall prevail.

Article 5

1. Immunities and facilities are accorded to the persons referred to in paragraph 1 of Article 1 of this Agreement solely in order to ensure for them the freedom of speech and the independence necessary for the discharge of their functions, tasks or duties, or the exercise of their rights in relation to the Commission and the Court.
2.
 - a. The Commission or the Court, as the case may be, shall alone be competent to waive, in whole or in part, the immunity provided for in paragraph 1 of Article 2 of this Agreement; they have not only the right but the duty to waive immunity in any case where, in their opinion, such immunity would impede the course of justice and waiver in whole or in part would not prejudice the purpose defined in paragraph 1 of this article.
 - b. The immunity may be waived by the Commission or by the Court, either ex officio or at the request, addressed to the Secretary General of the Council of Europe, of any Contracting Party or of any person concerned.
 - c. Decisions waiving immunity or refusing the waiver shall be accompanied by a statement of reasons.
3. If a Contracting Party certifies that waiver of the immunity provided for in paragraph 1 of Article 2 of this Agreement is necessary for the purpose of proceedings in respect of an offence against national security, the Commission or the Court shall waive immunity to the extent specified in the certificate.
4. In the event of the discovery of a fact which might, by its nature, have a decisive influence and which at the time of the decision refusing waiver of immunity was unknown to the author of the request, the latter may make a new request to the Commission or the Court.

Article 6

Nothing in this Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention.

Article 7

1. This Agreement shall be open to signature by the member States of the Council of Europe, who may become Parties to it either by:
 - a. signature without reservation in respect of ratification or acceptance, or
 - b. signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.
2. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

Article 8

1. This Agreement shall enter into force one month after the date on which five member States of the Council shall have become Parties to the Agreement, in accordance with the provisions of Article 7.
2. As regards any member States who shall subsequently sign the Agreement without reservation in respect of ratification or acceptance or who shall ratify or accept it, the Agreement shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification or acceptance.

Article 9

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification or acceptance, specify the territory or

territories to which this Agreement shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification or acceptance or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Agreement to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 10 of this Agreement.

Article 10

1. This Agreement shall remain in force indefinitely.
2. Any Contracting Party may, insofar as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. Such a denunciation shall not have the effect of releasing the Contracting Parties concerned from any obligation which may have arisen under this Agreement in relation to any person referred to in paragraph 1 of Article 1.

Article 11

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature without reservation in respect of ratification or acceptance;
- b. any signature with reservation in respect of ratification or acceptance;
- c. the deposit of any instrument of ratification or acceptance;
- d. any date of entry into force of this Agreement in accordance with Article 8 thereof;
- e. any declaration received in pursuance of the provisions of paragraph 2 of Article 4 and of paragraphs 2 and 3 of Article 9;
- f. any notification of withdrawal of a declaration in pursuance of the provisions of paragraph 2 of Article 4 and any notification received in pursuance of the provisions of Article 10 and the date on which any denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at London, this 6th day of May 1969, in the English and French languages, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

*Français*

European Convention on State Immunity

Basle, 16.V.1972

Protocol to the Convention (ETS 074A)

Preamble

The member States of the Council of Europe, signatory hereto,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members,
Taking into account the fact that there is in international law a tendency to restrict the cases in which a State may claim immunity before foreign courts;
Desiring to establish in their mutual relations common rules relating to the scope of the immunity of one State from the jurisdiction of the courts of another State, and designed to ensure compliance with judgments given against another State;
Considering that the adoption of such rules will tend to advance the work of harmonisation undertaken by the member States of the Council of Europe in the legal field,
Have agreed as follows.

Chapter I – Immunity from jurisdiction

Article 1

1. A Contracting State which institutes or intervenes in proceedings before a court of another Contracting State submits, for the purpose of those proceedings, to the jurisdiction of the courts of that State.
2. Such a Contracting State cannot claim immunity from the jurisdiction of the courts of the other Contracting State in respect of any counterclaim:
 - a. arising out of the legal relationship or the facts on which the principal claim is based;
 - b. if, according to the provisions of this Convention, it would not have been entitled to invoke immunity in respect of that counterclaim had separate proceedings been brought against it in those courts.
3. A Contracting State which makes a counterclaim in proceedings before a court of another Contracting State submits to the jurisdiction of the courts of that State with respect not only to the counterclaim but also to the principal claim.

