

CONTENTS

References are to pages.

See the first page of each part for detailed synopses and reference by paragraph.

<i>Foreword</i>	<i>xix</i>
Geoffrey Robertson, QC	
<i>Foreword to the Second Edition</i>	<i>xxiii</i>
Thomas Buergenthal	
<i>Foreword to the First Edition</i>	<i>xxiv</i>
Antonio Cassese	
<i>User's Guide</i>	<i>xxvii</i>
<i>Introduction</i>	<i>xxix</i>
<i>Glossary of Abbreviations Used in this Edition</i>	<i>xxxi</i>
<i>Quick Index to ICTY Statute</i>	<i>xxxvii</i>
<i>Quick Index to ICTR Statute</i>	<i>xxxix</i>
<i>Quick Index to ICTY and ICTR Rules of Procedure and Evidence</i>	<i>xl</i>

Part 1: The Establishment of the International Tribunals

ICTY Preamble: Updated Statute of the International Tribunal	2
ICTR Preamble: Updated Statute of the International Tribunal for Rwanda	2

Part 2: Organisation of the International Tribunals

ICTY Article 11: Organization of the International Tribunal	41
ICTR Article 10: Organization of the International Tribunal for Rwanda	41
ICC Article 34: Organs of the Court	42
Section 1: Chambers	43
Composition of the Chambers	43
ICTY Article 12/ICTR Article 11: Composition of the Chambers	43
ICC Article 39: Chambers	45

Qualifications and Election of Judges	46
ICTY Article 13/ICTR Article 12: Qualifications of Judges	46
ICTY Article 13 <i>bis</i> / ICTR Article 12 <i>bis</i> : Election of Permanent Judges	46
ICTY Article 13 <i>ter</i> / ICTR Article 12 <i>ter</i> : Election and Appointment of <i>Ad Litem</i> Judges	48
ICTY Article 13 <i>quater</i> / ICTR Article 12 <i>quater</i> : Status of <i>Ad Litem</i> Judges	49
Officers and Members of Chambers	54
ICTY Article 14/ ICTR Article 13: Officers and Members of the Chambers	54
ICTY Rule 14/ ICTR Rule 14: Solemn Declaration	58
ICTR Rule 14 <i>bis</i>	59
Disqualification, Resignation, and Precedence of Judges	59
ICTY Rule 15/ICTR Rule 15: Disqualification of Judges	59
ICTY Rule 15 <i>bis</i> /ICTR Rule 15 <i>bis</i> : Absence of a Judge	64
ICTY Rule 16/ICTR Rule 16: Resignation	67
ICTY Rule 17/ICTR Rule 17: Precedence	67
President, Vice President, and the Bureau	68
ICTY Rule 18/ICTR Rule 18: Election of the President	68
ICTY Rule 19/ICTR Rule 19: Functions of the President	69
ICTY Rule 20/ICTR Rule 20: The Vice President	70
ICTY Rule 21/ICTR Rule 21: Functions of the Vice President	71
ICTY Rule 22/ICTR Rule 22: Replacements	71
ICTY Rule 23/ICTR Rule 23: The Bureau	72
ICTY Rule 23 <i>bis</i> : The Coordination Council	73
ICTY Rule 23 <i>ter</i> : The Management Committee	73
Plenary Meetings	74
ICTY Rule 24/ICTR Rule 24: Plenary Meetings of the Tribunal	74
ICTY Rule 25/ICTR Rule 25: Dates of Plenary Sessions	74
ICTY Rule 26/ICTR Rule 26: Quorum and Vote	75
Rotation of Judges and Deliberations	75
ICTY Rule 27/ICTR Rule 27: Rotation	75
ICTY Rule 28: Reviewing and Duty Judges	76
ICTR Rule 28: Duty Judges	76
ICTY Rule 29/ICTR Rule 29: Deliberations	79
Section 2: The Registry	80
ICTY Article 17/ICTR Article 16: The Registry	80
ICTY Rule 30/ICTR Rule 30: Appointment of the Registrar	80
ICTY Rule 31/ICTR Rule 31: Appointment of the Deputy Registrar and Registry Staff	80
ICTY Rule 32/ICTR Rule 32: Solemn Declaration	81

