

35. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for such Violations Committed in the Territory of Neighbouring States

**Decision of 29 February 1996 (3637th meeting):
resolution 1047 (1996)**

At its 3637th meeting, held on 29 February 1996 in accordance with the understanding reached in its prior consultations, the Security Council included the item “International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia; International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for such Violations Committed in the Territory of Neighbouring States: appointment of the Prosecutor” in its agenda.

At the same meeting, the President (United States) drew the attention of the Council to a draft resolution prepared in the course of the Council’s prior consultations.¹ The draft resolution was put to the vote and adopted unanimously as resolution 1047 (1996), which reads:

The Security Council,

Recalling its resolutions 808 (1993) of 22 February 1993, 827 (1993) of 25 May 1993, 936 (1994) of 8 July 1994 and 955 (1994) of 8 November 1994,

Noting with regret the resignation of Mr. Richard J. Goldstone taking effect 1 October 1996,

Having regard to article 16, paragraph 4, of the statute 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 and article 15 of the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for

Such Violations Committed in the Territory of Neighbouring States,

Having considered the nomination by the Secretary-General of Mrs. Louise Arbour for the position of Prosecutor of the above-mentioned Tribunals,

Appoints Mrs. Louise Arbour as Prosecutor 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 and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Such Violations Committed in the Territory of Neighbouring States with effect from the date on which the resignation of Mr. Goldstone takes effect.

**Decision of 11 August 1999 (4033rd meeting):
resolution 1259 (1999)**

At its 4033rd meeting, held on 11 August 1999 in accordance with the understanding reached in its prior consultations, the Security Council resumed consideration of the item. The President (Namibia) drew the attention of the Council to a draft resolution prepared in the course of the Council’s prior consultations.² The draft resolution was put to the vote and adopted unanimously as resolution 1259 (1999), which reads:

The Security Council,

Recalling its resolutions 808 (1993) of 22 February 1993, 827 (1993) of 25 May 1993, 936 (1994) of 8 July 1994, 955 (1994) of 8 November 1994 and 1047 (1996) of 29 February 1996,

Noting with regret the resignation of Mrs. Louise Arbour taking effect on 15 September 1999,

Having regard to article 16, paragraph 4, of the statute of the International Tribunal for the Prosecution of Persons

¹ S/1996/139.

² S/1999/863.

Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and article 15 of the statute of the International Tribunal for Rwanda,

Having considered the nomination by the Secretary-General of Ms. Carla Del Ponte for the position of Prosecutor of the above-mentioned Tribunals,

Appoints Ms. Carla Del Ponte as Prosecutor 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 and the International Tribunal for Rwanda with effect from the date on which the resignation of Mrs. Louise Arbour takes effect.

Deliberations of 10 November 1999 (4063rd meeting)

At its 4063rd meeting, held on 10 November 1999 in accordance with the understanding reached in its prior consultations, the Security Council included the items “International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia” and “International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for such Violations Committed in the Territory of Neighbouring States” in its agenda. The President (Slovenia), with the consent of the Council, invited the representative of Rwanda, at his request, to participate in the discussion without the right to vote. The Security Council also extended an invitation, under rule 39 of the provisional rules of procedure of the Council, to the Prosecutor of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

The Prosecutor of the Tribunals stated that in creating the two Tribunals, the Council had designed a powerful enforcement mechanism of international humanitarian law and that the Tribunals would turn to the Council from time to time when its full weight needed to be brought to bear on those who refused to honour the international obligations imposed on them by Chapter VII of the Charter of the United Nations. In that regard, the International Tribunal for the Former Yugoslavia had already reported to the Security Council the “total defiance” on the part of the Federal Republic of Yugoslavia in surrendering people who had been indicted, as well as the recent decision by the

Republic of Croatia to withhold its cooperation because of its unilateral decision that the Tribunal had no jurisdiction to investigate the actions of its armed forces in Operation Storm and Operation Flash. In Bosnia and Herzegovina, there were accused who were beyond the reach of the Stabilization Force (SFOR) in Bosnia and Herzegovina. She stated that she therefore needed the Council’s help, as well as the support of national Governments and all other key international institutions. She stressed that it was essential for the success of the Tribunal that States not be permitted to dictate to the independent Prosecutor what events should and should not be investigated, as the power to initiate investigations bestowed upon the Prosecutor by the Council was fundamental. Noting that much of their effort that year had concerned Kosovo,³ she gave an update on the preliminary analysis of the first findings.⁴