Article 2

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has undertaken to submit to the jurisdiction of that court either:

- a. by international agreement;
- b. by an express term contained in a contract in writing; or
- c. by an express consent given after a dispute between the parties has arisen.

Article 3

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if, before claiming immunity, it takes any step in the proceedings relating to the merits. However, if the State satisfies the Court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it has taken such a step, it can claim immunity based on these facts if it does so at the earliest possible moment.
2. A Contracting State is not deemed to have waived immunity if it appears before a court of another Contracting State in order to assert immunity.

Article 4

1. Subject to the provisions of Article 5, a Contracting State cannot claim immunity from the jurisdiction of the courts of another Contracting State if the proceedings relate to an obligation of the State, which, by virtue of a contract, falls to be discharged in the territory of the State of

*Français*

European Convention on State Immunity

Basle, 16.V.1972

Protocol to the Convention (ETS 074A)

Preamble

The member States of the Council of Europe, signatory hereto,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members,
Taking into account the fact that there is in international law a tendency to restrict the cases in which a State may claim immunity before foreign courts,
Desiring to establish in their mutual relations common rules relating to the scope of the immunity of one State from the jurisdiction of the courts of another State, and designed to ensure compliance with judgments given against another State;
Considering that the adoption of such rules will tend to advance the work of harmonisation undertaken by the member States of the Council of Europe in the legal field,
Have agreed as follows:

Chapter I – Immunity from jurisdiction

Article 1

1. A Contracting State which institutes or intervenes in proceedings before a court of another Contracting State submits, for the purpose of those proceedings, to the jurisdiction of the courts of that State.
2. Such a Contracting State cannot claim immunity from the jurisdiction of the courts of the other Contracting State in respect of any counterclaim:
 - a. arising out of the legal relationship or the facts on which the principal claim is based,
 - b. if, according to the provisions of this Convention, it would not have been entitled to invoke immunity in respect of that counterclaim had separate proceedings been brought against it in those courts.
3. A Contracting State which makes a counterclaim in proceedings before a court of another Contracting State submits to the jurisdiction of the courts of that State with respect not only to the counterclaim but also to the principal claim.

Article 2

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has undertaken to submit to the jurisdiction of that court either:

- a. by international agreement;
- b. by an express term contained in a contract in writing; or
- c. by an express consent given after a dispute between the parties has arisen.

Article 3

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if, before claiming immunity, it takes any step in the proceedings before the court which amounts to an admission that it could not have acquired knowledge of facts on which a claim is based, or if it takes any step, it can claim immunity based on these facts if it does so at the earliest opportunity.
2. A Contracting State which appears before a court of another Contracting State in order to assert

immunity from the jurisdiction of the courts of another Contracting State, if it has undertaken to submit to the jurisdiction of that court by a contract, falls to be discharged in the territory of the State of

the forum.

2. Paragraph 1 shall not apply:
 - a. in the case of a contract concluded between States;
 - b. if the parties to the contract have otherwise agreed in writing;
 - c. if the State is party to a contract concluded on its territory and the obligation of the State is governed by its administrative law.

Article 5

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a contract of employment between the State and an individual where the work has to be performed on the territory of the State of the forum.
2. Paragraph 1 shall not apply where:
 - a. the individual is a national of the employing State at the time when the proceedings are brought;
 - b. at the time when the contract was entered into the individual was neither a national of the State of the forum nor habitually resident in that State; or
 - c. the parties to the contract have otherwise agreed in writing, unless, in accordance with the law of the State of the forum, the courts of that State have exclusive jurisdiction by reason of the subject-matter.
3. Where the work is done for an office, agency or other establishment referred to in Article 7, paragraphs 2.a and b of the present article apply only if, at the time the contract was entered into, the individual had his habitual residence in the Contracting State which employs him.

Article 6

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it participates with one or more private persons in a company, association or other legal entity having its seat, registered office or principal place of business on the territory of the State of the forum, and the proceedings concern the relationship, in matters arising out of that participation, between the State on the one hand and the entity or any other participant on the other hand.
2. Paragraph 1 shall not apply if it is otherwise agreed in writing.

Article 7

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has on the territory of the State of the forum an office, agency or other establishment through which it engages, in the same manner as a private person, in an industrial, commercial or financial activity, and the proceedings relate to that activity of the office, agency or establishment.
2. Paragraph 1 shall not apply if all the parties to the dispute are States, or if the parties have otherwise agreed in writing.

