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REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 2
OF SECURITY COUNCIL RESOLUTION 808 (1993)

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Introduction

1. By paragraph 1 of resolution 808 (1993) of 22 February 1993, the Security

Council decided "that an international tribunal shall be established for the
prosecution of persons responsible for serious violations of international

2. By paragraph 2 of the resolution, the Secretary-General was requested "to

in Bosnia and Herzegovina, should comply with the provisions of that resolution,

7. In resolution 780 (1992) of 6 October 1992, the Security Council requested the Secretary-General to establish an impartial Commission of Experts to examine

and analyse the information as requested by resolution 771 (1992), together with

B

12. The Security Council's decision in resolution 808 (1993) to establish an

international tribunal is circumscribed in scope and purpose: the prosecution

committed in the territory of the former Yugoslavia since 1991. The decision

does not relate to the establishment of an international criminal jurisdiction

15. The Secretary-General wishes to place on record his appreciation for the

offered valuable suggestions and comments.

D

16. In the main body of the report which follows, the Secretary-General first examines the legal basis for the establishment of the International Tribunal

foreseen in resolution 808 (1993). The Secretary-General then sets out in

it would be opened for signature and ratification. Such an approach would have

the advantage of allowing for a detailed examination and elaboration of all the

issues pertaining to the establishment of the international tribunal. It also

would need to take further measures under the Charter. Furthermore, the Council has repeatedly reaffirmed that all parties in the former Yugoslavia are bound to

II. COMPETENCE OF THE INTERNATIONAL TRIBUNAL

31. The competence of the International Tribunal derives from the mandate set

examine and make proposals regarding these fundamental elements of its

competence: ratione materiae (subject-matter jurisdiction), ratione personae

(personal jurisdiction), ratione loci (territorial jurisdiction) and ratione

temporis (temporal jurisdiction), as well as the question of the concurrent

law. While international humanitarian law as outlined above provides a sufficient basis for subject-matter jurisdiction, there is one related issue

which would require reference to domestic practice, namely, penalties (see

Grave breaches of the 1949 Geneva Conventions

37. The Geneva Conventions constitute rules of international humanitarian law and provide the core of the customary law applicable in international armed

conflicts. These Conventions regulate the conduct of war from the humanitarian

perspective by protecting certain categories of persons: namely, wounded and

sick members of armed forces in the field; wounded, sick and shipwrecked members

of armed forces at sea; prisoners of war, and civilians in time of war.

(d) unlawful deportation or transfer or unlawful confinement of a

civilian;

(h) taking civilians as hostages.

Violations of the laws or customs of war

41. The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on

Land and the Regulations annexed thereto comprise a second important area of

conventional humanitarian international law which has become part of the body of

42. The Nürnberg Tribunal recognized that many of the provisions contained in

Genocide

45. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide, whether committed in time of peace or in time

of war, is a crime under international law for which individuals shall be tried and punished. The Convention is today considered part of international

customary law as evidenced by the International Court of Justice in its Advisory

Crimes against humanity

47. Crimes against humanity were first recognized in the Charter and Judgement

of the Nürnberg Tribunal, as well as in Law No. 10 of the Control Council for

and individual criminal responsibility

50. By paragraph 1 of resolution 808 (1993), the Security Council decided that

the International Tribunal shall be established for the prosecution of persons

56. A person in a position of superior authority should, therefore, be held

the present statute. But he should also be held responsible for failure to

C. Competence *ratione loci* (territorial jurisdiction) and

60. Pursuant to paragraph 1 of resolution 808 (1993), the territorial and

temporal jurisdiction of the International Tribunal extends to serious

violations of international humanitarian law to the extent that they have been

66. According to the principle of non-bis-in-idem, a person shall not be tried

twice for the same crime. In the present context, given the primacy of the

subsequent trial before a national court. However, the principle of non-bis-in

(b) the national court proceedings were not impartial or independent,

responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of
a crime under the present Statute, the International Tribunal shall take
into account the extent to which any penalty imposed by a national court on

the same person for the same act has already been served.

73. The corresponding article of the statute would read as follows:

Article 12

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of

whom may be nationals of the same State, who shall serve as follows:

(b) Five judges shall serve in the Appeals Chamber.

2. Qualifications and election of judges

74. The judges of the International Tribunal should be persons of high moral character, impartiality and integrity who possess the qualifications required in

Assembly, would appoint a person meeting the qualifications of paragraph 74 above, for the remainder of the term of office concerned.

78. The corresponding article of the statute would read as follows:

Article 13

Qualifications and election of judges

1. The judges shall be persons of high moral character, impartiality

and integrity who possess the qualifications required in their respective

countries for appointment to the highest judicial offices. In the overall

composition of the Chambers due account shall be taken of the experience of

the judges in criminal law, international law, including international

humanitarian law and human rights law.