All members of the Council made statements expressing appreciation for the work of the Tribunals and the Prosecutor. Most speakers stressed the importance of all States cooperating fully with the Tribunals and that States could not unilaterally suspend their cooperation for any reason whatsoever. Several representatives noted that in creating the two Tribunals, the United Nations had contributed significantly to the development of international criminal law, including the first conviction for genocide and crimes against humanity in Rwanda. A few representatives expressed concern at the delays in the administration of justice as accused persons had been in custody awaiting trial for long periods.⁵

The representative of France stated that in creating the two Tribunals, the United Nations had established the foundations for a genuine international criminal system. He stressed that the cooperation of States with the Tribunals was a legal obligation of every State Member of the United Nations, and States

³ For purposes of this Supplement, the term “Kosovo” is used as the abbreviation for “Kosovo, Federal Republic of Yugoslavia”, without prejudice to issues of status. In other instances, the terminology originally used in official documents has been preserved to the extent possible.

⁴ S/PV.4063, pp. 2-5.

⁵ *Ibid.*, pp. 6-7 (Argentina); pp. 6-7 (Canada); pp. 9-11 (Malaysia); p. 12 (Netherlands); pp. 12-13 (Brazil); p. 13 (Gambia); pp. 13-14 (Bahrain); p. 14 (Gabon); and p. 14 (Namibia).

did not have the luxury of suspending their cooperation with the Tribunals. Finally, he noted that the success of the Tribunals and of the Prosecutor also depended upon the soundness of the legal framework within which they carried out their missions. In that connection, France was pleased at the effort made by the Tribunals to improve procedures by drawing from various legal systems for inspiration.⁶

The representative of the United Kingdom reiterated that it was the duty of States to hand over to the Tribunals' custody all those indictees residing in their territory, in accordance with their obligations under the relevant Security Council resolutions. They remained particularly concerned that indictees remained at large in Republika Srpska⁷ and in the Federal Republic of Yugoslavia. He stated that the Serbian performance had been the least satisfactory of all. Croatia had also been at times dilatory, though at times also responsive about compliance with the court, and noted that the court wanted them to remain in direct communication with Croatia to make sure that it responded. The United Kingdom was particularly insistent that Croatia extradite the indictee Mladen Naletilic to The Hague and make progress on handing over documents on Operation Storm and Operation Flash without delay. He suggested that they had to pay more attention to the fact that the Security Council had a responsibility to ensure that States lived up to their obligations. In the expectation that there would soon be an international criminal court, he also suggested that they ought to discuss further the obligation of the Security Council to make sure that the Statutes were implemented.⁸

The representative of China noted that there was still room for improvement in the work of the Tribunals, *inter alia*, the disputes between the States and the Tribunals in the field of cooperation. He reiterated that both Tribunals were established by Security Council resolutions and the countries concerned needed to cooperate with them, in accordance with the relevant Security Council resolutions, the Statutes of the Tribunals, and their

national laws. He also stated that the Tribunals, in requesting cooperation from the States concerned, also needed to take into consideration the public interests and security of those countries, and respect the national laws of those States. Failing that, the Tribunals would continue to face daunting tasks in the future. He expressed the hope that the Tribunal's work would be professional, objective, impartial and free from any political interference.⁹

The representative of the Russian Federation stated that his country supported the demands made on all States to comply with international commitments to cooperate with the Tribunals. In regard to the International Tribunal for the Former Yugoslavia, however, all problems relating thereto needed to be resolved through direct cooperation between the parties and the Tribunal, as set forth in Security Council resolutions and in the Statute of the Tribunal. He stressed that indictees should not be detained without the consent of the State in whose territory they were found, nor should it result from the undue coercion of those States. Russia was categorically opposed to sealed indictments. That practice had occurred in connection with the Stabilization Force in Bosnia and went beyond the mandate of such forces. He expressed serious doubts about the propriety of the "so-called sealed lists of indictees" as such practices were contrary to the Statute of the Tribunal and to its rules of procedure. He maintained that the authorities of the States concerned and the indictees themselves were thereby deprived of the opportunity to demonstrate that they were willing to cooperate with the Tribunal. He underscored that every action taken to detain a person accused of war crimes needed to be considered primarily from the point of view of how it might affect international efforts to stabilize the situation in the region and move the peace process forward. He noted that in the recent work of the Tribunal there had been serious instances in which that principle had been allowed to slide, including the indictment of the leader of Serbia and the Federal Republic of Yugoslavia. Such decisions destabilized the situation in Bosnia, the Federal Republic of Yugoslavia and the entire region and were an additional hindrance to moving the Bosnia and Kosovo settlement process forward. As for the activities of the International Criminal Tribunal for the Former Yugoslavia in Kosovo, they needed to be

