

International and internationalized criminal tribunals: a synopsis

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Abstract

The proliferation of judicial bodies is of particular prevalence in the field of international criminal law, where, despite the creation of an operational International Criminal Court, the political or factual exigencies of different situations have led to the establishment of specific criminal justice systems. The object of this synopsis is to study their variety and to sketch out the differences and similarities between existing international and internationalized criminal tribunals. The complexity and the sheer illimitable amount of information necessitated a condensed and synthesized visualization.



Introduction

The proliferation of international judicial and quasi-judicial bodies has become a common feature of the international landscape.¹ The dispersion of international and internationalized criminal tribunals is but one important aspect of this modern phenomenon, which in turn forms part of a larger tendency to which the International Law Commission is referring as the fragmentation or, for the sake of more neutral connotations, the diversification of international law.² The proliferation of judicial bodies is of particular prevalence in the field of international

criminal law, where, despite the existence of an operational International Criminal Court (ICC), the political or factual exigencies of different situations have led to the establishment of specific criminal justice systems, namely the Special Court for Sierra Leone (SCSL), the Iraqi Special Tribunal (IST), the Extraordinary Chambers for Cambodia (EC-Cambodia), the Special Panels for Serious Crimes in East Timor (SPSC) and the UNMIK court system in Kosovo.³ While the completion strategy for the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) has taken shape, there are good reasons to believe that the proliferation of international or internationalized criminal justice systems will continue in the future. Most recently, the assessment mission to Burundi in its report to the Security Council recommended a judicial accountability mechanism in the form of a special chamber within the court system of Burundi.⁴ Similarly, before the situation in Darfur had been referred to the ICC by the UN Security Council,⁵ the establishment of an international criminal tribunal for Sudan had been seriously contemplated.⁶

While debate continues as to the risks ensuing from this fragmentation process and while discussion goes on with respect to the question as to which factual circumstances warrant which particular criminal justice model, it is the purpose of this synopsis to sketch out the differences and similarities between existing international and internationalized criminal tribunals. Even though the differences between some of the existing tribunals are systemic, that is, some tribunals are truly of an international nature whereas others form part of the national criminal justice system and merely feature certain international elements, a number of common *tertia comparationis* could be identified. Comparing apples with pears thus is not a veritable objection if one intends to compare fruit, that is, international and internationalized tribunals. In this regard it bears mentioning that the UNMIK court system in Kosovo, established by UNMIK Regulation 1999/24 and Regulation 2001/9,⁷ 15 May 2001, has not been included in the synopsis because of its uniqueness, in that there is no fixed court, panel or chamber but rather international judges permeate the court system on a case-by-case basis.⁸

1 For the first comprehensive mapping of the international judicial system see The PICT Research Matrix which encompasses 18 international judicial bodies, Status as of 2000, available at: <<http://www.pict-cti.org/matrix/matrixintro.html>> (last visited 28 July 2005).

2 ILC Report, “Risks ensuing from fragmentation of international law,” subsequently renamed “Fragmentation of international law: difficulties arising from the diversification and expansion of international law,” report in progress.

3 For a comprehensive analysis of internationalized criminal tribunals, see Cesare P. R. Romano, André Nollkaemper and Jann K. Kleffner (eds.), *International Criminal Courts – Sierra Leone, East Timor, Kosovo, and Cambodia*, Oxford University Press, New York 2004.

4 See Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council, S/2005/158, 11 March 2005.

5 SC/RES/1593 (2005).

6 Norman Kempster, “U.S. May Back Creation of Special Atrocity Tribunals,” *L.A. Times*, 2 August 2001, available at: <<http://www.sudan.net/news/posted/3155.html>> (last visited 30 August 2001).

7 UNMIK derives its mandate from UN Security Council Resolution 1244, para. 10, S/RES/1244 (1999).

8 See John Cerone and Clive Baldwin, “Explaining and Evaluating the UNMIK Court System” in Romano, Nollkaemper and Kleffner, above note 3, p. 42.

Naturally, the chosen criteria emphasize certain aspects over others that would have been equally worthy of comparison. Such limitations are due mainly to the availability of information and their suitability for comparison, and they seem justified by the fact that the value of any such synopsis does not lie in the data and information provided but in their synthesized compendium.

Rather than aiming even to approximate the provision of comprehensive data about these international criminal justice mechanisms it is the object of this synopsis to study their variety and to this end to sketch out similarities as well as differences. Any such attempt must necessarily fall short of adequately resembling the complexities of this particular domain, and for the sake of enhanced visual representation many of the information given had to be reduced further, to a straightforward “yes” or “no” answer. Yet it is precisely this complexity and the sheer illimitable amount of information which in the view of the authors necessitated a condensed and synthesized visualization.