2. The judges of the International Tribunal shall be elected by the

General Assembly from a list submitted by the Security Council, in the

4. The judges shall be elected for a term of four years. The terms and conditions of service shall be those of the Judges of the International Court of justice. They shall be eligible for re-election.

79. The judges would elect a President of the International Tribunal from among

their members who would be a member of the Appeals Chamber and would preside over the appellate proceedings.

would assign the judges to the Appeals Chamber and to the Trial Chambers. Each

Article 15

Rules of procedure and evidence

2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral

character and possess the highest level of competence and experience in the

conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for

Article 17

The Registry

1. The Registry shall be responsible for the administration and

2. The Registry shall consist of a Registrar and such other staff as

may be required.

consultation with the President of the International Tribunal. He or she

Article 18

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims

100. A person against whom an indictment has been confirmed would, pursuant to

an order or a warrant of the International Tribunal, be informed of the contents
of the indictment and taken into custody.

101. A trial should not commence until the accused is physically present before

B. Rights of the accused

106. It is axiomatic that the International Tribunal must fully respect

internationally recognized standards regarding the rights of the accused at all

stages of its proceedings. In the view of the Secretary-General, such

internationally recognized standards are, in particular, contained in article 14

of the International Covenant on Civil and Political Rights. 10/

107. The corresponding article of the statute would read as follows:

Article 21

Rights of the accused

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the

C. Protection of victims and witnesses

108. In the light of the particular nature of the crimes committed in the former

115. The corresponding articles of the statute would read as follows:

Article 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose

international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of

119. Where a new fact has come to light which was not known at the time of the

proceedings before the Trial Chambers or the Appeals Chamber, and which could

have been a decisive factor in reaching the decision, the convicted person or

application for review of the judgement.

120. The corresponding articles of the statute would read as follows:

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by

decide the matter in accordance with the interests of justice and the general

principles of law.

124. The corresponding article of the statute would read as follows:

Enforcement of sentences

Imprisonment shall be served in a State designated by the
International Tribunal from a list of States which have indicated to the

Security Council their willingness to accept convicted persons. Such

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the

violations of international humanitarian law.

2. States shall comply without undue delay with any request for

2. The judges, the Prosecutor and the Registrar shall enjoy the
privileges and immunities, exemptions and facilities accorded to diplomatic

envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the
privileges and immunities accorded to officials of the United Nations under

4. Other persons, including the accused, required at the seat of the

International Tribunal shall be accorded such treatment as is necessary for

Article 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations.

D. Working languages

Notes

1/ On 19 April 1993, the Secretary-General addressed a letter to the

President of the Security Council informing him that the report would be made

available to the Security Council no later than 6 May 1993.

established by General Assembly resolution 687 (VII) of 5 December 1952.

3/ Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of

Annex

Statute of the International Tribunal

Article 3

The International Tribunal shall have the power to prosecute persons

limited to:

(a) employment of poisonous weapons or other weapons calculated to cause

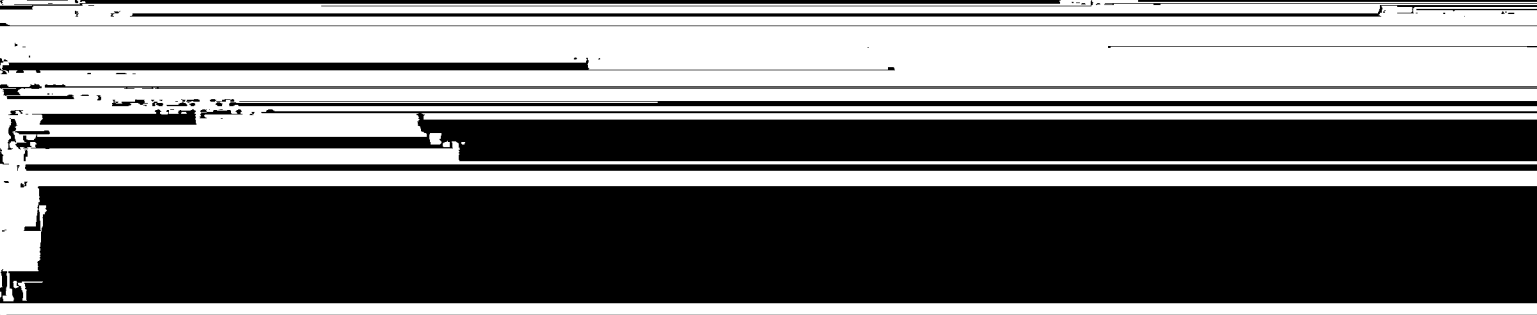
(c) direct and public incitement to commit genocide;

(e) complicity in genocide.

