

The representative of the United Kingdom stressed that the High Representative had to be given support in what he was doing, and be able to take the decisions that were necessary.²⁰²

The representative of China emphasized the necessity of establishing a unified armed force. He also expressed support for the work of the International Tribunal for the Former Yugoslavia, which hopefully would proceed in a professional, impartial and objective manner.²⁰³

The representative of Slovenia maintained that the crisis in Kosovo had severely tested peace and stability in Bosnia and Herzegovina, and he commended all parties in Bosnia and Herzegovina for their responsible and wise attitude, which contributed to the preservation of stability in the country. The peace, stability and unity of Bosnia and Herzegovina were of critical importance for the resolution of other problems in the region, most notably the problem of Kosovo. Therefore, every effort needed to be made to strengthen Bosnia and Herzegovina and its institutions.²⁰⁴

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

Decision of 8 May 1996 (3663rd meeting): statement by the President

By a letter dated 24 April 1996 addressed to the President of the Security Council,²⁰⁵ 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 informed the Council of the refusal of the Federal Republic of Yugoslavia to cooperate with the Tribunal, as required by resolutions of the Council and the Statute of the Tribunal. Specifically, the occasion for the report was the failure of the Federal Republic of Yugoslavia to execute arrest warrants against three

accused, Mile Mrksic, Miroslav Radic and Veselin Sljivancanin, all of whom were on its territory and who were charged with the murder of 260 civilians and other unarmed men following the fall of the city of Vukovar in November 1991.

At its 3663rd meeting, held on 8 May 1996 in accordance with the understanding reached in its prior consultations, the Security Council included the letter in its agenda. The President (China) then drew the attention of the Council to the following documents: a letter dated 19 April 1996 from the representative of Bosnia and Herzegovina addressed to the President of the Security Council;²⁰⁶ a letter dated 19 April 1996 from the representative of Croatia addressed to the President of the Security Council;²⁰⁷ and a letter dated 8 May 1996 from the representative of the Federal Republic of Yugoslavia addressed to the President of the Security Council.²⁰⁸

At the same meeting the President made the following statement on behalf of the Council:²⁰⁹

The Security Council expresses its profound concern at recent instances of failure to cooperate with the International Tribunal for the former Yugoslavia, established pursuant to resolution 827 (1993) of 25 May 1993, and in particular the failure of the Federal Republic of Yugoslavia to cooperate, described in the letter dated 24 April 1996 from the President of the Tribunal to the President of the Security Council.

The Council recalls its decision in resolution 827 (1993) that all States should cooperate fully with the International Tribunal and its organs in accordance with that resolution and the statute of the Tribunal and that consequently all States should take any measures necessary under their domestic law to implement the provisions of the resolution and the statute, including the obligation of States to comply with requests for assistance or orders issued by Trial Chamber under article 29 of the statute. The Council underlines the importance of these obligations, as well as the obligations undertaken by the

²⁰² Ibid., p. 19.

²⁰³ Ibid., p. 21.

²⁰⁴ Ibid., pp. 25-26.

²⁰⁵ S/1996/319.

²⁰⁶ S/1996/300.

²⁰⁷ Letter informing the Council that the Croatian Sabor (Parliament) had adopted a Constitutional Law which would allow the Government of Croatia to cooperate with the International Tribunal, consistent with the relevant provisions of Security Council resolution 827 (1992) (S/1996/306).

²⁰⁸ Letter transmitting information on the cooperation of the Federal Republic of Yugoslavia with the International Tribunal (S/1996/339).

²⁰⁹ S/PRST/1996/23.

parties to the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively the “Peace Agreement”) to cooperate fully with the International Tribunal.

The Council deplores the failure to date of the Federal Republic of Yugoslavia to execute the arrest warrants issued by the International Tribunal against the three individuals referred to in the letter dated 24 April 1996, and calls for the execution of those arrest warrants without delay.

The Council calls upon all States and others concerned to comply fully with their obligations with respect to cooperation with the International Tribunal, and in particular their obligation to execute arrest warrants transmitted to them by the Tribunal. It recalls its resolution 1022 (1995) of 22 November 1995 which it noted, *inter alia*, that compliance with the requests and orders of the Tribunal constituted an essential aspect of implementing the Peace Agreement. The Council calls upon all States which have not already done so to make provision in their domestic law enabling them to comply fully with their obligations with respect to cooperation with the Tribunal.