General issues

	ICC	ICTY	ICTR
Established in	1998	1993	1994
Established by ¹	Rome Statute of the International Criminal Court, Rome, 17 July 1998	UN Security Council Res. 827, 25 May 1993	UN Security Council Res. 955, 8 Nov. 1994
Permanent ² Seat ³	Yes The Hague, Netherlands	No The Hague, Netherlands	No Arusha, Tanzania

Administrative issues

	ICC	ICTY	ICTR
Staff ⁴ Budget ⁵	306 (June 2005) €66 million (2005)	1,062 (2005) Approximately. US\$272 million (2005)	1,042 (2005) Approximately US\$256 million (2005)
Working language ⁶	English, French	English, French	English, French
Judge's term ⁷	3, 6 and 9 years	4 years (permanent); max. 3 years (<i>ad litem</i>)	4 years (permanent); max. 3 years (<i>ad litem</i>)
Re-election ⁸	Depending on term	Yes (permanent); no (<i>ad litem</i>)	Yes (permanent), no (<i>ad litem</i>)

SC-Sierra Leone	Iraqi ST	EC-Cambodia	SP-East Timor
2002 Agreement between the UN and the government of Sierra Leone, 16 Jan. 2002	2003 Statute No. (1), 10 Dec. 2003, enacted by the Iraqi Governing Counsel	2003 Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia (NS/RKM/0801/12), promulgated on 10 Aug. 2002, as amended on 27 Oct. 2004; agreement between the UN and the government of Cambodia, signed 6 June 2003	2000 UNTAET Reg. 2000/15, 6 June 2000; UNTAET Reg. 2000/11, 6 March 2000; UN Security Council Res. 1272, 25 Oct. 1999
No Freetown, Sierra Leone	No Baghdad, Iraq	No Phnom Penh, Cambodia	No Dili, East Timor

SC-Sierra Leone	Iraqi ST	EC-Cambodia	SP-East Timor
294 (2005) US\$29.9 million (2004/2005)	n.a. Borne by the regular budget of Iraqi government	n.a. Borne mainly by the Cambodian national budget and the UN Trust Fund (three-year budget: US\$56.3 million)	n.a. Approximately US\$6.3 million (2002)
English	Arabic	Khmer, English, French	Tetum, Portuguese, Bahasa, Indonesia, English
3 years	5 years	Appointed for the period of the proceedings	Initially 2–3 years, then appointment for life
Yes	Yes	No (appointed for the period of the proceedings)	Yes

Procedural aspects

	ICC	ICTY	ICTR
Applicable law ⁹	ICC Statute/international law, including humanitarian law/general principles of law	International humanitarian law	International humanitarian law
Hearings ¹⁰	Public	Public	Public
Majority required ¹¹	Attempt unanimity, or decision by majority	Majority of judges	Majority of judges
<i>Amicus curiae</i> ¹²	Yes	Yes	Yes
Burden of proof ¹³	Guilt beyond reasonable doubt	Guilt beyond reasonable doubt	Guilt beyond reasonable doubt
Trials <i>in absentia</i> ¹⁴	Not laid down	Not laid down	Possible
Highest penalty ¹⁵	Life imprisonment Life imprisonment possible	Life imprisonment possible Imprisonment for determined number of years	Death penalty

Composition

	ICC	ICTY	ICTR
Pre-trial chamber ¹⁶	Yes	Pre-trial judge	Pre-trial judge/pre-trial conference
No. of trial chambers ¹⁷	1	3	3
No. of trial chamber judges ¹⁸	3	3–9	3 permanent and maximum 4 <i>ad litem</i>
Appeal	Yes	Yes (AC shared with ICTR)	Yes (AC shared with ICTY)
No. of appeal chamber judges ¹⁹	5	5	5
Integrated*/External	External	External	External

SC-Sierra Leone	Iraqi ST	EC-Cambodia	SP-East Timor
humanitarian law/Sierra Leonean law	International criminal law/humanitarian law/Iraqi laws	Cambodian penal law/humanitarian law and custom/international conventions recognized by Cambodia	Law of East Timor/international law, including humanitarian law
Public Majority of judges	Public Simple majority of judges	Public Attempt unanimity or affirmative vote of at least four judges (TC); affirmative vote of at least 5 judges (SC)	Public Majority vote
Yes Guilt beyond reasonable doubt Not laid down	Yes Not laid down	Not laid down Not laid down	Not laid down Not laid down
	Possible	Not laid down	Not possible in principle, but exceptions made
Life imprisonment	Imprisonment not in excess of 25 years		