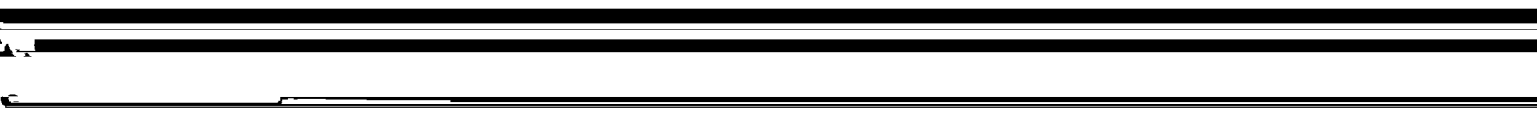
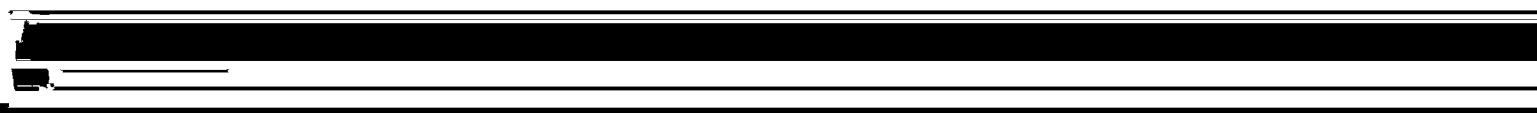
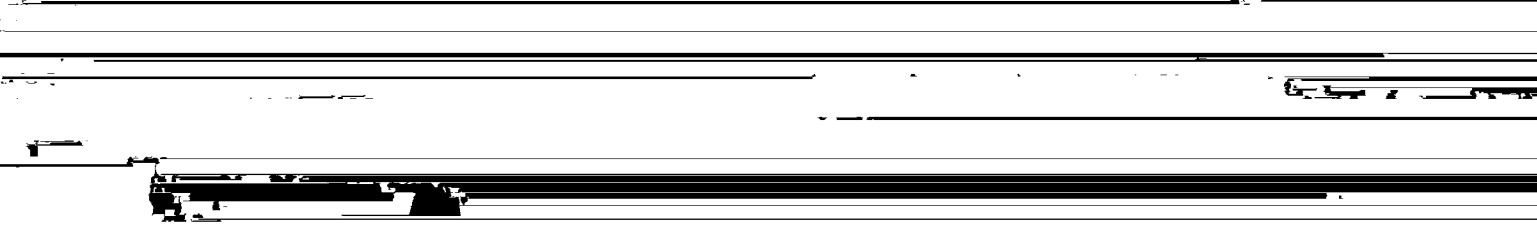
Crimes against humanity

The International Tribunal shall have the power to prosecute persons

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such



3. The fact that any of the acts referred to in articles 2 to 5 of the



criminal responsibility if he knew or had reason to know that the subordinate



2. A person who has been tried by a national court for acts constituting

by the International Tribunal only if:

(a) the act for which he or she was tried was characterized as an ordinary

crime; or

(b) the national court proceedings were not impartial or independent, were

designed to shield the accused from international criminal responsibility, or

2. The judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following

(a) The Secretary-General shall invite nominations for judges of the

International Tribunal from States Members of the United Nations and non-member

States maintaining permanent observer missions at United Nations Headquarters;

General, each State may nominate up to two candidates meeting the qualifications

Article 15

Rules of procedure and evidence

The judges of the International Tribunal shall adopt rules of procedure and

evidence for the conduct of the pre-trial phase of the proceedings, trials and

other appropriate matters.

4. The staff of the Registry shall be appointed by the Secretary-General

Article 18

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the

basis of information obtained from any source, particularly from Governments,

United Nations organs, intergovernmental and non-governmental organizations.

The Prosecutor shall assess the information received or obtained and decide

Article 20

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious

and that proceedings are conducted in accordance with the rules of procedure and

protection of victims and witnesses.

(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same

conditions as witnesses against him;

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;

(g) not to be compelled to testify against himself or to confess guilt.

Protection of victims and witnesses

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures

shall include, but shall not be limited to, the conduct of in camera proceedings

and the protection of the victim's identity.

Article 23

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and

Article 25

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the

Trial Chambers or from the Prosecutor on the following grounds:

- (a) an error on a question of law invalidating the decision; or

- (b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken

Article 26

Review proceedings

Article 29

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal in the

investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for

assistance or an order issued by a Trial Chamber, including, but not limited to:

(a) the identification and location of persons;

(b) the taking of testimony and the production of evidence;

(c) the service of documents;

(d) the arrest or detention of persons;

(e) the surrender or the transfer of the accused to the International

Tribunal.

Article 30

Article 32

Expenses of the International Tribunal

The expenses of the International Tribunal shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the

Working languages

The working languages of the International Tribunal shall be English and

French.

Article 34

Annual report

The President of the International Tribunal shall submit an annual report of the International Tribunal to the Security Council and to the General

Assembly.