The Council will remain seized of the matter.

**Decision of 8 April 1997 (3763rd meeting):
resolution 1104 (1997)**

At its 3763rd meeting, held on 8 April 1997 in accordance with the understanding reached in its prior consultations, the Security Council included the item “Establishment of the list of candidates for Judges” in its agenda.

At the same meeting, the President (China) drew the attention of the Council to a draft resolution prepared in the course of the Council’s prior consultations.²¹⁰ The draft resolution was then put to the vote and adopted unanimously as resolution 1104 (1997), which reads:

The Security Council,

Recalling its resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993,

Having decided to consider the nominations for Judges 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 received by the Secretary-General by 13 March 1997,

²¹⁰ S/1997/283.

Forwards the following nominations to the General Assembly in accordance with article 13, paragraph 2 (d) of the Statute of the International Tribunal:

Mr. Masoud Mohamed Al-Amri (Qatar)
Mr. George Randolph Tissa Dias Bandaranayake (Sri Lanka)
Mr. Antonio Cassese (Italy)
Mr. Babiker Zain Elabideen Elbashir (Sudan)
Mr. Saad Saood Jan (Pakistan)
Mr. Claude Jorda (France)
Mr. Adolphus Godwin Karibi-Whyte (Nigeria)
Mr. Richard George May (United Kingdom)
Ms. Gabrielle Kirk McDonald (United States)
Ms. Florence Ndepele Mwachande Mumba (Zambia)
Dr. Rafael Nieto Navia (Colombia)
Dr. Daniel David Ntanda Nsereko (Uganda)
Dr. Elizabeth Odio Benito (Costa Rica)
Dr. Fouad Abdel-Moneim Riad (Egypt)
Mr. Almiro Simões Rodrigues (Portugal)
Mr. Mohamed Shahabuddeen (Guyana)
Mr. Jan Skupinski (Poland)
Mr. Wang Tieya (China)
Mr. Lal Chand Vohrah (Malaysia)

**Decision of 27 August 1997 (3813th meeting):
resolution 1126 (1997)**

By a letter dated 30 July 1997 addressed to the President of the Security Council,²¹¹ the Secretary-General informed him that the President of the International Tribunal for the Former Yugoslavia had requested an extension of the terms of office of the non-elected judges of the Tribunal in order to allow them to dispose of ongoing cases.

At its 3813th meeting, held on 27 August 1997 in accordance with the understanding reached in its prior consultations, the Security Council included the letter in its agenda.

At the same meeting, the President (United Kingdom) drew the attention of the Council to a draft

²¹¹ S/1997/605.

resolution prepared in the course of its prior consultations.²¹² The draft resolution was then put to the vote and adopted unanimously as resolution 1126 (1997), which reads:

The Security Council,

Taking note of the letter dated 30 July 1997 from the Secretary-General to the President of the Security Council, to which was annexed the letter to him dated 18 June 1997 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,

Endorses the recommendation of the Secretary-General that Judges Karibi-Whyte, Odio Benito and Jan, once replaced as members of the International Tribunal, finish the *Celebici* case which they have begun before expiry of their terms of office, and takes note of the intention of the Tribunal to finish the case before November 1998.

**Decision of 13 May 1998 (3878th meeting):
resolution 1166 (1998)**

At its 3878th meeting, held on 13 May 1998 in accordance with the understanding reached in its prior consultations, the President (Kenya) drew the attention of the Council to a draft resolution submitted by Costa Rica, France, Japan, Kenya, Portugal, Slovenia, Sweden, the United Kingdom and the United States²¹³. The President then drew the attention of the Council to a letter dated 5 May 1998 from the Secretary-General addressed to the President of the Security Council, transmitting a letter dated 16 April 1998 from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General, raising the problem faced as a result of the recent dramatic increase in the number of persons accused of crimes under the Statute of the Tribunal, and recommending the establishment of a third Trial Chamber.²¹⁴

The representative of the Russian Federation stated that it was his delegation's understanding that the reference in the draft resolution to Chapter VII of the Charter was purely a technicality and would not set a precedent for the consideration by the Security Council of any similar situation.²¹⁵

The representative of China expressed his country's reservation about invoking Chapter VII in the draft resolution. He noted that over the previous five years the situation in the territory of the former Yugoslavia had undergone tremendous changes, which made it even less appropriate to invoke Chapter VII.²¹⁶