SC-Sierra Leone	Iraqi ST	EC-Cambodia	SP-East Timor
None	Designated judge/pre-hearing judge	Yes	None
1 3, ratio: 2 international/1 national	1 5, ratio: n.a.	1 5, ratio: 2 international/3 national	3 Panels (Feb. 2005) 3, ratio: 2 international/1 national
Yes 5, ratio: 3 international/2 national	Yes 9, ratio: n.a. – international possible	Yes 7, ratio: 3 international/4 national	Yes 3 (exceptionally 5), ratio: 2 international/1 national (3 international/2 national)
External	External	Integrated	Integrated

Jurisdiction

	ICC	ICTY	ICTR
Temporal jurisdiction ²⁰	Since 1 July 2002	Since 1 Jan. 1991	1 Jan. 1994–31 Dec. 1994
Personal jurisdiction ²¹	Natural persons	Natural persons	Natural persons
Territorial jurisdiction ²²	Territory of states party/ territory of non-party states when crimes committed by states party's nationals/ territory of non-party states that accepted the jurisdiction of the court	Territory of the former SFRY	Territory of Rwanda (Rwandans, non-Rwandan citizens)/territory of neighbouring countries (Rwandans)

Subject matter jurisdiction

	ICC	ICTY	ICTR
Genocide	Yes	Yes	Yes
War crimes	Yes	Yes: grave breaches and violations of laws and customs of war	Yes: violations of common Art. 3 Geneva Conventions I-IV and AP II
Crimes against humanity	Yes	Yes	Yes
Other Crimes ²³	Yes: aggression	No	No
Appellate Jurisdiction	Yes	Yes	Yes
Concurrent Jurisdiction vis-à-vis national courts ²⁴	Complementarity	Concurrent jurisdiction, primacy of the ICTY	Concurrent jurisdiction, primacy of the ICTR
Parallel TRC ²⁵	No	No	No

SC-Sierra Leone	Iraqi ST	EC-Cambodia	SP-East Timor
Since 30 Nov. 1996	17 July 1968–1 May 2003	17 April 1975–6 Jan. 1979	1 Jan. 1999–25 Oct. 1999
Persons who bear the greatest responsibility for serious violations of international humanitarian law	Any Iraqi national or resident of Iraq	Senior leaders and those most responsible for crimes committed in Democratic Kampuchea	Universal jurisdiction
Territory of Sierra Leone	Territory of Iraq/ 'elsewhere', including crimes committed in connection with Iraq's wars against the Islamic Republic of Iran and the State of Kuwait	Territory of Cambodia (senior leaders and those most responsible for crimes committed in Democratic Kampuchea)	Universal jurisdiction

SC-Sierra Leone	Iraqi SC	EC-Cambodia	SP-East Timor
No	Yes	Yes	Yes
Yes	Yes	Yes: grave breaches of the 1949 Geneva Conventions	Yes
Yes	Yes	Yes	Yes
Yes: crimes under Sierra Leonean law	Yes: violations of Iraqi laws	Yes crimes defined by the Cambodian law instituting the ECs	Yes: murder, sexual offences and torture
Yes	Yes	Yes	Yes
Concurrent jurisdiction: decisions of SCSL take precedence	Concurrent jurisdiction, primacy of IST	Exclusive jurisdiction	Exclusive jurisdiction
Yes	No	No	Yes

<nb. each note is in the form of an unnumbered list>

¹ICC: Statute of the International Criminal Court, Rome, 17 July 1998, corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002, UN Doc. A/CONF.183/9 (hereinafter “ICC Statute”).

ICTY: SC Res. 827, 25 May 1993.

ICTR: SC Res. 955, 8 November 1994.

SC Sierra Leone: Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, 16 January 2002, in Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone transmitted by the Secretary-General to the President of the Security Council by Letter dated 6 March 2002, UN Doc. S/2002/246, <<http://www.sc-sl.org/scsl-agreement.html>> (hereinafter “UN-Sierra Leone Agreement”); Statute of the Special Court of Sierra Leone, 16 January 2002, *ibid.*, <<http://www.sc-sl.org/scsl-stature.html>> (hereinafter “SCSL Statute”).

Iraqi ST: Statute No. (1), 10 December 2003, enacted by the Iraqi Governing Council, <<http://www.iraq-ist.org/en/about/statute.htm>> (hereinafter “IST Statute”).

