Chapter 37
The Conduct of Trials*
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I. Introduction

This article addresses the Conduct of Trials before the International Criminal Court (ICC). However, at the present time, no trial was ever held before the ICC so we cannot benefit from any case law that would interpret the Statute of the International Criminal Court (hereinafter, the Statute) or the Rules of Procedure and Evidence of the International Criminal Court (hereinafter, the Rules) in that regard. Therefore, we have tried, when possible, to refer to the case law of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Ruanda (ICTR) (hereinafter, the ad hoc tribunals) and other internationalized tribunals to give guidelines on how some principles and similar rules were interpreted in the past. We first addressed the general provisions such as the location of the trial, the presence of the accused and the duties of the Trial Chamber upon the assignment of a case. Then we referred to the commencement of the trial and the presentation of evidence and lastly we addressed the decision of the court and, the sentencing process.

II. General Provisions

A. Place of Trial

Pursuant to Article 62 of the Statute, the trial shall be held at the seat of the Court "unless provided otherwise". "The Court may sit elsewhere whenever it considers it desirable."1 Rule 100 of the Rules sets forth the procedure for holding the proceed-

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2 The seat of the Court is in The Hague, the Netherlands, (Article 3 (i) of the Statute).
3 Article 3 (3) of the Statute and Rule 100 (1) of the Rules.

ings elsewhere than the seat of the Court. The request to that effect may be made by the Prosecution, the Defence or by a majority of the Judges of the Court. It shall be made in writing and addressed to the Presidency. The request must specify the State where the moving party wants the proceedings to be held. After satisfying itself on the views of the relevant chamber and after consulting the State where the Court intends to sit and secure its consent, the Presidency shall refer the matter to the judges, which shall take the final decision in plenary session, by a two-thirds majority. The Court may grant the request if it considers that it is necessary, in the interests of justice, to do so.  

Similar provisions exist in the Rules of Procedure and Evidence of both the ICTR and the ICTY. However, the practice of the ad hoc tribunals was more focused on authorising site visits rather than holding proceedings in States other than the host State.

According to the case-law of the ad hoc tribunals, the decision to hold the trial elsewhere than the seat of the Tribunal is a discretionary one and should be taken after due consideration of several factors, including the necessity and value of such a visit; the accessibility of the location; the number of sites to visit and the safety of the judges, parties and the accused. Site visit is important since it allows the Trial Chamber to gain a better understanding of the evidence presented at trial and a better knowledge of the places of the alleged events. Pursuant to the case-law of the ICTR, visits to a particular location may be conducted either before or after the presentation of evidence.

All these factors must be assessed in view of the particular circumstances of each case and as stated by the Trial Chamber in Prosecutor v. Théoneste Bagosora et al.:

“In view of the logistics and costs involved, a decision to carry out a site visit should preferably be made when the visit will be instrumental in the discovery of the truth and determination of the matter before the Chamber.”

4 Rule 100.
5 Rule 4 of the ICTR Rules of Procedure and Evidence (hereinafter ICTR Rules) states that “A Chamber or a Judge may exercise their functions away from the Seat of the Tribunal, if so authorized by the President, in the interests of justice”. See also Rule 4 of the ICTY Rules of Procedure and Evidence (hereinafter ICTY Rules), which states that: “A Chamber may exercise its functions at a place other than the seat of the Tribunal, if so authorized by the President, in the interests of justice.”
8 Idem.
10 Prosecutor v. Théoneste Bagosora et al, Case No. ICTR–98–41–T, Decision on Prosecution’s