Article 8

- A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate:
- a. to a patent, industrial design, trade-mark, service mark or other similar right which, in the State of the forum, has been applied for, registered or deposited or is otherwise protected, and in respect of which the State is the applicant or owner;
 - b. to an alleged infringement by it, in the territory of the State of the forum, of such a right belonging to a third person and protected in that State;
 - c. to an alleged infringement by it, in the territory of the State of the forum, of copyright belonging to a third person and protected in that State;
 - d. to the right to use a trade name in the State of the forum.

Article 9

- A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to:
- a. its rights or interests in, or its use or possession of, immovable property; or
 - b. its obligations arising out of its rights or interests in, or use or possession of, immovable property

and the property is situated in the territory of the State of the forum.

Article 10

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a right in movable or immovable property arising by way of succession, gift or *bona vacantia*.

Article 11

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred.

Article 12

1. Where a Contracting State has agreed in writing to submit to arbitration a dispute which has arisen or may arise out of a civil or commercial matter, that State may not claim immunity from the jurisdiction of a court of another Contracting State on the territory or according to the law of which the arbitration has taken or will take place in respect of any proceedings relating to:
 - a. the validity or interpretation of the arbitration agreement;
 - b. the arbitration procedure;
 - c. the setting aside of the award,

unless the arbitration agreement otherwise provides.

2. Paragraph 1 shall not apply to an arbitration agreement between States

Article 13

Paragraph 1 of Article 1 shall not apply where a Contracting State asserts, in proceedings pending before a court of another Contracting State to which it is not a party, that it has a right or interest in property which is the subject-matter of the proceedings, and the circumstances are such that it would have been entitled to immunity if the proceedings had been brought against it.

Article 14

Nothing in this Convention shall be interpreted as preventing a court of a Contracting State from administering or supervising or arranging for the administration of property, such as trust property or the estate of a bankrupt, solely on account of the fact that another Contracting State has a right or interest in the property.

Article 15

A Contracting State shall be entitled to immunity from the jurisdiction of the courts of another Contracting State if the proceedings do not fall within Articles 1 to 14; the court shall decline to entertain such proceedings even if the State does not appear.

Chapter II – Procedural rules

Article 16

1. In proceedings against a Contracting State in a court of another Contracting State, the following rules shall apply.
2. The competent authorities of the State of the forum shall transmit
 - o the original or a copy of the document by which the proceedings are instituted;
 - o a copy of any judgment given by default against a State which was defendant in the proceedings,

through the diplomatic channel to the Ministry of Foreign Affairs of the defendant State, for onward transmission, where appropriate, to the competent authority. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the defendant State.

3. Service of the documents referred to in paragraph 2 is deemed to have been effected by their receipt by the Ministry of Foreign Affairs.
4. The time-limits within which the State must enter an appearance or appeal against any judgment given by default shall begin to run two months after the date on which the document by which the proceedings were instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.
5. If it rests with the court to prescribe the time-limits for entering an appearance or for appealing against a judgment given by default, the court shall allow the State not less than two months after the date on which the document by which the proceedings are instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.
6. A Contracting State which appears in the proceedings is deemed to have waived any objection to the method of service.
7. If the Contracting State has not appeared, judgment by default may be given against it only if it is established that the document by which the proceedings were instituted has been transmitted in conformity with paragraph 2, and that the time-limits for entering an appearance provided for in paragraphs 4 and 5 have been observed.

Article 17

No security, bond or deposit, however described, which could not have been required in the State of the forum of a national of that State or a person domiciled or resident there, shall be required of a Contracting State to guarantee the payment of judicial costs or expenses. A State which is a claimant in the courts of another Contracting State shall pay any judicial costs or expenses for which it may become liable.

Article 18

A Contracting State party to proceedings before a court of another Contracting State may not be subjected to any measure of coercion, or any penalty, by reason of its failure or refusal to disclose any documents or other evidence. However the court may draw any conclusion it thinks

lit from such failure or refusal.

Article 19

1. A court before which proceedings to which a Contracting State is a party are instituted shall, at the request of one of the parties or, if its national law so permits, of its own motion, decline to proceed with the case or shall stay the proceedings if other proceedings between the same parties, based on the same facts and having the same purpose:
 - a. are pending before a court of that Contracting State, and were the first to be instituted; or
 - b. are pending before a court of any other Contracting State, were the first to be instituted and may result in a judgment to which the State party to the proceedings must give effect by virtue of Article 20 or Article 25.
2. Any Contracting State whose law gives the courts a discretion to decline to proceed with a case or to stay the the proceedings in cases where proceedings between the same parties, based on the same facts and having the same purpose, are pending before a court of another Contracting State, may, by notification addressed to the Secretary General of the Council of Europe, declare that its courts shall not be bound by the provisions of paragraph 1.

