

## (b) Constitutional and Institutional Developments

*Compiled by Åsa Rydberg\**

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

By decision of the Judges at the Twentieth plenary session of the International Criminal Tribunal for the former Yugoslavia (ICTY)<sup>1</sup> two new rules were adopted, Rule 77 *bis* and Rule 84 *bis* of the Rules of Procedure and Evidence (Rules).<sup>2</sup> In addition, 13 rules were amended.<sup>3</sup>

Rule 77 *bis* concerns payment of fines in connection with Contempt of the Tribunal or False Testimony under Solemn Declaration.<sup>4</sup> Rule 84 *bis* provides that during the proceedings, after the opening statements of the parties, the accused may, if he or she so wishes and the Trial Chamber so decides, make a statement under the control of the Trial Chamber.

### 2. AGREEMENTS ON GRATIS PERSONNEL CONCLUDED

On 9 June 1999 the Secretary-General approved the request by the Prosecutor of the ICTY, Justice Louise Arbour, to issue invitations to all Member States of the United Nations to offer gratis personnel to the ICTY for a period of six months.<sup>5</sup> In her request, the Prosecutor noted that the ICTY “will have to deal with an unprecedented quantity of tasks once it is possible to enter Kosovo” and stressed the urgent need to undertake on-site crime scene investigations before essential evidence is lost forever.<sup>6</sup> In particular, “multifaceted investigation teams in-

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1. UN Doc. IT/149.

2. UN Doc. IT/32 Rev.16.

3. Rules 15(A) and (C), 34, 46(B), 47(C), 69(B), 72(A) and (C), 73(C), 75(A), 76, 77(J), 94(B), 108 and 108 *bis* (A) were amended. Some of these Rules were only amended in French. UN Doc. IT/32 Rev.16.

4. *See further* Rule 77 on Contempt of the Tribunal and Rule 91 on False Testimony under Solemn Declaration. UN Doc. IT/32 Rev.16.

5. Letter dated 9 June from the Secretary-General to the President of the General Assembly, 9 June 1999, UN Doc. A/53/1000, and Letter dated 9 June from the Secretary-General to the President of the Security Council, 9 June 1999, UN Doc. S/1999/665.

6. Letter dated 7 June 1999 from the Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Terri-

volving forensic and other specialists will be required to gather and record evidence at the various crime scenes that have been prioritized by this Office.”<sup>7</sup>

Following this request, six states have concluded agreements with the United Nations to make available their national experts to the ICTY. These experts are made available on a *gratis* basis to provide temporary and urgent assistance to the investigations conducted by the Office of the Prosecutor in Kosovo.<sup>8</sup> Thus far, agreements have been concluded with Canada, Denmark, France, Sweden, Switzerland and the United Kingdom.<sup>9</sup>

### 3. PROSECUTOR RESIGNS

Justice Louise Arbour has announced that she will be resigning from her post as Prosecutor of the ICTY and the International Criminal Tribunal for Rwanda. Following her appointment to the Supreme Court of Canada, Justice Arbour made public that she will leave the post as a Prosecutor on a date prior to mid-September 1999. By the time Justice Arbour leaves, she will have served three years of her four-year term of office as Prosecutor.<sup>10</sup>

According to the Statute of the ICTY, the Prosecutor is 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.<sup>11</sup>

### 4. NEW JUDGE APPOINTED

Acting pursuant to Article 13(3) of the Statute of the ICTY,<sup>12</sup> the Secretary-General appointed Judge Patricia M. Wald to succeed Judge Gabrielle Kirk McDonald, effective 17 November 1999.<sup>13</sup> Judge Wald, who is a national of the United States of America, will serve the remainder of Judge Kirk McDonald's term of office until 17 November 2001.

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tory of the Former Yugoslavia since 1991 addressed to the Secretary-General, as annexed to the Letter dated 9 June from the Secretary-General to the President of the General Assembly, 9 June 1999, UN Doc. A/53/1000.

7. *Id.*

8. ICTY Press release 412, 25 June 1999.

9. ICTY Press release 412, 25 June 1999 and Press release 418, 9 July 1999.

10. ICTY Press release 408, 11 June 1999. *See also* ICTY Press release 409, 11 June 1999.

11. Art. 16(4) of the Statute of the ICTY.

12. Art. 13(3) of the Statute of the ICTY provides that in the event of a vacancy in the Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person for the remainder of the term of office concerned.

13. ICTY Press release 415, 7 July 1999.

**5. ARREST WARRANTS SERVED ON MEMBER STATES IN CONNECTION WITH INDICTMENT AGAINST MILOSEVIĆ AND FOUR OTHERS**

On 27 May 1999 the Prosecutor of the ICTY, Justice Louise Arbour, announced that she had indicted Slobodan Milošević, President of the Federal Republic of Yugoslavia, for crimes against humanity and violations of the laws or customs of war.<sup>14</sup> Four other senior officials were indicted in the same indictment: Milan Milutinović, President of the Republic of Serbia, Nikola Šainović, Deputy Prime Minister of the Federal Republic of Yugoslavia, Dragoljub Ojdanić, Chief of the General Staff of the Armed Forces of the Federal Republic of Yugoslavia, and Vljako Stojiljković, Minister of Internal Affairs of the Republic of Serbia.<sup>15</sup>

The indictment against the accused was reviewed and confirmed by Judge Hunt of the ICTY.<sup>16</sup> In addition to confirming all counts of the indictment, Judge Hunt also ordered, further to requests by the Prosecutor, that certified copies of the arrest warrants be transmitted to all Member States of the United Nations and Switzerland.<sup>17</sup> Moreover, pursuant to Article 19(2) of the Statute of the ICTY and Rule 54 of the Rules,<sup>18</sup> all United Nations Member States were ordered to search for and freeze any and all assets of the accused within their respective jurisdictions. The order was sought to prevent foreign assets being used for the purpose of evading justice, and to permit effective restitution to be made upon conviction.<sup>19</sup>

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14. ICTY Press release 403, 27 May 1999 and Press release 404, 27 May 1999.

15. *Id.*

16. The indictment was confirmed on 24 May 1999. It was the subject of a non-disclosure order which expired at noon on 27 May 1999. The non-disclosure order was sought on the basis of security considerations, in particular for the United Nations humanitarian mission in the former Yugoslavia. Prosecutor v. Milošević *et al.* Decision on Review of Indictment and Application for Consequential Orders, Case No. IT-99-37-I, Judge Hunt, 24 May 1999. ICTY Press release 403, 27 May 1999 and ICTY Press release 404, 27 May 1999.

17. Prosecutor v. Milošević *et al.*, *see supra* note 16.

18. Art. 19(2) of the Statute of the ICTY and Rule 54 of the Rules of Procedure and Evidence, UN Doc. IT/32 Rev. 16.

19. Prosecutor v. Milošević *et al.*, *see supra* note 16. ICTY Press release 403, 27 May 1999 and ICTY Press release 404, 27 May 1999.