



Memorandum

July 25, 2006

TO: House Armed Services Committee
Attention: Lorry Fenner

FROM: Jennifer K. Elsea
Legislative Attorney
American Law Division

SUBJECT: Comparison of Procedural Rules in Criminal Proceedings

The attached document, a chart entitled “Comparison of Selected Procedural Rights in Criminal Tribunals,” is provided in response to your request for a new version of the chart from CRS Report RL31600, *The Department of Defense Rules for Military Commissions: Analysis of Procedural Rules and Comparison with Proposed Legislation and the Uniform Code of Military Justice*. In addition to columns comparing the rules for courts-martial and for military commissions as presently established by the Department of Defense Military Commission Order No. 1, the chart provides information regarding the procedural rules in selected international tribunals. These include the International Military Tribunal (IMT) established by the Allies to try European Axis war crimes after World War II, as well as the more recent “ad hoc” tribunals established by the United Nations Security Council to try war crimes that occurred during the conflicts in the former Yugoslavia and Rwanda.

The following sources and abbreviations are used:

M.C.M.: Manual for Courts-Martial, 2002 ed.

R.C.M.: Rules for Courts-for Courts-Martial, M.C.M. Part II.

Mil. R. Evid.: Military Rules of Evidence, M.C.M. Part III.

M.C.O. No. 1: Department of Defense Military Commission Order Number 1, Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism (August 31, 2005), available online at [<http://www.defenselink.mil/news/Sep2005/d20050902order.pdf>].

M.C.I.: Military Commission Instruction, issued by the Department of Defense General Counsel, available online at [http://www.defenselink.mil/news/Aug2004/commissions_instructions.html].

IMT: International Military Tribunal (Nuremberg), created pursuant to the London Agreement of August 8, 1945. The agreement, as well as the tribunal’s constitution (“IMT Charter”) and rules of procedure are available online at the Avalon Project at Yale University, [<http://www.yale.edu/lawweb/avalon/imt/proc/v1menu.htm>]. The Opinion and

Judgment of the IMT is available at
[<http://www.yale.edu/lawweb/avalon/imt/proc/judcont.htm>].

ICTY: International Criminal Tribunal for the former Yugoslavia, created by UN Security Council Resolution 827 (May 25, 1993). Its statute (ICTY Stat.) and procedural rules (ICTY Rule) are available at [<http://www.un.org/icty/legaldoc-e/index.htm>].

ICTR: International Criminal Tribunal for Rwanda, created by UN Security Council Resolution 955 (Nov. 8, 1994). Its statute (ICTR Stat.) and procedural rules (ICTR Rule) are available at [<http://69.94.11.53/default.htm>].