Chapter III – Effect of Judgment

Article 20

1. A Contracting State shall give effect to a judgment given against it by a court of another Contracting State:
 - a. if, in accordance with the provisions of Articles 1 to 13, the State could not claim immunity from jurisdiction; and
 - b. if the judgment cannot or can no longer be set aside if obtained by default, or if it is not or is no longer subject to appeal or any other form of ordinary review or to annulment.
2. Nevertheless, a Contracting State is not obliged to give effect to such a judgment in any case:
 - a. where it would be manifestly contrary to public policy in that State to do so, or where, in the circumstances, either party had no adequate opportunity fairly to present his case;
 - b. where proceedings between the same parties, based on the same facts and having the same purpose:
 - i. are pending before a court of that State and were the first to be instituted;
 - ii. are pending before a court of another Contracting State, were the first to be instituted and may result in a judgment to which the State party to the proceedings must give effect under the terms of this Convention;
 - c. where the result of the judgment is inconsistent with the result of another judgment given between the same parties:
 - i. by a court of the Contracting State, if the proceedings before that court were the first to be instituted or if the other judgment has been given before the judgment satisfied the conditions specified in paragraph 1.b; or
 - ii. by a court of another Contracting State where the other judgment is the first to satisfy the requirements laid down in the present Convention;
 - d. where the provisions of Article 16 have not been observed and the State has not entered an appearance or has not appealed against a judgment by default.
3. In addition, in the cases provided for in Article 10, a Contracting State is not obliged to give effect to the judgment:
 - a. if the courts of the State of the forum would not have been entitled to assume jurisdiction had they applied, *mutatis mutandis*, the rules of jurisdiction (other than those mentioned in the annex to the present Convention) which operate in the State against which judgment is given; or
 - b. if the court, by applying a law other than that which would have been applied in accordance with the rules of private international law of that State, has reached a result different from that which would have been reached by applying the law determined by those rules.

However, a Contracting State may not rely upon the grounds of refusal specified in sub-paragraphs a and b above if it is bound by an agreement with the State of the forum on the recognition and enforcement of judgments and the judgment fulfils the requirement of that agreement as regards jurisdiction and, where appropriate, the law applied.

Article 21

1. Where a judgment has been given against a Contracting State and that State does not give effect thereto, the party which seeks to invoke the judgment shall be entitled to have determined by the competent court of that State the question whether effect should be given to the judgment in accordance with Article 20. Proceedings may also be brought before this court by the State against which judgment has been given, if its law so permits.
2. Save in so far as may be necessary for the application of Article 20, the competent court of the State in question may not review the merits of the judgment.
3. Where proceedings are instituted before a court of a State in accordance with paragraph 1:
 - a. the parties shall be given an opportunity to be heard in the proceedings;
 - b. documents produced by the party seeking to invoke the judgment shall not be subject to legalisation or any other like formality;
 - c. no security, bond or deposit, however described, shall be required of the party invoking the judgment by reason of his nationality, domicile or residence;
 - d. the party invoking the judgment shall be entitled to legal aid under conditions no less favourable than those applicable to nationals of the State who are domiciled and resident therein.
4. Each Contracting State shall, when depositing its instrument of ratification, acceptance or accession, designate the court or courts referred to in paragraph 1, and inform the Secretary General of the Council of Europe thereof.

Article 22

1. A Contracting State shall give effect to a settlement to which it is a party and which has been made before a court of another Contracting State in the course of the proceedings; the provisions of Article 20 do not apply to such a settlement.
2. If the State does not give effect to the settlement, the procedure provided for in Article 21 may be used.

Article 23

No measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented thereto in writing in any particular case.