EC Cambodia: Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia (NS/RKM/0801/12), promulgated on 10 August 2002, as amended on 27 October 2004 (NS/RKM/1004/006) (hereinafter “Establishment Law”); Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the Period of Democratic Kampuchea, 6 June 2003 (hereinafter “UN-Cambodia Agreement”). By virtue of Art. 2 of the Agreement, the Agreement is implemented in Cambodia through the Law on the establishment of the Extraordinary Chambers as adopted and amended.

SP East Timor: UNTAET Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, UNTAET/REG/2000/15, 6 June 2000, <<http://www.un.org/peace/etimor/untaetR/Reg0015E.pdf>> (hereinafter “SPSC Reg.”); UNTAET Regulation No. 2000/11 on the Organization of Courts in East Timor, 6 March 2000, UNTAET/REG/2000/11 (hereinafter “UNTAET Reg. 2000/11”), <<http://www.un.org/peace/etimor/untaetR/Reg11.pdf>> (last visited 29 July 2005).

²ICC: See ICC Statute, Preamble, para. 9.

ICTY: For the completion strategy for the ICTY, and more particularly the estimation that the ICTY’s trial activities would probably run until end of 2009, see “Assessments and report of Judge Theodor Meron, President of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)”, 25 May 2005, Annexed to Letter dated 25 May 2005 from the President 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, addressed to the President of the Security Council, UN Doc. S/2005/343.

ICTR: For the completion strategy for the ICTY, and more particularly the estimation that the ICTY would complete a certain number of trials by the end of 2008, see “Completion strategy of the International Criminal Tribunal for Rwanda”, enclosed in Letter dated 23 May 2005 from the President 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 and 31 December 1994 addressed to the President of the Security Council, UN Doc. S/2005/336.

SC Sierra Leone: For the completion strategy for the SCSL, see “Special Court for Sierra Leone Completion strategy (18 May 2005)”, annexed to Identical letters dated 26 May 2005 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, UN Doc. A/59/816–S/2005/350. With regard to the phasing out of the Special Court for Sierra Leone, see Art. 23 of the UN-Sierra Leone Agreement.

Iraqi ST: See limited temporal jurisdiction as described in IST Statute, Art. 1.

EC Cambodia: Establishment Law, Art. 47: “The Extraordinary Chambers in the courts of Cambodia shall automatically dissolve following the definitive conclusion of these proceedings.” See also limited temporal jurisdiction as described in Art. 1 of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea.

SP East Timor: On 20 May 2005 the SPSC’s mandate finished and trials were completed. A total of 84 defendants were convicted and three defendants were acquitted of all charges, see <<http://www.jsmp.minihub.org/courtmonitoring/spsc.htm>> (last visited 29 July 2005).

³ICC: ICC Statute, Art. 3.

ICTY: ICTY Statute, Art. 31.

ICTR: SC Res. 977, 22 February 1995.

SC Sierra Leone: UN-Sierra Leone Agreement, Art. 10.

Iraqi ST: IST Statute, Art. 2.

EC Cambodia: Establishment Law, Art. 43.

SP East Timor: SPSC Reg., Sec. 1.1.

⁴ICC: ICC Staff is currently composed of 57 Nationalities (as of June 2005), see *ICC Newsletter*, June 2005, available at <http://www.icc-cpi.int/library/about/newsletter/4/pdf/>/ICC-CPI_NL4_En.pdf> (last visited 16 August 2005).

ICTY: ICTY Staff is currently composed of 79 Nationalities (as of 2005), see <<http://www.un.org/icty/glance/index.htm>> (last visited 18 August 2005).

ICTR: ICTR Staff is currently composed of 85 Nationalities (as of 2005), see <<http://www.ictor.org/default.htm>> (last visited 18 August 2005).

SC Sierra Leone: "There are 164 Sierra Leonean nationals and 130 internationals working at the Special Court", see <<http://www.sc-sl.org/faq.pdf>> (last visited 14 August 2005).

⁵ICC: Assembly of States Parties, *Draft Programme Budget for 2005*, Third session, The Hague, 6-10 September 2004, ICC-ASP/3/2, p.3, available at <http://www.icc-cpi.int/library/asp/ICC-ASP3-2_budget_English.pdf> (last visited 16 August 2005).

ICTY: Available at <<http://www.un.org/icty/glance/index.htm>> (last visited 29 July 2005).

ICTR: Available at <<http://www.ictor.org/default.htm>> (last visited 29 July 2005).