ICTY Rule 33/ICTR Rule 33: Functions of the Registrar	81
ICTY Rule 33 <i>bis</i> : Functions of the Deputy Registrar	84
Section 3: Victims and Witnesses	85
ICTY Rule 34/ICTR Rule 34: Victims and Witnesses Section	85
Section 4: Minutes and Records	88
ICTY Rule 35/ICTR Rule 35: Minutes	88
ICTY Rule 36/ICTR Rule 36: Record Book	88
Section 5: The Prosecutor	90
ICTY Article 16/ICTR Article 15: The Prosecutor	90
ICTY Rule 37/ICTR Rule 37: Functions of the Prosecutor	97
ICC Article 15: Prosecutor	98
ICTY Rule 38/ICTR Rule 38: Deputy Prosecutor	100
Section 6: The Defence	101
ICTY Rule 44: Appointment, Qualifications, and Duties of Counsel	101
ICTR Rule 44: Appointment and Qualifications of Counsel	101
ICTR Rule 44 <i>bis</i> : Duty Counsel	103
ICTY Rule 45/ICTR Rule 45: Assignment of Counsel	104
ICTY Rule 45 <i>bis</i> /ICTR Rule 45 <i>bis</i> : Detained Persons	112
ICTR Rule 45 <i>ter</i> : Availability of Counsel	113
ICTR Rule 45 <i>quater</i>	113
ICTY Rule 46/ICTR Rule 46: Misconduct of Counsel	114

Part 3: The Status, Privileges and Immunities of the International Tribunals

ICTY Article 30: The Status, Privileges and Immunities of the International Tribunal	120
ICTY Article 29: The Status, Privileges and Immunities of the International Tribunal for Rwanda	120
ICTY Article 31: Seat of the International Tribunal	120
ICTY Rule 4: Meetings Away from the Seat of Tribunal	121
ICTR Rule 4: Sittings Away from the Seat of the Tribunal	121
ICTY Article 32: Expenses of the International Tribunal	122
ICTR Article 30: Expenses of the International Tribunal for Rwanda	122
ICTY Article 33/ICTR Article 31: Working Languages	123
ICTY Article 34/ICTR Article 32: Annual Report	124

Part 4: Competence of the International Tribunals

ICTY Article 1: Competence of the International Tribunal	131
ICTR Article 1: Competence of the International Tribunal for Rwanda	131

Section 1: Sources of Law	136
Section 2: Subject-Matter Jurisdiction	143
Genocide	143
ICTY Article 4/ICTR Article 2: Genocide	143
ICC Article 6: Genocide.	179
Crimes Against Humanity	180
ICTY Article 5/ICTR Article 3: Crimes Against Humanity	180
ICC Article 7: Crimes Against Humanity.	218
War Crimes.	219
ICTY Article 2: Grave Breaches of the Geneva Conventions of 1949	220
ICTY Article 3: Violations of the Laws or Customs of War	251
ICTR Article 4: Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II.	266
ICC Article 8: War Crimes	274
Elements of the Offences	289
ICC Elements of Crimes	298
Offenses Against the Administration of Justice	322
ICTY Rule 77/ICTR Rule 77: Contempt of the Tribunal	322
ICTY Rule 77 <i>bis</i> : Payment of Fines	337
ICTY Rule 91/ICTR Rule 91: False Testimony Under Solemn Declaration.	338
ICC Article 70: Offences Against the Administration of Justice	343
ICC Rule 162: Exercise of Jurisdiction	344
ICC Rule 163: Application of the Statute and the Rules	344
ICC Rule 164: Periods of Limitation	345
ICC Rule 165: Investigation, Prosecution and Trial	345
ICC Rule 166: Sanctions Under Article 70	345
ICC Rule 167: International Cooperation and Judicial Assistance.	346
ICC Rule 168: <i>Ne Bis in Idem</i>	346
ICC Rule 169: Immediate Arrest	346
ICC Article 71: Sanctions for Misconduct Before the Court	347
Section 3: Personal Jurisdiction	348
ICTY Article 6/ICTR Article 5: Personal Jurisdiction	348
ICC Article 1: The Court	357
ICC Article 25: Individual Criminal Responsibility.	357
ICC Article 26: Exclusion of Jurisdiction Over Persons Under Eighteen	358