Chapter IV – Optional provisions

Article 24

1. Notwithstanding the provisions of Article 15, any State may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, or at any later date, by notification addressed to the Secretary General of the Council of Europe, declare that, in cases not falling within Articles 1 to 13, its courts shall be entitled to entertain proceedings against another Contracting State to the extent that its courts are entitled to entertain proceedings against States not party to the present Convention. Such a declaration shall be without prejudice to the immunity from jurisdiction which foreign States enjoy in respect of acts performed in the exercise of sovereign authority (*acta jure imperii*).
2. The courts of a State which has made the declaration provided for in paragraph 1 shall not however be entitled to entertain such proceedings against another Contracting State if their jurisdiction could have been based solely on one or more of the grounds mentioned in the annex to the present Convention, unless that other Contracting State has taken a step in the proceedings relating to the merits without first challenging the jurisdiction of the court.
3. The provisions of Chapter II apply to proceedings instituted against a Contracting State in accordance with the present article.
4. The declaration made under paragraph 1 may be withdrawn by notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect three months after the date of its receipt, but this shall not affect proceedings instituted before the date on which the withdrawal becomes effective.

Article 25

1. Any Contracting State which has made a declaration under Article 24 shall, in cases not falling within Articles 1 to 13, give effect to a judgment given by a court of another Contracting State which has made a like declaration:
 - a. if the conditions prescribed in paragraph 1.b of Article 20 have been fulfilled; and
 - b. if the court is considered to have jurisdiction in accordance with the following paragraphs.
2. However, the Contracting State is not obliged to give effect to such a judgment:
 - a. if there is a ground for refusal as provided for in paragraph 2 of Article 20; or
 - b. if the provisions of paragraph 2 of Article 24 have not been observed.
3. Subject to the provisions of paragraph 4, a court of a Contracting State shall be considered to have jurisdiction for the purpose of paragraph 1.b:
 - a. if its jurisdiction is recognised in accordance with the provisions of an agreement to which the State of the forum and the other Contracting State are Parties;
 - b. where there is no agreement between the two States concerning the recognition and enforcement of judgments in civil matters, if the courts of the State of the forum would have been entitled to assume jurisdiction had they applied, *mutatis mutandis*, the rules of jurisdiction (other than those mentioned in the annex to the present Convention) which operate in the State against which the judgment was given. This provision does not apply to questions arising out of contracts.
4. The Contracting States having made the declaration provided for in Article 24 may, by means of a supplementary agreement to this Convention, determine the circumstances in which their courts shall be considered to have jurisdiction for the purposes of paragraph 1.b of this article.
5. If the Contracting State does not give effect to the judgment, the procedure provided for in Article 21 may be used.

Article 26

Notwithstanding the provisions of Article 23, a judgment rendered against a Contracting State in proceedings relating to an industrial or commercial activity, in which the State is engaged in the same manner as a private person, may be enforced in the State of the forum against property of the State against which judgment has been given, used exclusively in connection with such an activity, if:

- a. both the State of the forum and the State against which the judgment has been given have made declarations under Article 24;
- b. the proceedings which resulted in the judgment fell within Articles 1 to 13 or were instituted in accordance with paragraphs 1 and 2 of Article 24; and
- c. the judgment satisfies the requirements laid down in paragraph 1.b of Article 20.

Chapter V – General provisions

Article 27

1. For the purposes of the present Convention, the expression "Contracting State" shall not include any legal entity of a Contracting State which

is distinct therefrom and is capable of suing or being sued, even if that entity has been entrusted with public functions.

2. Proceedings may be instituted against any entity referred to in paragraph 1 before the courts of another Contracting State in the same manner as against a private person; however, the courts may not entertain proceedings in respect of acts performed by the entity in the exercise of sovereign authority (*acta jure imperii*).
3. Proceedings may in any event be instituted against any such entity before those courts if, in corresponding circumstances, the courts would have had jurisdiction if the proceedings had been instituted against a Contracting State.

Article 28

1. Without prejudice to the provisions of Article 27, the constituent States of a Federal State do not enjoy immunity.
2. However, a Federal State Party to the present Convention, may, by notification addressed to the Secretary General of the Council of Europe, declare that its constituent States may invoke the provisions of the Convention applicable to Contracting States, and have the same obligations.
3. Where a Federal State has made a declaration in accordance with paragraph 2, service of documents on a constituent State of a Federation shall be made on the Ministry of Foreign Affairs of the Federal State, in conformity with Article 16.
4. The Federal State alone is competent to make the declarations, notifications and communications provided for in the present Convention, and the Federal State alone may be party to proceedings pursuant to Article 34.

Article 29

The present Convention shall not apply to proceedings concerning:

- a. social security;
- b. damage or injury in nuclear matters;
- c. customs duties, taxes or penalties.

