STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

On 13 July 1992, the Security Council, deploring the continued fighting in Bosnia and Herzegovina, reaffirmed that all parties to the conflict were bound to comply with their obligations under international humanitarian law, in particular the 1949 Geneva Conventions, and that persons who committed or ordered the commission of grave breaches of the Conventions were individually responsible in respect of such breaches (resolution 764 (1992)). On 13 August of the same year, the Security Council strongly condemned any violations of international humanitarian law, including those involved in the practice of “ethnic cleansing”, and, acting under Chapter VII of the Charter, decided that all parties and others concerned in the former Yugoslavia and all military forces in Bosnia and Herzegovina must comply with the provisions of that resolution, failing which the Council would need to take further measures under the Charter. The Council further called upon States and international humanitarian organizations to submit substantiated information on grave violations of international humanitarian law in their possession to the Council (resolution 771 (1992)).

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 analyze the information requested in resolution 771 (1992) together with such further information that the Commission may obtain through its own investigations or efforts, with a view to providing the Secretary-General with its conclusions on evidence of grave breaches of the 1949 Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia. On 14 October the Secretary-General submitted to the Security Council a report on the establishment a five-member Commission of Experts (S/24657). The Commission of Experts, whose members were appointed by the Secretary-General on 26 October 1992, held its first three sessions between November 1992 and January 1993. At its third session, the Commission adopted an interim report, submitted by the Secretary-General to the Security Council on 9 February 1993 (S/25274), which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia. The Commission observed that should the Security Council, or another competent organ of the United Nations, decide to establish an ad hoc international tribunal, such a tribunal would be consistent with its work.

Against this background, the Security Council determined, in resolution 808 (1993) of 22 February 1993, that the situation in the former Yugoslavia constituted a threat to international peace and security, and decided that an international tribunal should be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in that territory since 1991. The Secretary-General was requested to submit for consideration to the Council a report on all aspects of this matter. The Secretary-General presented his report (S/25704) to the Security Council on 3 May 1993, with a draft Statute of the International Criminal Tribunal for the former Yugoslavia annexed thereto. The report set out in detail the competence and organization of the Tribunal, as well as general provisions on its seat, status, privileges and immunities, financial arrangements, working languages and annual report. Acting under Chapter VII of the Charter, the Security Council approved, by resolution 827 (1993) of 25 May 1993, the report by the Secretary-General and decided to establish an international criminal tribunal for the purpose of prosecuting individuals responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia from 1 January 1991.

The Statute of the International Criminal Tribunal for the former Yugoslavia has since its adoption been subject to a number of amendments. A third Trial Chamber was established by resolution 1166 (1998) of 13 May 1998, amending articles 11, 12 and 13 of the Statute. In 2000, a pool of *ad litem* judges was established and the membership of the Appeals Chamber was enlarged by an amendment of articles 12, 13 and 14 of the Statute (resolution 1329 (2000) of 30 November 2000). An amendment with regard to the determination of the nationality of the judges was made in resolution 1411 (2002) of 17 May 2002, and articles 13 and 14 were further amended in resolution 1431 (2002) of 14 August 2002 with regard to the election of permanent judges, officers and members of the Tribunal. On 19 May 2003, article 13 *quater* was amended in resolution 1481 (2003) as to allow *ad litem* judges to adjudicate in pre-trial proceedings of other cases than that to which they had been appointed, should the need arise. Noting that the number of candidates for judges of the Tribunal fell short of the number required by the Statute, the Council amended, in resolution 1597 (2005) of 20 April 2005, article 13 *ter* of the Statute as to allow *ad litem* judges whose term of office had expired to be eligible for re-election. Upon a proposal made by the President of the Tribunal, the Council decided on 28 February 2006, in resolution 1660 (2006), that the Secretary-General, at the request of the President, could appoint reserve judges, thus amending articles 12 and 13 *quater*. 