SC Sierra Leone: Special Court for Sierra Leone, *Budget 2005-2006*, presented by Robin Vincent, registrar, p.6, available at <<http://www.sc-sl.org/Documents/budget2005-2006.pdf>> (last visited 14 August 2005).

Iraqi ST: See IST Statute, Art. 35.

EC Cambodia: Establishment Law, Art. 44. For the figures, see "Agreement between UN and Cambodia on Khmer Rouge trials takes effect", *UN News Service*, 29 April 2005, available at <<http://www.un.org/apps/news/story.asp?NewsID=14134&Cr=Cambodia&Cr1=>>> (last visited 16 August 2005).

SP East Timor: Thordis Ingadottir, "The financing of internationalized criminal courts and tribunals", in Cesare P. R. Romano, André Nollkaemper and Jann K. Kleffner (eds.), *Internationalized Criminal Courts*, Oxford University Press, Oxford, 2004, p. 283.

⁶ICC: ICC Statute, Art. 50: The official languages of the Court are Arabic, Chinese, English, French, Russian and Spanish, but the working languages are English and French.

ICTY: ICTY Statute, Art. 33.

ICTR: ICTR Statute, Art. 31.

SC Sierra Leone: The working language is English but the accused has the right to use his own language. See Rules of Procedure and Evidence of the Special Court of Sierra Leone, as amended at sixth Plenary, 14 May 2005, <<http://www.sc-sl.org/rulesofprocedureandevidence.pdf>> (last visited 17 August 2005) (hereinafter "the SCSL Rules of Proced. and Ev."), Rule 3.

Iraqi ST: IST Statute, Art. 34.

EC Cambodia: Establishment Law, Art. 45.

SP East Timor: UNTAET Reg. 2000/11, Sec. 36.

⁷ICC: ICC Statute, Art. 36(9)(b).

ICTY: ICTY Statute, Arts. 13 *bis* and 13 *ter*.

ICTR: ICTR Statute, Arts. 12 *bis* and 12 *ter*.

SC Sierra Leone: UN-Sierra Leone Agreement, Art. 2(4); SCSL Statute, Art. 13.3: The judges shall be appointed for a three-year term and shall be eligible for re-appointment.

Iraqi ST: IST Statute, Art. 5.

EC Cambodia: Establishment Law, Art. 12.

SP East Timor: UNTAET Reg. 2000/11, Sec. 28.

⁸ICC: ICC Statute, Art. 36(9): Judges elected for nine years are not eligible for re-election. A judge who is selected to serve for a term of three years shall be eligible for re-election for a full term.

ICTY: ICTY Statute, Arts. 13 *bis* para. 3 (Permanent judges) and 13 *ter* para. 1(e) (*ad litem* judges).

ICTR: ICTR Statute, Arts. 12 *bis* para. 3 (Permanent judges) and 12 *ter* para. 1(e) (*ad litem* judges).

SC Sierra Leone: UN-Sierra Leone Agreement, Art. 2(4); SCSL Statute, Art. 13.3: judges shall be appointed for a three-year term and shall be eligible for re-appointment.

Iraqi ST: Not laid down in the IST Statute, but Rule 16 of the Rules of Procedure and Evidence stated that "In case of re-appointment, the total period of service as a Judge of the Special Tribunal shall be taken into account", which considers the possibility for a judge to be re-appointed. See Rules of Procedure and Evidence of the Iraqi Special Tribunal, 23 December 2004, <<http://www.iraq-ist.org/en/laws/rules.htm>> (hereinafter "IST Rules of Proced. and Ev.").

EC Cambodia: Establishment Law, Art. 12.

SP East Timor: UNTAET Reg. 2000/11, Sec. 28.1.

⁹ICC: ICC Statute, Art. 21.

ICTY: ICTY Statute, Art. 1.

ICTR: ICTR Statute, Art. 1.

SC Sierra Leone: UN-Sierra Leone Agreement, Art. 1; SCSL Statute, Art. 1.

Iraqi ST: IST Statute, Arts. 11–14.

EC Cambodia: Establishment Law, Art. 1.

SP East Timor: SPSC Reg., Sec. 3: "In exercising their jurisdiction, the panels shall apply: (a) the law of East Timor as promulgated by Sections 2 and 3 of UNTAET Regulation No. 1999/1 and any subsequent UNTAET regulations and directives; and (b) where appropriate, applicable treaties and recognised principles and norms of international law, including the established principles of the international law of armed conflict."

¹⁰Exceptions to the rule that hearings be public are laid out in:

ICC: ICC Statute, Art. 67(7): "The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in Art. 68, or to protect confidential or sensitive information to be given in evidence."

