Rules of Evidence for the International Criminal Court

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Introduction

Since the heinous crimes of World War II, the world’s nations have recognized the need to prosecute and suppress serious international criminal acts committed by individuals. Some of the nations’ own criminal legal systems have been used effectively to investigate and punish offenders of international criminal law. However, countries have recognized that, at times, domestic legal systems are unavailable or ineffective at dealing with serious international criminal offences. Thus, the establishment of an International Criminal Court is the culmination of the States’ desires to further justice and to deter future crimes by prosecuting and punishing those individuals who have committed crimes of genocide, aggression, serious violations of the laws and customs applicable in armed conflict, serious crimes of international concern and crimes against humanity.

The International Law Commission adopted in 1994 a draft Statute for the formation and workings of an International Criminal Court (hereinafter draft Statute). The Court will consist of 18 judges who are elected on the basis of either their expertise in criminal law or their knowledge of international law. Judicial functions will be performed by the President, elected from among the judges, and the Chambers, including an Appeals Chamber and Trial Chamber. Functions of an investigative and prosecutorial nature will be handled by the Procuracy, and those of an administrative nature by the Registry. Such a separation of functions is one example of the draft Statute provisions to ensure the independence of the various organs of the Court and to guarantee fairness and impartiality.

The Court’s unique role in the administration of world justice requires a distinctive implementation of procedure and formation of rules. It is the judges’ responsibility to develop rules of procedure and evidence for the functioning of the Court. A permanent set of rules is necessary for fairness to the accused and impartiality of the judges. The accused will be fully aware in advance of the evidentiary rules governing the trial without having to
guess at which rules will control. The judges will be able to rule consistently on which evidence will be admissible at trials before the Court.

The purpose of this paper is to propose Rules of Evidence for the International Criminal Court.

In developing these Rules of Evidence, one goal has been to combine the best and most appropriate rules from various countries representing diverse legal traditions. The common law tradition, employed by the United States, and the civil law tradition, exemplified by France, are the two main legal traditions of the Western Hemisphere and have been helpful in the development of these proposed Rules of Evidence. The divergent approaches of the two legal traditions have led to very distinct notions of which relevant evidence should be admissible in a criminal trial. Along with the common and civil law traditions, the evidentiary rules for the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (hereinafter Tribunal for the Former Yugoslavia)\(^2\) have also proved very useful in drafting these Rules. The Rules of Evidence for the Tribunal for the Former Yugoslavia are contained in the Annex to this paper.

The adoption of these proposed Rules of Evidence would, it is hoped, allow for a just, impartial and efficient adjudication of the cases tried before the International Criminal Court.\(^3\)

**Proposed Rules of Evidence for the International Criminal Court**

**Part I: General Provisions**

*Rule 1: Court Bound Only by the Following Rules of Evidence.*

These Rules govern proceedings in the International Criminal Court (hereinafter the Court). The Court shall not be bound by national rules of evidence.

Commentary to Rule 1. This Rule is patterned after Rule 89(A) of the Rules of Evidence of the Tribunal for the Former Yugoslavia (hereinafter YTRE). The Court’s unique role in the administration of world justice requires that it have a tailor made set of Rules of Evidence that fit its task of prosecuting and suppressing the most serious crimes of genocide, aggression, serious violations of the laws and customs applicable in armed conflict, serious crimes of international concern and crimes against humanity.