CHAPTER TWO

GENERAL FRAMEWORK OF INTERNATIONAL CRIMINAL PROCEEDINGS

This chapter gives an overview and presents three aspects of the general framework of international criminal trials: 1) the statutory framework, 2) actors in the proceedings, and 3) course of the proceedings. Some evidential matters are covered in more depth including: the indictment, plea-bargaining and victims’ participation.

2.1 Statutory Framework

The legal framework of an international criminal trial is first and foremost governed by the statute of the tribunal or court. In general these are short and concise, and the formal law-making powers are divided between the founders of the tribunal or court and the judges. In addition to the skeleton provided in the statute, all of the tribunals and courts have their own rules of procedure and evidence; together they form the statutory framework. One could include more documents in the statutory framework, but their status varies between different jurisdictions.

The judges at the historical tribunals had, and the ad hoc tribunals, the MICT, the internationalized courts have, a wide discretion to tailor the actual proceedings by drafting and amending the rules of procedure. ICC represents the exception from this approach through its extensive statute which includes procedural issues and more restricted law-making powers for the Judges.\(^1\)

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The legal basis of the IMT was an international agreement between the victorious States, while the IMTFE was instituted by a unilateral act of the Supreme Commander of the allied powers. Considering that they only represented a part of the international community, it is held that the IMT and IMTFE were “multinational tribunals, but not international tribunals in the strict sense”. The IMT itself pointed out in its judgment that the four signatory powers “have done together what any one of them might have done singly”.

The IMT Charter consisted of 30 articles and set forth the jurisdiction, functions and broad procedures of the IMT. During the negotiations in London there was consensus on the substantive criminal law while the principal differences concerned procedure. The four conferring delegations started far apart, for they represented considerable variations and conflicts in legal models and philosophy.

The British and Americans followed the adversarial model emphasizing “the submission of a relatively short indictment which would be followed by the submission of evidence first by prosecution and then by the defence. The French and the Soviets, with variations, followed the inquisitorial model in which the principal evidence is delivered along with the indictment, including a dossier (containing witness statements and documentary evidence) and thereafter the prosecution plays a relatively minor role.”

Whereas both the Soviet Union and France represented the inquisitorial model, French law was exposed to a liberal stream of political philosophy.