

(b) Constitutional and Institutional Developments

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1. AMENDMENTS TO THE RULES OF PROCEDURE AND EVIDENCE OF THE ICTY

By decision of the Judges at the Nineteenth plenary session of the International Criminal Tribunal for the former Yugoslavia (ICTY)¹ one new rule was adopted and 16 rules of the Rules of Procedure and Evidence were amended.² The new rule concerns affidavit evidence.³ The rule regarding amendments of the rules was changed so that an amendment shall enter into force seven days after the day of issue of an official Tribunal document containing the amendment, instead of immediately after the issuance.⁴ The rules on contempt of the Tribunal and false testimony under solemn declaration were made stricter as they were both amended to allow for a Chamber to impose substantially longer terms of imprisonment on persons who have been found guilty of such offences.⁵

2. JUDGES OF THE ICTY

In Resolution 1166 the Security Council recognized the need to increase the number of judges and Trial Chambers and decided to establish a third Trial Chamber of the ICTY.⁶ Following their election on 16 October 1998 by the General Assembly as judges of the ICTY, Mr David Anthony Hunt (Australia), Mr Mohamed Bennouna (Morocco), and Mr Patrick Lipton Robinson (Jamaica) were sworn in by Mr Ralph Zacklin, Assistant Secretary-General for Legal Affairs, on behalf of the Secretary-General of the United Nations. Thus, with 14 sitting judges, the judiciary of the ICTY is now larger than ever.

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1. Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (the Rules), UN Doc. IT/142
2. Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia UN Doc. IT/32 Rev.14.
3. Rule 94 *ter* of the Rules
4. Rule 6 of the Rules.
5. Rule 77 regarding Contempt of the Tribunal and Rule 91 concerning Rule 91 of the Rules of Procedure and Evidence, UN Doc. IT/32 Rev.14. *Cf.* Rules 77 and 91 of the Rules of Procedure and Evidence, UN Doc. IT/32 Rev. 13.
6. Resolution 1166 (1998) adopted by the Security Council on 13 May 1998.

3. COMPOSITION OF THE CHAMBERS OF THE ICTY

Following the swearing in of the three additional judges, a new Trial Chamber was composed. The Chambers of the ICTY are now composed as follows: The Appeals Chamber consists of Judge Gabrielle Kirk McDonald, Presiding (United States of America), Judge Mohamed Shahabuddeen (Guyana), Judge Lal Chand Vorah (Malaysia), Judge Tieya Wang (China), and Judge Rafael Nieto-Navia (Colombia). Trial Chamber I consists of Judge Claude Jorda, Presiding (France), Judge Fouad Abdel-Monem Riad (Egypt), and Judge Almiro Simões Rodrigues (Portugal). Trial Chamber II consists of Judge Antonio Cassesse, Presiding (Italy), Judge Florence Ndepele Mwachande Mumba (Zambia), and Judge David Anthony Hunt (Australia). Trial Chamber III consists of Judge Richard George May, Presiding (United Kingdom), Judge Mohamed Bennouna (Morocco), and Judge Patrick Lipton Robinson (Jamaica).⁷

4. ICTY SEEKS THE ASSISTANCE OF THE SECURITY COUNCIL

Following the refusal of the Federal Republic of Yugoslavia to issue visas to investigators of the Office of the Prosecutor in order to conduct investigations in Kosovo, the President of the ICTY, Judge Gabrielle Kirk McDonald, reported to the Security Council "the continuing refusal of the Federal Republic of Yugoslavia to cooperate with the International Tribunal".⁸ In her letter of 6 November 1998 to the President of the Security Council, the President of the ICTY also noted that it was the fourth time the President of the ICTY has reported non-compliance of the Federal Republic of Yugoslavia.⁹ Submitting that "the intentional and continuous refusal by the Federal Republic of Yugoslavia to comply with its clear and incontrovertible legal obligations to the Tribunal is an affront to the Security Council and to all law-abiding nations", the ICTY President sought from the Security Council measures which were sufficiently compelling to bring the Federal Republic of Yugoslavia into the fold of law-abiding nations.¹⁰ In addition, on 8 December 1998 President Kirk McDonald addressed the Security Council regarding the implementation of its Resolution 1207¹¹ and reported, *inter alia*, that the Federal Republic of Yugoslavia was in "non-

7. Press release 365, 20 November 1998.

8. Press release 362, 11 November 1998.

9. *Id.*

10. *Id.*

11. In Security Council Resolution 1207 (1998), adopted on 17 November 1998, the Security Council, acting under Chapter VII of the UN Charter, reiterated its decision that all States shall cooperate fully with the Tribunal. It also demanded of the Federal Republic of Yugoslavia its immediate and unconditional execution of arrest warrants against three individuals issued by the Tribunal, including the transfer to the custody of the Tribunal of those individuals.

compliance with its obligations under international law, the UN Charter, Security Council Resolution 827 establishing the Tribunal, and most recently, Security Council Resolution 1207¹², and urged the Security Council not to allow such obstructionism to go unchecked.¹²

12. Press release 371, 8 December 1998.