Section 4: Temporal and Territorial Jurisdiction	354
ICTY Article 8/ICTR Article 7: Territorial and Temporal Jurisdiction.	354
ICC Article 11: Jurisdiction <i>Ratione Temporis</i>	357
ICC Article 4: Legal Status and Powers of the Court	358
ICC Article 12: Preconditions to the Exercise of Jurisdiction	358
ICC Article 13: Exercise of Jurisdiction	358

Part 5: Primacy of the International Tribunals

ICTY Article 9/ ICTR Article 8: Concurrent Jurisdiction	367
ICTY Article 10/ICTR Article 9: <i>Non-Bis-in-Idem</i>	371
ICTY Rule 13/ICTR Rule 13: <i>Non-Bis-in-Idem</i>	372
ICTY Rule 8/ICTR Rule 8: Request for Information.	376
ICTY Rule 9/ICTR Rule 9: Prosecutor's Request for Deferral.	377
ICTY Rule 10/ICTR Rule 10: Formal Request for Deferral.	379
ICTY Rule 11 <i>bis</i> /ICTR Rule 11 <i>bis</i> : Referral of the Indictment to Another Court	385
ICTY Rule 12/ICTR Rule 12: Determinations of Courts of Any State.	387
ICC Preamble.	390
ICC Article 1: The Court	390
ICC Article 17: Issues of Admissibility	391
ICC Article 18: Preliminary Rulings Regarding Admissibility	392
ICC Article 19: Challenges to the Jurisdiction of the Court or the Admissibility of a Case	394
ICC Article 20: <i>Ne Bis in Idem</i>	396

Part 6: General Principles of Criminal Law

Section 1: Legality	400
ICC Article 22: <i>Nullum Crimen Sine Lege</i>	400
ICC Article 23: <i>Nulla Poena Sine Lege</i>	401
ICC Article 24: Non-Retroactivity <i>Ratione Personae</i>	401
Section 2: Individual Criminal Responsibility	408
ICTY Article 7/ICTR Article 6: Individual Criminal Responsibility	408
ICTY Article 7(3)/ICTR Article 6(3): Command Responsibility	424
ICC Article 28: Responsibility of Commanders and Other Superiors	442
ICC Article 33: Superior Orders and Prescription of Law	444
Section 3: Defences	445
ICC Article 31: Grounds for Excluding Criminal Responsibility.	458
ICC Article 32: Mistake of Fact or Mistake of Law	459
ICC Article 33: Superior Orders and Prescription of Law	459

Part 7: Rules of Procedure and Evidence

ICTY Article 15/ICTR Article 14: Rules of Procedure and Evidence 462

ICC Article 51: Rules of Procedure and Evidence 467

ICC Article 52: Regulations of the Court. 467

ICTY Rule1/ICTR Rule1: Entry into Force 468

ICTY Rule 2/ICTR Rule 2: Definitions 468

ICTY Rule 3/ICTR Rule 3: Languages 470

ICTY Rule 5/ICTR Rule 5: Non-Compliance with Rules 473

ICTY Rule 6/ICTR Rule 6: Amendment of the Rules 474

ICTY Rule 7/ICTR Rule 7: Authentic Texts. 476

Part 8: International Criminal Proceedings

Section 1: Investigations 492

ICTY Rule 39/ICTR Rule 39: Conduct of Investigations. 492

ICTY Rule 40/ICTR Rule 40: Provisional Measures 494

ICTY Rule 40 *bis*/ICTR Rule 40 *bis*: Transfer and Provisional
Detention of Suspects 495