During the course of the debate, a number of speakers made statements expressing support for the work of the Tribunal, and supporting the establishment of a third Trial Chamber. Several speakers also called on all parties to cooperate fully with the Tribunal.²¹⁷ A number of speakers also highlighted the need for a permanent international criminal court.²¹⁸

At the same meeting, the draft resolution was put to the vote and adopted unanimously as resolution 1166 (1998), which reads:

The Security Council,

Reaffirming its resolution 827 (1993) of 25 May 1993,

Remaining convinced that the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia contributes to the restoration and maintenance of peace in the former Yugoslavia,

Having considered the letter dated 5 May 1998 from the Secretary-General to the President of the Security Council,

Convinced of the need to increase the number of judges and Trial Chambers, in order to enable 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 ("the International Tribunal") to try without delay the large number of accused awaiting trial,

Noting the significant progress being made in improving the procedures of the International Tribunal, and convinced of the need for its organs to continue their efforts to further such progress,

Acting under Chapter VII of the Charter of the United Nations,

²¹⁶ *Ibid.*, p. 9.

²¹⁷ *Ibid.*, pp. 2-3 (United Kingdom on behalf of the European Union and associated and aligned countries: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia; and Cyprus, Iceland and Norway); p. 4 (Portugal); pp. 4-5 (Japan); pp. 5-6 (United States); pp. 7-8 (France); p. 8 (Gabon); p. 8 (Bahrain); pp. 8-9 (Gambia); and pp. 9-10 (Kenya).

²¹⁸ *Ibid.*, p. 3 (Costa Rica); p. 5 (Sweden); pp. 6-7 (Slovenia); and p. 7 (Brazil).

²¹² S/1997/667.

²¹³ S/1998/386.

²¹⁴ S/1998/376.

²¹⁵ S/PV.3878, p. 8.

1. *Decides* to establish a third Trial Chamber of the International Tribunal, and to this end decides to amend articles 11, 12 and 13 of the statute of the Tribunal, replacing those articles with the text set out in the annex to the present resolution;²¹⁹

2. *Decides* that three additional judges shall be elected as soon as possible to serve in the additional Trial Chamber, and decides also, without prejudice to paragraph 4 of article 13 of the statute of the International Tribunal, that once elected they shall serve until the date of expiry of the terms of office of the existing judges, and that for the purpose of that election the Security Council shall, notwithstanding paragraph 2 of article 13 of the statute, establish a list from the nominations received of no less than six and no more than nine candidates;

3. *Urges* all States to cooperate fully with the International Tribunal and its organs in accordance with their obligations under resolution 827 (1993) and the statute of the Tribunal, and welcomes the cooperation already extended to the Tribunal in the fulfilment of its mandate;

4. *Requests* the Secretary-General to make practical arrangements for the elections mentioned in paragraph 2 above and for enhancing the effective functioning of the International Tribunal, including the timely provision of personnel and facilities, in particular for the third Trial Chamber and related offices of the Prosecutor, and further requests him to keep the Security Council closely informed of progress in this regard;

5. *Decides* to remain actively seized of the matter.

**Decision of 27 August 1998 (3919th meeting):
resolution 1191 (1998)**

At its 3919th meeting, held on 27 August 1998 in accordance with the understanding reached in its prior consultations, the Security Council included the item "Establishment of the list of candidates for judges" in its agenda.

At the same meeting, the President (Slovenia) drew the attention of the Council to a draft resolution, prepared in the course of the Council's prior consultations.²²⁰ The draft resolution was then put to the vote and adopted unanimously as resolution 1191 (1998), which reads:

The Security Council,

Recalling its resolutions 808 (1993) of 22 February 1993, 827 (1993) of 25 May 1993 and 1166 (1998) of 13 May 1998,

Having decided to consider the nominations for judges 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 received by the Secretary-General by 4 August 1998,

Forwards the following nominations to the General Assembly in accordance with paragraph 2 (d) of article 13 of the statute of the International Tribunal:

Mr. Mohamed Bennouna (Morocco)

Mr. David Anthony Hunt (Australia)

Mr. Per-Johan Lindholm (Finland)

Mr. Hugo Anibal Llanos Mansilla (Chile)

Mr. Patrick Robinson (Jamaica)

Mr. Jan Skupinski (Poland)

