

(b) Constitutional and Institutional Developments

*Compiled by Åsa Rydberg**

1. AGREEMENTS CONCLUDED

On 23 July 1999, an Agreement on the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (ICTY) was concluded between the United Nations and the Federal Government of Austria. The formalization of the Agreement took place during a meeting in Vienna between Judge Gabrielle Kirk McDonald, President of the ICTY, H.E. Mrs. Benita Ferrero-Waldner, State Secretary, Federal Ministry for Foreign Affairs of Austria and H.E. Mr. Nikolaus Michalek, Federal Minister for Justice of Austria.¹ Austria is the fifth state to enter into such an Agreement.²

With regard to gratis personnel, additional Agreements have been concluded.³ Austria, Belgium, Germany, Iceland and the United States of America have all concluded Agreements with the United Nations to make available their national experts on a gratis basis for temporary and urgent assistance to the investigations conducted by the Office of the Prosecutor of the ICTY in Kosovo.⁴

2. NEW PROSECUTOR APPOINTED

On 11 August 1999, the Security Council appointed Ms. Carla Del Ponte as Prosecutor of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) for a period of four years.⁵ Ms. Del Ponte, a national of Switzerland, joined the ICTY and the ICTR from her previous position as Attorney-General of the Confederation of Switzerland. She is an experienced Prosecutor who has been involved in various high profile cases, including organized crime, financial and economic crimes, terrorism, drug trafficking, money laundering, illegal traf-

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1. Press release 421, 23 July 1999.

2. The following states have concluded Agreements with the United Nations on the enforcement of sentences of the ICTY: Italy (6 February 1997), Finland (7 May 1997), Norway (24 April 1998), and Sweden (23 February 1999).

3. See further Å Rydberg, *Constitutional and Institutional Developments*, 12 LJIL 631-633 (1999).

4. Press release 421, 23 July 1999, Press release 424, 30 July 1999 and Press release 430, 13 August 1999. Agreements have previously been concluded with Canada, Denmark, France, Sweden, Switzerland and the United Kingdom.

5. Resolution 1259 adopted by the Security Council on 11 August 1999, UN Doc. S/RES/1259 (1999).

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ficking in arms as well as international legal assistance.⁶ Ms. Del Ponte is the third Prosecutor, following Justice Richard Goldstone of South Africa and Justice Louise Arbour of Canada.

3. JUDGE CASSESE RESIGNS

Judge Antonio Cassese has advised the President of the ICTY and his fellow colleagues of his decision to resign from the ICTY in order to resume his academic activities at Florence University. Judge Cassese was elected as the ICTY's first President in November 1993 and re-elected for a second two-year term of office in November 1995.⁷

4. PRESIDENT REPORTS NON-COMPLIANCE TO THE SECURITY COUNCIL

Following a Request from the Prosecutor of the ICTY, on 25 August 1999 Judge Gabrielle Kirk McDonald, President of the ICTY, reported to the Security Council "the refusal of the Republic of Croatia to cooperate with the International Tribunal". She requested "the Security Council to take measures that are sufficiently compelling to bring the Republic of Croatia into compliance with its obligations under international law."⁸

More specifically, concerning the refusal of the Republic of Croatia to accept the ICTY's jurisdiction over crimes allegedly committed during and in the aftermath of "Operation Storm" and "Operation Flash", and its subsequent refusal to provide the Prosecutor with information in relation to these operations, the President found the Republic of Croatia in breach of its obligations to cooperate with the ICTY in its investigations and prosecutions, under Articles 18(2) and 29(1) of the Statute of the ICTY.⁹ The President also found that by failing to surrender and transfer an individual indicted by the ICTY who is being held in custody by the Croatian authorities, the Republic of Croatia is in non-

6. Press release 429, 12 August 1999.

7. Press release 435, 8 September 1999.

8. Letter dated 25 August 1999 from the President of the ICTY to the President of the Security Council, UN Doc. S/1999/912 (1999), Press release 433, 25 August 1999, and Press release 438, 29 September 1999.

9. *Id.*, Press release 420, 20 July 1999, and Press release 423, 28 July 1999.

compliance with its obligation pursuant to Article 29 of the Statute of the ICTY.¹⁰

10. The Prosecutor's Request related to two indictees, Vinko Martinović (also known as 'Štela') and Mladen Naletelić (also known as 'Tuta'), Case No. IT-98-34-I. However, as Vinko Martinović was surrendered to the ICTY by the Republic of Croatia on 9 August 1999, the President found that the Republic of Croatia was in non-compliance with its obligation pursuant to Article 29 only in connection with its failure to surrender Mladen Naletelić to the ICTY. The Prosecutor's Request raised a third matter, namely the fact that the Republic of Croatia had failed to respond to 13 outstanding requests for assistance of various kinds. However, the President declined, at that stage, to make a finding that the Republic of Croatia was in non-compliance with its obligation to provide evidence and information to the ICTY. Letter dated 25 August 1999 from the President of the ICTY to the President of the Security Council, UN Doc. S/1999/912 (1999). Press release 427, 9 August 1999, Press release 433, 25 August 1999, and Press release 438, 29 September 1999.