ICTY Rule 41: Retention of Information 500

ICTR Rule 41: Preservation of Information. 500

ICTY Rule 42/ICTR Rule 42: Rights of Suspects During
Investigations. 501

ICTY Rule 43/ICTR Rule 43: Recording Questioning of Suspects 502

Section 2: Indictment 504

ICTY Article 18/ICTR Article 17: Investigation and Preparation of
Indictment 504

ICTY Article 19/ICTR Article 18: Review of the Indictment. 508

ICTY Rule 47/ICTR Rule 47: Submission of Indictment by the
Prosecutor 510

ICTY Rule 48/ICTR Rule 48: Joinder of Accused 516

ICTR Rule 48 *bis*: Joinder of Trials 520

ICTY Rule 49/ICTR Rule 49: Joinder of Crimes 520

ICTY Rule 50/ICTR Rule 50: Amendment of Indictment 523

ICTY Rule 51/ICTR Rule 51: Withdrawal of Indictment. 528

ICTY Rule 52/ICTR Rule 52: Public Character of Indictment. 531

ICTY Rule 53/ICTR Rule 53: Non-Disclosure of Indictment 531

ICTY Rule 53 *bis*/ICTR Rule 53 *bis*: Service of Indictment 533

Section 3: Cumulative Charging. 534

Section 4: Orders and Warrants 538

ICTY Rule 54/ICTR Rule 54: General Rule 538

ICTY Rule 54 *bis*: Orders Directed to States for the Production of
Documents 552

ICTY Rule 55/ICTR Rule 55: Execution of Arrest Warrants	555
ICTR Rule 55 <i>bis</i> : Warrant of Arrest to All States	558
ICTY Rule 57/ICTR Rule 57: Procedure after Arrest	559
ICTY Rule 59 <i>bis</i> : Transmission of Arrest Warrants	560
ICTY Rule 60/ICTR Rule 60: Publication of Indictment	565
ICTY Rule 61/ICTR Rule 61: Procedure in Case of Failure to Execute a Warrant	566
Section 5: Commencement and Conduct of Trial Proceedings	574
ICTY Article 20/ICTR Article 19: Commencement and Conduct of Trial Proceedings	574
Rights of the Accused	577
ICTY Article 21/ICTR Article 20: Rights of the Accused	577
ICTY Rule 63/ICTR Rule 63: Questioning of the Accused	596
ICTY Rule 64/ICTR Rule 64: Detention on Remand	598
ICTY Rule 65/ICTR Rule 65: Provisional Release	599
Protection of Victims and Witnesses	612
ICTY Article 22/ICTR Article 21: Protection of Victims and Witnesses	612
ICTY Rule 69/ICTR Rule 69: Protection of Victims and Witnesses	612
ICTY Rule 75/ICTR Rule 75: Measure for the Protection of Victims and Witnesses	621
Time Limits	630
ICTY Rule 126: General Provision	630
ICTY Rule 126 <i>bis</i> : Time for Filing Responses to Motions	630
ICTY Rule 127: Variation of Time-Limits	631
ICTR Rule 7 <i>ter</i> : Time Limits	631
Preliminary Proceedings	632
ICTY Rule 62/ICTR Rule 62: Initial Appearance of Accused	632
ICTY Rule 62 <i>bis</i> : Guilty Pleas	639
ICTY Rule 62 <i>ter</i> : Plea Agreement Procedure	642
ICTY Rule 65 <i>bis</i> /ICTR Rule 65 <i>bis</i> : Status Conferences	642
ICTY Rule 65 <i>ter</i> : Pre-Trial Judge	644
Production of Evidence	647
ICTY Rule 66: Disclosure by the Prosecutor	647
ICTR Rule 66: Disclosure of Materials by the Prosecutor	647
ICTY Rule 67: Reciprocal Disclosure	656
ICTR Rule 67: Reciprocal Disclosure of Evidence	656
ICTY Rule 68/ICTR Rule 68: Disclosure of Exculpatory Evidence	662
ICTY Rule 68 <i>bis</i> : Failure to Comply with Disclosure Obligations	668
ICTY Rule 70/ICTR Rule 70: Matters Not Subject to Disclosure	668
Depositions	672
ICTY Rule 71/ICTR Rule 71: Depositions	672
ICTY Rule 71 <i>bis</i> : Testimony by Video-Conference Link	676