Mr. S. W. B. Vadugopatiya (Sri Lanka)

Mr. Luis Valencia-Rodríguez (Ecuador)

Mr. Peter H. Wilkitzki (Germany)

**Decision of 17 November 1998 (3944th meeting):
resolution 1207 (1998)**

By a letter dated 8 September 1998 addressed to the President of the Security Council,²²¹ the President of the International Tribunal for the Former Yugoslavia reported to the Council the continuing refusal of the Government of the Federal Republic of Yugoslavia to cooperate with the Tribunal by failing to arrest and transfer to its custody three persons who had been indicted: Mile Mrksic, Miroslav Radic and Veselin Sljivancanin. He stressed that such conduct was illegal. He noted that the Security Council had acted under Chapter VII of the Charter of the United Nations when it created the International Tribunal for the Former Yugoslavia, thus all States were legally required to comply with its orders, including warrants of arrest and surrender. Moreover, the Federal Republic of Yugoslavia, as a signatory to the Dayton Agreement, was further bound to cooperate with the International Tribunal (General Framework Agreement, article IX; annex I-A, article X; annex 7, article III (2)). He therefore stressed that it was imperative that the conduct of the Government of the Federal Republic of Yugoslavia no longer be tolerated.

²²¹ S/1998/839.

²¹⁹ Annex not included in present *Supplement*.

²²⁰ S/1998/806.

By a letter dated 22 October 1998 addressed to the President of the Security Council,²²² the President of the International Tribunal for the Former Yugoslavia noted that recent efforts to find a peaceful solution to events in Kosovo²²³ had resulted in agreements between the Government of the Federal Republic of Yugoslavia and the Organization for Security and Cooperation in Europe and the North Atlantic Treaty Organization. While the agreements committed the Government of the Federal Republic of Yugoslavia to accept an international verification system in Kosovo, they contained no provisions regarding the obligation of the Federal Republic of Yugoslavia to cooperate with the Tribunal. Moreover, it appeared that the statement by the President of Serbia reserved to the domestic judicial system of the Federal Republic of Yugoslavia the right to investigate, prosecute and try offences committed in Kosovo that might fall within the jurisdiction of the Tribunal. He stressed that that was of particular concern to the Tribunal considering the history of its relationship with the Federal Republic of Yugoslavia, which was characterized by near-total non-compliance. Thus, he maintained that it was imperative that the competence of the Tribunal be unambiguously reaffirmed and that the obligation of the Government of the Federal Republic of Yugoslavia to cooperate with it be made an explicit part of any resolution of the situation in Kosovo.

By a letter dated 6 November 1998 addressed to the President of the Security Council,²²⁴ the President of the International Tribunal for the Former Yugoslavia reported to the Security Council the continuing refusal of the Federal Republic of Yugoslavia to cooperate with the Tribunal. The occasion for the report was the failure of the Federal Republic of Yugoslavia to issue visas to investigators of the Office of the Prosecutors so that they could conduct investigations in Kosovo. In doing so, the Federal Republic of Yugoslavia had stated that it did not accept any investigation of the Tribunal in Kosovo and Metohija. He stressed that that position contravened the explicit decisions of the Council in resolutions 1160 (1998), 1199 (1998), and 1203 (1998).

²²² S/1998/990.

²²³ For purposes of this *Supplement*, the term “Kosovo” refers to “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.

²²⁴ S/1998/1040.

Noting that the Council had issued presidential statements in response to prior reports by the Tribunal of non-compliance by the Federal Republic of Yugoslavia, which had failed to bring about the required cooperation with the Tribunal, he requested measures from the Council that were sufficiently compelling to bring the Federal Republic of Yugoslavia into the fold of law-abiding nations.

At its 3944th meeting, held on 17 November 1998 in accordance with the understanding reached in its prior consultations, the Security Council included the three letters in its agenda. The President (United States) then drew the attention of the Council to a draft resolution submitted by France, Germany, Italy, Japan, Portugal, Sweden, the United Kingdom and the United States, with Slovenia joining as a sponsor.²²⁵