ICTY: ICTY Statute, Art. 20(4): "The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence."

ICTR: ICTR Statute, Art. 19(4): "The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence."

SC Sierra Leone: SCSL Statute, Art. 17(2): "The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses."

Iraqi ST: IST Statute, Art. 21: "... unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence. The decision to close the proceedings shall be exercised on a very limited basis."

EC Cambodia: Establishment Law, Art. 34: "Trials shall be public unless in exceptional circumstances the Extraordinary Chambers decide to close the proceedings for good cause in accordance with existing procedures in force", Art. 12 of the Agreement (above note 1): "Any exclusion from such proceeding ... shall only be to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice."

SP East Timor: UNTAET Reg. 2000/11, Sec. 25.2: "The hearings of the court, including the pronouncement of the decision, shall be public, unless otherwise determined by the present regulation or by law, insofar as the law is consistent with Section 3.1 of UNTAET Regulation No. 1999/1." See also UNTAET Reg. 2000/30 on Transitional Rules of Criminal Procedure, 25 September 2000, UNTAET/REG/2000/30, <<http://www.un.org/peace/etimor/untaetR/reg200030.pdf>>: "28.1 Trial hearings shall be open to the public. 28.2 The court may exclude the public from all or part of a hearing in circumstances where: (a) qualified information of national security may be disclosed; (b) it is necessary to protect the privacy of persons, as in cases of sexual offences or cases involving minors; or (c) publicity would prejudice the interest of justice."

¹¹ICC: ICC Statute, Art. 74(3): "The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges." Art. 83(4) 4. The judgment of the Appeals Chamber shall be taken by a majority of the judges and shall be delivered in open court.

ICTY: ICTY Statute, Art. 23.

ICTR: ICTR Statute, Art. 22.

SC Sierra Leone: SCSL Statute, Art. 18.

Iraqi ST: IST Statute, Art. 23.

EC Cambodia: Establishment Law, Art. 4: "The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply: a. A decision by the Trial Chamber shall require the affirmative vote of at least four judges; b. A decision by the Supreme Court Chamber shall require the affirmative vote of at least five judges."

SP East Timor: UNTAET Reg. 2000/11, Secs. 9.2 and 15.2.

¹²ICC: Rules of Procedure and Evidence of the International Criminal Court, 9 September 2002, ICC-ASP/1/3 (part II-A), <http://www.un.org/law/icc/asp/1stsession/report/english/part_ii_a_e.pdf> (hereinafter "ICC Rules of Proc. and Ev."), Rule 103.

ICTY: Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia, 11 February 1994, <<http://www.un.org/icty/legaldoc/procedureindex.htm>> (hereinafter "ICTY Rules of Proc. and Ev."), Rule 74.

ICTR: Rules of procedure and evidence of the International Criminal Tribunal for Rwanda, 29 June 1995,

<<http://www.ictor.org/ENGLISH/rules/070605/070605.pdf>> (hereinafter "ICTR Rules of Proced. and Ev."), Rule 74.

SC Sierra Leone: SCSL Rules of Proced. and Ev., Rule 74: "A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization of person to make submissions on any issue specified by the Chamber." See *Prosecutor v. Kallon*, Case No. SCSL-2003-07-PT, Decision on the Application for Leave to Submit Amicus Curiae Briefs, 17 July 2003, at para. 8; *Ibid*, Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae Brief and to Present Oral Submissions, 1 November 2003, para. 5.

Iraqi ST: IST Rules of Proced. and Ev., Rule 66: "Interveners: A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any organization or person to make submissions on any issue specified by the Chamber."

EC Cambodia: Not laid down in Establishment Law. However Art. 33, as amended, provides that: "If these existing procedure do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application or if there is a question regarding their consistency with international standard, guidance may be sought in procedural rules established at the international level."

¹³ICC: ICC Statute, Art. 66(3).

ICTY: ICTY Rules of Proced. and Ev., Rule 87.

ICTR: ICTR Rules of Proced. and Ev., Rule 87.

SC Sierra Leone: SCSL Rules of Proced. and Ev., Rule 87.

Iraqi ST: Not laid down in the IST Statute or in the Rules of Proced. and Ev. It is not required either by the existing Iraqi law which supplements the Statute and the Rules, by virtue of Rule 65 ("The proceedings before trial chambers should comply with provisions set forth in the law of criminal proceedings No. 23 of 1971 as well as these rules"). See Paragraph 182 of the Law on Criminal Proceedings with Amendments, No. 23 of 1971, which requires that the court is "satisfied" that the defendant committed the offence of which he is accused.