Motions	676
ICTY Rule 72/ICTR Rule 72: Preliminary Motions.	676
ICTY Rule 73: Other Motions	686
ICTR Rule 73: Motions	686
Conferences	691
ICTY Rule 73 <i>bis</i> /ICTR Rule 73 <i>bis</i> : Pre-Trial Conference.	691
ICTY Rule 73 <i>ter</i> /ICTR Rule 73 <i>ter</i> : Pre-Defence Conference	694
Proceedings Before Trial Chambers	696
ICTY Rule 74/ICTR Rule 74: <i>Amicus Curiae</i>	696
ICTY Rule 74 <i>bis</i> /ICTR Rule 74 <i>bis</i> : Medical Examination of the Accused	702
ICTY Rule 76/ICTR Rule 76: Solemn Declaration by Interpreters and Translators.	702
ICTY Rule 78/ICTR Rule 78: Open Sessions	703
ICTY Rule 79/ICTR Rule 79: Closed Sessions	703
ICTY Rule 80/ICTR Rule 80: Control of Proceedings.	707
ICTY Rule 81/ICTR Rule 81: Records of Proceedings and Evidence	707
ICTY Rule 82/ICTR Rule 82: Joint and Separate Trials	708
ICTY Rule 83/ICTR Rule 83: Instruments of Restraint.	711
ICTY Rule 84/ICTR Rule 84: Opening Statements	712
ICTY Rule 84 <i>bis</i> : Statement of the Accused.	713
ICTY Rule 85/ICTR Rule 85: Presentation of Evidence	713
ICTY Rule 86/ICTR Rule 86: Closing Arguments.	719
ICTY Rule 87/ICTR Rule 87: Deliberations	721
Rules of Evidence	725
ICTY Rule 89/ICTR Rule 89: General Provisions	725
ICTY Rule 90/ICTR Rule 90: Testimony of Witnesses	735
ICTY Rule 90 <i>bis</i> /ICTR Rule 90 <i>bis</i> : Transfer of a Detained Witness	741
ICTY Rule 92/ICTR Rule 92: Confessions	745
ICTY Rule 92 <i>bis</i> /ICTR Rule 92 <i>bis</i> : Proof of Facts Other Than by Oral Evidence	746
ICTY Rule 93/ICTR Rule 93: Evidence of Consistent Pattern of Conduct	749
ICTY Rule 94/ICTR Rule 94: Judicial Notice	749
ICTY Rule 94 <i>bis</i> /ICTR Rule 94 <i>bis</i> : Testimony of Expert Witnesses	752
ICTY Rule 95: Exclusion of Certain Evidence	753
ICTR Rule 95: Exclusion of Evidence on the Grounds of the Means by Which It Was Obtained	753
ICTY Rule 96/ICTR Rule 96: Evidence in Cases of Sexual Assault	754
ICTY Rule 97/ICTR Rule 97: Lawyer-Client Privilege	757
ICTY Rule 98/ICTR Rule 98: Power of Chambers to Order Production of Additional Evidence	758
Section 6: Judgement	760
ICTY Article 23/ICTR Article 22: Judgement	760
ICTY Rule 98 <i>bis</i> /ICTR Rule 98 <i>bis</i> : Motion of Judgement of Acquittal.	761

ICTY Rule 98 <i>ter</i> : Judgement	763
ICTR Rule 88: Judgement	763
ICTY Rule 99/ICTR Rule 99: Status of the Acquitted Person	764