⁶ *Ibid.*, p. 6.

⁷ Under the General Framework Agreement for Peace in Bosnia and Herzegovina, Republika Srpska is one of two entities, along with the Federation of Bosnia and Herzegovina, that make up Bosnia and Herzegovina.

⁸ *Ibid.*, pp. 7-8.

⁹ *Ibid.*, p. 8.

objective and strictly in accordance with the decisions of the Council, including resolution 1244 (1999), and with the Statute of the Tribunal. He noted that the Tribunal had clearly not been able to achieve objectivity, as to date it had focused primarily on investigating crimes committed against Albanians. Therefore, the International Criminal Tribunal needed to actively investigate the scale of the atrocities committed by Kosovo Albanian extremists against Serbs and other non-Albanian peoples in Kosovo, because otherwise there would be grounds for accusing the International Criminal Tribunal for the Former Yugoslavia of double standards, which would not enhance the effectiveness of its work.¹⁰

The representative of the United States maintained that one of the greatest challenges confronting the Tribunal for the Former Yugoslavia was obtaining custody of indictees still at large. Serbia had made this difficult to achieve by offering de facto sanctuary to indicted fugitives. He stated that the Security Council needed to stand firm in its insistence that Serbia transfer indictees, including the “Vukovar Three”, General Ratko Mladic, “Arkan” and ultimately, Slobodan Milosevic and his co-indictees. The United States also believed that it was imperative that Radovan Karadzic face justice before the International Criminal Tribunal for the Former Yugoslavia. He stressed that those indictees not yet in custody needed to understand that there was no “safe haven” for them, and the United States thus did not agree with some of the points made by the Russian representative. While welcoming recent cooperation on one important case, he also urged the Government of Croatia to comply promptly with the Tribunal’s request for cooperation on Operations Storm and Flash. In conclusion, he stated that his delegation would support measures in the Council that would be effective in improving compliance with the orders of the Tribunals.¹¹

¹⁰ Ibid., pp. 8-9.

¹¹ Ibid., pp. 11-12.

The representative of Slovenia stated that the real question before the Council was whether and what kind of additional decisions by the Council might be necessary. In the opinion of his delegation, it would be important for the Council to start a process of further, more detailed consideration of which steps were to be taken next. He stressed that the Security Council had the responsibility to provide support and strengthen the effectiveness of the judicial bodies it had created.¹²

The Prosecutor of the International Tribunals intervened a second time to respond to points raised by the members of the Council. She refuted the assertion that a one-sided investigations was being carried out in Kosovo. She assured members of the Council that her Office was undertaking investigation in which the accused were not only Serbs, but also Muslims and members of the Kosovo Liberation Army (KLA). In that regard, she noted that the difficulty in investigating KLA suspects arose from the attitude of the Federal Republic of Yugoslavia and Serbia. Many Serbian victims involved in their investigations had taken refuge in Serbia, where the International Tribunal had no access, having had to close their office in Belgrade. Regarding the sealed indictments, it was true that they were indictments that were not made public. She maintained that in national systems no indictments were published on the Internet or in the press before they were executed, and the International Tribunal for the Former Yugoslavia was working along the same lines. She also stated that her predecessor had found that investigative method very important and had received the blessing of the Trial Chamber and the Appeals Chambers. Juridically and judicially it was provided for in the rules and their Statutes. She stated that she was ready to discuss the sealed indictments with the States concerned, but only after those States had arrested all the individuals still at large.¹³

¹² Ibid., pp. 14-15.

¹³ Ibid., pp. 15-16.