Article 30

The present Convention shall not apply to proceedings in respect of claims relating to the operation of seagoing vessels owned or operated by a Contracting State or to the carriage of cargoes and of passengers by such vessels or to the carriage of cargoes owned by a Contracting State and carried on board merchant vessels.

Article 31

Nothing in this Convention shall affect any immunities or privileges enjoyed by a Contracting State in respect of anything done or omitted to be done by, or in relation to, its armed forces when on the territory of another Contracting State.

Article 32

Nothing in the present Convention shall affect privileges and immunities relating to the exercise of the functions of diplomatic missions and consular posts and of persons connected with them.

Article 33

Nothing in the present Convention shall affect existing or future international agreements in special fields which relate to matters dealt with in the present Convention.

Article 34

1. Any dispute which might arise between two or more Contracting States concerning the interpretation or application of the present Convention shall be submitted to the International Court of Justice on the application of one of the parties to the dispute or by special agreement unless the parties agree on a different method of peaceful settlement of the dispute.
2. However, proceedings may not be instituted before the International Court of Justice which relate to:
 - a. a dispute concerning a question arising in proceedings instituted against a Contracting State before a court of another Contracting State, before the court has given a judgment which fulfils the condition provided for in paragraph 1.b of Article 20;
 - b. a dispute concerning a question arising in proceedings instituted before a court of a Contracting State in accordance with paragraph 1 of Article 21, before the court has rendered a final decision in such proceedings.

Article 35

1. The present Convention shall apply only to proceedings introduced after its entry into force.
2. When a State has become Party to this Convention after it has entered into force, the Convention shall apply only to proceedings introduced after it has entered into force with respect to that State.
3. Nothing in this Convention shall apply to proceedings arising out of, or judgments based on, acts, omissions or facts prior to the date on which the present Convention is opened for signature.

Chapter VI – Final provisions

Article 36

1. The present Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall enter into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 37

1. After the entry into force of the present Convention, the Committee of Ministers of the Council of Europe may, by a decision taken by a unanimous vote of the members casting a vote, invite any non-member State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.
3. However, if a State having already acceded to the Convention notifies the Secretary General of the Council of Europe of its objection to the accession of another non-member State, before the entry into force of this accession, the Convention shall not apply to the relations between these two States.

Article 38

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the present Convention shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 40 of this Convention.

Article 39

No reservation is permitted to the present Convention.

Article 40

1. Any Contracting State may, in so far as it is concerned, denounce this Convention by means of notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. This Convention shall, however, continue to apply to proceedings introduced before the date on which the denunciation takes effect, and to judgments given in such proceedings.

Article 41

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

- a. any signature;
- b. any deposit of an instrument of ratification, acceptance or accession;
- c. any date of entry into force of this Convention in accordance with Articles 36 and 37 thereof;
- d. any notification received in pursuance of the provisions of paragraph 2 of Article 19;
- e. any communication received in pursuance of the provisions of paragraph 4 of Article 21;
- f. any notification received in pursuance of the provisions of paragraph 1 of Article 24;
- g. the withdrawal of any notification made in pursuance of the provisions of paragraph 4 of Article 24;
- h. any notification received in pursuance of the provisions of paragraph 2 of Article 28;
- i. any notification received in pursuance of the provisions of paragraph 3 or Article 37;
- j. any declaration received in pursuance of the provisions of Article 38;
- k. any notification received in pursuance of the provisions of Article 40 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.
Done at Basle, this 16th day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

Annex

The grounds of jurisdiction referred to in paragraph 3, sub-paragraph a, of Article 20, paragraph 2 of Article 24 and paragraph 3, sub-paragraph b, of Article 25 are the following:

- a. the presence in the territory of the State of the forum of property belonging to the defendant, or the seizure by the plaintiff of property situated there, unless:
 - the action is brought to assert proprietary or possessory rights in that property, or arises from another issue relating to such property; or
 - the property constitutes the security for a debt which is the subject-matter of the action;
- b. the nationality of the plaintiff;
- c. the domicile, habitual residence or ordinary residence of the plaintiff within the territory of the State of the forum unless the assumption of jurisdiction on such a ground is permitted by way of an exception made on account of the particular subject-matter of a class of contracts;
- d. the fact that the defendant carried on business within the territory of the State of the forum, unless the action arises from that business;
- e. a unilateral specification of the forum by the plaintiff, particularly in an invoice.

A legal person shall be considered to have its domicile or habitual residence where it has its seat, registered office or principal place of business.