Part 9: Sentencing Procedure, Penalties and Enforcement of Sentences

ICTY Article 24/ICTR Article 23: Penalties	769
ICTY Rule 101/ICTR Rule 101: Penalties	769
ICTY Rule 100/ICTR Rule 100: Sentencing Procedure on a Guilty Plea	791
ICTY Rule 102/ICTR Rule 102: Status of the Convicted Person	796
ICTY Article 27/ICTR Article 26: Enforcement of Sentences	797
ICTY Rule 103/ICTR Rule 103: Place of Imprisonment	798
ICTY Rule 104/ICTR Rule 104: Supervision of Imprisonment	801
ICTY Rule 105/ICTR Rule 105: Restitution of Property	802
ICTY Rule 106/ICTR Rule 106: Compensation to Victims	803
ICTY Article 28/ICTR Article 27: Pardon or Commutation of Sentences	804
ICTY Rule 123/ICTR Rule 124: Notification by States	805
ICTY Rule 124/ICTR Rule 125: Determination by the President	805
ICTY Rule 125/ICTR Rule 126: General Standards for Granting Pardon or Commutation	806

Part 10: Appeal and Review Proceedings

Section 1: Appeal Proceedings	811
ICTY Article 25/Article 24: Appellate Proceedings	811
ICTY Rule 107/ICTR Rule 107: General Provision	814
ICTR Rule 107 <i>bis</i> : Practice Directions for the Appeals Chamber	815
ICTY Rule 108/ICTR Rule 108: Notice of Appeal	815
ICTR Rule 108 <i>bis</i> : Pre-Appeal Judge	816
ICTY Rule 108 <i>bis</i> : State Request for Review	816
ICTY Rule 109/ICTR Rule 109: Record on Appeal	818
ICTY Rule 110/ICTR Rule 110: Copies of Record	819
ICTY Rule 111/ICTR Rule 111: Appellant's Brief	819
ICTY Rule 112/ICTR Rule 112: Respondent's Brief	821
ICTY Rule 113/ICTR Rule 113: Brief in Reply	821
ICTY Rule 114/ICTR Rule 114: Date of Hearing	822
ICTY Rule 115/ICTR Rule 115: Additional Evidence	822
ICTR Rule 116: Extension of Time-Limits	826
ICTY Rule 116 <i>bis</i> /ICTR Rule 117: Expedited Appeals Procedure	827
ICTR Rule 117 <i>bis</i> : Parties' Books	828
ICTR Rule 117 <i>ter</i> : Filing of the Trial Records	829
ICTY Rule 117/ICTR Rule 118: Judgement on Appeal	829
ICTY Rule 118/ICTR Rule 119: Status of the Accused Following Appeal	830

Section 2: Review Proceedings 831

ICTY Article 26/ICTR Article 25: Review Proceedings 831

ICTY Rule 119/ICTR Rule 120: Request for Review 831

ICTY Rule 120/ICTR Rule 121: Preliminary Examination 832

ICTY Rule 121/ICTR Rule 122: Appeals. 832

ICTY Rule 122/ICTR Rule 123: Return of Case to Trial Chamber 833

Part 11: State Cooperation

Section 1: General Obligation to Cooperate 836

ICTY Article 29/ICTR Article 28: Cooperation and Judicial Assistance 836

ICTY Rule 56/ICTR Rule 56: Cooperation of States 843

ICTR Rule 58/ICTR Rule 58: National Extradition Provisions 844

Section 2: Consequences of Non-Cooperation 846

ICTY Rule 7 *bis*/ICTR Rule 7 *bis*: Non-Compliance with Obligations 846

ICTY Rule 11/ICTR Rule 11: Non-Compliance with a Request for Deferral 846

ICTY Rule 59: Failure to Execute a Warrant or Transfer Order 847

ICTR Rule 59: Failure to Execute a Warrant of Arrest or Transfer Order. 847

Annexes

Annex 1: Summary of Concluded Trials 851

Annex 2: Rome Statute for an International Criminal Court 859

Annex 3: International Criminal Court Rules of Procedure and Evidence. 915

Annex 4: ICTY Directive on the Assignment of Defence Counsel. 981

Annex 5: Statute of the Special Court for Sierra Leone 993

Annex 6: Special Court for Sierra Leone Rules of Procedure and Evidence . . . 1001

Indices

Bibliography. 1037

Biographical Note 1055

Index 1057