Speaking before the vote, the representative of China stated that his country supported the work of the Tribunal in principle. However, he stressed that the Council had established the Tribunal on an ad hoc basis, with a specific target. The Tribunal was not a permanent court of law, nor was it an organ that could intervene at any time in the internal affairs of any country in the Balkan region with regard to matters that fell purely within that country’s domestic jurisdiction. He stressed that the problems in the Kosovo region of the Federal Republic of Yugoslavia, by their very nature, originated in terrorist and separatist activities, and the Government of the Federal Republic of Yugoslavia was investigating and handling those matters through its internal judicial procedures. The handling of those matters fell entirely within the internal jurisdiction of the Government of the Federal Republic of Yugoslavia. He reiterated that the principle of respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia needed to be strictly observed. In the light of those considerations, he stated that the Chinese delegation was unable to support the invoking of Chapter VII of the Charter as a means of putting pressure on the Federal Republic of Yugoslavia, as well as some other provisions in the draft resolution. Therefore, his delegation would abstain in the vote.²²⁶

At the same meeting, the draft resolution was put to the vote and adopted by 14 votes to none, with

²²⁵ S/1998/1082.

²²⁶ S/PV.3944, pp. 2-3.

1 abstention (China), as resolution 1207 (1998),²²⁷ which reads:

The Security Council,

Recalling all its previous relevant resolutions concerning the conflicts in the former Yugoslavia, in particular resolution 827 (1993) of 25 May 1993,

Recalling also the statement by its President of 8 May 1996,

Recalling further the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto, in particular its article IX of the Agreement and article X of annex 1-A,

Having considered the letters dated 8 September, 22 October and 6 November 1998 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,

Deploring the continued failure of the Federal Republic of Yugoslavia to cooperate fully with the International Tribunal, as described in those letters,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* its decision that all States shall cooperate fully with the International Tribunal and its organs in accordance with resolution 827 (1993) and the statute of the Tribunal, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under article 29 of the statute, to execute arrest warrants transmitted to them by the Tribunal, and to comply with its requests for information and investigations;

2. *Calls again upon* the Federal Republic of Yugoslavia, and all other States which have not already done so, to take any measures necessary under their domestic law to implement the provisions of resolution 827 (1993) and the statute of the International Tribunal, and affirms that a State may not invoke provisions of its domestic law as justification for its failure to perform binding obligations under international law;

3. *Condemns* the failure to date of the Federal Republic of Yugoslavia to execute the arrest warrants issued by the International Tribunal against the three individuals referred to in the letter dated 8 September 1998, and demands the immediate and unconditional execution of those arrest warrants, including the transfer to the custody of the Tribunal of those individuals;

²²⁷ For the vote, see S/PV.3944, p. 3.

4. *Reiterates its call* upon the authorities of the Federal Republic of Yugoslavia, the leaders of the Kosovo Albanian community and all others concerned to cooperate fully with the Prosecutor in the investigation of all possible violations within the jurisdiction of the International Tribunal;

5. *Requests* the President of the Tribunal to keep the Council informed about the implementation of the present resolution for the further consideration of the Council;

6. *Decides* to remain seized of the matter.

E. The situation in the former Yugoslav Republic of Macedonia

Decision of 13 February 1996 (3630th meeting): resolution 1046 (1996)

On 30 January 1996, pursuant to resolution 1027 (1995), the Secretary-General submitted to the Council a report on developments on the ground and other circumstances affecting the mandate of the United Nations Preventive Deployment Force (UNPREDEP) in the former Yugoslav Republic of Macedonia and all aspects of UNPREDEP.²²⁸ In his report, the Secretary-General noted that the deployment of the Force in the former Yugoslav Republic of Macedonia had played a significant role in preventing the conflict in the former Yugoslavia from spreading to that Republic and had contributed to alleviating serious concerns about external security threats. He stated that, as the continuation of the UNPREDEP mission was an important contribution to the maintenance of peace and stability in the region, he recommended that the mandate of UNPREDEP should not only be continued but that it should become an independent mission, reporting directly to United Nations Headquarters in New York, effective on 1 February 1996.²²⁹ He noted that, despite its new status, the operation would have basically the same mandate, strength and composition

²²⁸ S/1996/65.

²²⁹ UNPREDEP was established as a distinct operating entity in the former Yugoslav Republic of Macedonia pursuant to Security Council resolution 983 (1995) of 31 March 1995. However, in view of the interconnected nature of the problems in the former Yugoslavia and in order to enhance coordination, overall command and control of the United Nations presence in the former Yugoslavia was placed with the United Nations Peace Forces Headquarters and exercised by the Special Representatives of the Secretary-General and the United Nations Theatre Force Commander.