EC Cambodia: Not laid down in Establishment Law. But see Art. 33, as amended (above note 12).

SP East Timor: UNTAET Reg. 2000/30, Sec. 39.1. It only mentioned that the court "shall pronounce on the guilt or innocence of the accused".

*The criminal justice mechanism forms part of the national court system.

¹⁴ICC: The only mention of the absence of the accused are found in Rule 125 "Decision to hold the confirmation hearing in the absence of the person concerned", and Rule 126 "Confirmation hearing in the absence of the person concerned", of the ICC Rules of Proced. and Ev.

ICTY: Not laid down in the ICTY Rules of Proced. and Ev.

ICTR: ICTR Rules of Proced. and Ev., Rule 82 *bis*.

SC Sierra Leone: Not laid down in the SCSL Rules of Proced. and Ev.

Iraqi ST: Rules of Proced. and Ev., Rule 56.

EC Cambodia: Not laid down in Establishment Law. But see Art. 33, as amended (above note 12).

SP East Timor: UNTAET Reg. 2000/30, Sec. 5.1: "No trial of a person shall be held in absentia, except in the circumstances defined in the present regulation."

¹⁵ICC: ICC statute, Art 77.

ICTY: ICTY Statute, Art. 24.

ICTR: ICTR Statute, Art. 23.

SC Sierra Leone: SCSL Statute, Art. 19.

Iraqi ST: By virtue of Art. 24 of the IST Statute, the Iraqi Penal Code as amended (Law No 111 of 1969) applies: its Paragraph 85, on the primary penalties, included death.

EC Cambodia: Establishment Law, Arts. 38 and 39.

SP East Timor: SPSC Reg., Sec. 10.1(a).

¹⁶ICC: Art. 39 para. 2 (b)(iii) of the ICC-Statute.

ICTY: Rule 65 *ter* of the ICTY Rules of Proced. and Ev.

ICTR: Rule 73 *bis* of the ICTR Rules of Proced. and Ev.

SC Sierra Leone: Art. 11 of the SCSL Statute.

Iraqi ST: IST Rules of Proced. and Ev., Rule 13(4), and Rule 27.

EC Cambodia. UN-Cambodia Agreement, Art. 7.

¹⁷ICC: ICC Statute, Art. 39(2)(c): Possibly more than 1 TC if the efficient management of the Court's workload so requires.

ICTY: ICTY Statute, Art. 11.

ICTR: ICTR Statute, Art. 10.

SC Sierra Leone: SCSL Statute, Art. 11: one Trial Chamber, but possibly more.

Iraqi ST: IST Statute, Art. 3(a)(1): one Trial Chamber, but possibly more.

EC Cambodia: UN–Cambodia Agreement, Art. 3(1) and (2); Establishment Law, Art. 9 (as amended).

SP East Timor: See Sylvia de Bertodano, “East Timor: Trials and Tribulations”, in *Internationalized Criminal Courts*, above note 5, p. 87.

¹⁸ICC: ICC Statute, Art. 39(2)(b)(ii): The functions of the Trial Chamber shall be carried out by three judges of the Trial Division. To be combined with Art. 39 para. 1: the Trial Division is composed of no fewer than six judges.

ICTY: ICTY Statute, Art. 12.

ICTR: ICTR Statute, Art. 11(2): “Three permanent judges and a maximum at any one time of four *ad litem* judges shall be members of each Trial Chamber”

SC Sierra Leone: SCSL Statute, Art. 12(1)(a).

Iraqi ST: IST Statute, Art. 4(b).

EC Cambodia: UN–Cambodia Agreement, Art. 3(2)(a); Establishment Law, Art. 9 (as amended).

SP East Timor: SPSC Reg., Sec. 22.

¹⁹ICC: ICC Statute, Art. 39(2)(b)(1): The Appeals Chamber shall be composed of all the judges of the Appeals Division. To be combined with Art. 39(1): the Appeals Division is composed of President and four other judges.

ICTY: ICTY Statute, Art. 12(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.”

ICTR: ICTR Statute, Art. 11(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.”

SC Sierra Leone: SCSL Statute, Art. 12(1)(b).

Iraqi ST: IST Statute, Art. 4(c). For the possibility of having non-Iraqi judges, see Art. 4(d): “The Governing Council or the Successor Government, if it deems necessary, can appoint non-Iraqi judges who have experience in the crimes encompassed in this statute, and who shall be persons of high moral character, impartiality and integrity.”

EC Cambodia: UN–Cambodia Agreement, Art. 3(2)(b); Establishment Law, Art. 9 (as amended).

SP East Timor: SPSC Reg., Sec. 22.

²⁰ICC: ICC Statute, Art. 11(1).

ICTY: ICTY Statute, Art. 8.

ICTR: ICTR Statute, Art. 7.

SC Sierra Leone: SCSL Statute, Art. 1.

Iraqi ST: IST Statute, Art. 1.

EC Cambodia: Establishment Law, Art. 2.

SP East Timor: SPSC Reg., Sec. 2.3: “With regard to offences listed under Section 10(1)(d)–(e) of UNTAET Regulation No. 2000/11 the panels established within the District Court in Dili shall have exclusive jurisdiction for the period between 1 January 1999 and 25 October 1999.”

²¹ICC: ICC Statute, Art. 25. See also Art. 26 on the exclusion of jurisdiction on persons under 18.

ICTY: ICTY Statute, Art. 6.

ICTR: ICTR Statute, Art. 5.

SC Sierra Leone: SCSL Statute, Art. 1. See also Art. 7 on the exclusion of jurisdiction on persons under 15.

Iraqi ST: IST Statute, Arts. 1 and 10.

EC Cambodia: Establishment Law, Art. 2.

SP East Timor: SPSC Reg., Sec. 2.2: “For the purposes of the present regulation, “universal jurisdiction” means jurisdiction irrespective of whether: (a) the serious criminal offence at issue was committed within the territory of East Timor; (b) the serious criminal offence was committed by an East Timorese citizen; or (c) the victim of the serious criminal offence was an East Timorese citizen.”

²²ICC: ICC Statute, Art. 12: The State on the territory of which the conduct in question occurred if this same State is Party to the Statute or has accepted the jurisdiction of the Court in accordance with paragraph 3; or if the State of which the person accused of the crime is a national, is Party to the Statute or has accepted the jurisdiction of the Court in accordance with paragraph 3.

ICTY: ICTY Statute, Art. 8.

ICTR: ICTR Statute, Art. 7.

SC Sierra Leone: SCSL Statute, Art. 1.

Iraqi ST: IST Statute, Art. 1.

EC Cambodia: Establishment Law, Art. 1 (No territorial jurisdiction is mentioned explicitly).

SP East Timor: SPSC Reg., Sec. 2.2: “For the purposes of the present regulation, “universal jurisdiction” means jurisdiction irrespective of whether: (a) the serious criminal offence at issue was committed within the territory of East Timor; (b) the serious criminal offence was committed by an East Timorese

citizen; or (c) the victim of the serious criminal offence was an East Timorese citizen.”

²³ICC: ICC Statute, Art. 5(2): the jurisdiction on the crime of aggression will not be exercised until the crime has been defined.

SC Sierra Leone: SCSL Statute, Art. 5: namely violations of the Prevention of Cruelty to Children Act, 1926 and the Malicious Damage Act, 1861.

Iraqi ST: IST Statute, Art. 14.

EC Cambodia: Establishment Law, Ch. II.

SP East Timor: SPSC Reg., Sec. 1.3.

²⁴ICC: ICC Statute, Art. 1: The Court shall be complementary to national criminal jurisdictions.

ICTY: ICTY Statute, Art. 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.”

ICTR: ICTR Statute, Art. 8: “Concurrent Jurisdiction: 1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighboring States, between 1 January 1994 and 31 December 1994. 2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.”

SC Sierra Leone: SCSL Statute, Art. 8: Special Court and the national courts of Sierra Leone have concurrent jurisdiction, but the Special Court’s decisions take precedence over national courts.

Iraqi ST: IST Statute, Art. 29: “(a) The Tribunal and the national courts of Iraq shall have concurrent jurisdiction to prosecute persons for those offences prescribed in Article 14 that fall within the jurisdiction of the Tribunal. (b) The Tribunal shall have primacy over all other Iraqi courts with respect to the crimes stipulated in Articles 11 to 13.”

EC Cambodia: Establishment Law, Arts. 1 and 47.

SP East Timor: SPSC Reg., Sec. 1.1: Panels within the District Court of Dili have exclusive jurisdiction to deal with serious criminal offences.

²⁵SC Sierra Leone: Sierra Leone Truth and Reconciliation Commission founded in 2002, see official website: <<http://www.sierra-leone.org/trc-documents.html>> (last visited 14 August 2005).

SP East Timor: Commission for reception, truth and reconciliation in East Timor, UNTAET/REG/2001/10. 13 July 2001, see official website: <<http://www.easttimor-reconciliation.org/>> (last visited 14 August 2005).