

United Nations peacemaking and peacekeeping efforts related to the former Yugoslavia. He recalled that in May 1993 Mr. Thorvald Stoltenberg had been appointed as both Special Representative of the Secretary-General and Co-Chairman of the Steering Committee of the International Conference on the Former Yugoslavia. At that time it had been hoped that the Vance-Owen plan for Bosnia and Herzegovina would shortly be agreed and that thereafter the main focus of United Nations activities in the former Yugoslavia would be implementation of that plan on the ground, together with continuing efforts to implement the Vance plan related to the United Nations Protected Areas in Croatia. However, as the members of the Council were aware, the Vance-Owen plan had not been accepted and Mr. Stoltenberg remained heavily engaged in continuing negotiations. That had left him insufficient time to carry out in full the functions of Special Representative of the Secretary-General and Chief of Mission of UNPROFOR. Accordingly, and after consulting Mr. Stoltenberg and contacting the heads of Government and other parties directly concerned in the former Yugoslavia, the Secretary-General had come to the conclusion that the resumption of negotiations in Geneva, following the meeting there between the Foreign Ministers of the European Union, the Co-Chairmen of the Steering Committee of the Conference and the parties on 29 November 1993, made it necessary to separate the functions of Co-Chairman of the Steering Committee and Special Representative. Therefore, it was the Secretary-General's intention that Mr. Stoltenberg should continue to serve as Co-Chairman and that Mr. Yasushi Akashi, until recently the Secretary-General's Special Representative for Cambodia, should be appointed to the post of Special Representative for the former Yugoslavia and Chief of Mission of UNPROFOR. The Secretary-General further stated that he had so informed the heads of Government and other parties directly concerned in the former Yugoslavia.

By a letter dated 2 December 1993,⁵⁷⁰ the President of the Security Council informed the Secretary-General of the following:

I have the honour to inform you that your letter dated 1 December 1993 concerning the staffing of the United Nations peace keeping and peacemaking efforts in the former Yugoslavia has been brought to the attention of the members of the Council.

⁵⁷⁰ S/26839.

They take note of the information contained in your letter and agree with the proposal mentioned therein.

E. Establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia

Initial proceedings

Decision of 22 February 1993 (3175th meeting): resolution 808 (1993)

At its 3175th meeting, on 22 February 1993, the Security Council included the item entitled "Establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia" in its agenda. The Council also included the following documents in its agenda: a letter dated 10 February 1993 from the representative of France addressed to the Secretary-General, transmitting the report of a Committee of French jurists set up to study the establishment of an international criminal tribunal to judge the crimes committed in the former Yugoslavia;⁵⁷¹ a letter dated 16 February 1993 from the representative of Italy addressed to the Secretary-General, forwarding a draft statute for a tribunal for war crimes and crimes against humanity committed in the territory of the former Yugoslavia;⁵⁷² and a letter dated 18 February 1993 from the representative of Sweden addressed to the Secretary-General, transmitting the decision by the States of the Conference on Security and Cooperation in Europe (CSCE) on a proposal for an international war crimes tribunal for the former Yugoslavia made by the Rapporteurs under the CSCE Moscow Human Dimension Mechanism to Bosnia and Herzegovina and Croatia.⁵⁷³

Following the adoption of the agenda, the Council invited the representatives of Bosnia and Herzegovina and Croatia, at their request, to participate in the discussion without the right to vote. The

⁵⁷¹ S/25266.

⁵⁷² S/25300.

⁵⁷³ S/25307.

President (Morocco) then drew the attention of the Council members to several documents,⁵⁷⁴ and to the text of a draft resolution that had been prepared in the course of the Council's prior consultations.⁵⁷⁵

Speaking before the vote, the representative of Brazil stated that the information gathered by the Commission of Experts and by the Special Rapporteur of the Commission on Human Rights had provided substantial evidence of grave breaches of humanitarian law being committed on a massive scale and in a systematic fashion. The international community could not allow that to continue unpunished. These grave breaches of the most elementary norms of humanity must be treated as what they were: criminal acts, crimes against women and children and other defenceless victims, but also crimes against humanity. Brazil favoured strong action to ensure the full ascertainment of the truth about each of the cases of war crimes and crimes against humanity committed in the territory of the former Yugoslavia and, in that regard, supported the establishment of an international criminal tribunal to bring to justice the individuals found to be responsible for such "abominable acts".

The speaker further observed that it was of particular importance that the international tribunal should rest on a solid legal foundation, in order to ensure the effectiveness of its actions. Addressing the question of the best method for establishing an ad hoc international criminal tribunal, he noted that the authority of the Security Council was not self-constituted but originated from a delegation of powers by the whole membership of the Organization. The Security Council, in the exercise of its responsibilities, acted on behalf of the States Members of the United

Nations, in accordance with Article 24 (1) of the Charter. Its powers could not be created, recreated or reinterpreted by decisions of the Council itself, but must be based on specific Charter provisions. Because the Council exercised a delegated responsibility, the task of interpreting its competence called for extreme caution, in particular when invoking Chapter VII of the Charter. The Security Council should play a strong and positive role in promoting the implementation of the various elements that would contribute to the peace efforts developed by the International Conference on the Former Yugoslavia, but that role should remain within the scope of the powers expressly granted to the Security Council in accordance with the Charter. In a rapidly changing world, Brazil considered it increasingly important to promote the rule of law in international relations by acting to ensure strict respect for the provisions of the Charter and other norms of international law.⁵⁷⁶

The representative of China stated that his delegation supported the thrust of the draft resolution and would therefore vote in favour. That vote would not, however, prejudice China's position on future Security Council actions on the subject.⁵⁷⁷

The draft resolution was then put to the vote and adopted as resolution 808 (1993), which reads:

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Recalling paragraph 10 of its resolution 764 (1992) of 13 July 1992, in which it reaffirmed that all parties are bound to comply with the obligations under international humanitarian law, in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches,

Recalling also its resolution 771 (1992) of 13 August 1992, in which, inter alia, it demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law,

Recalling further its resolution 780 (1992) of 6 October 1992, in which it requested the Secretary-General to establish, as a matter of urgency, an impartial commission of experts to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the commission may obtain, with a view

⁵⁷⁴ Report of the Secretary-General on the activities of the International Conference on the Former Yugoslavia (S/25221); letter dated 9 February 1993 from the Secretary-General addressed to the President of the Security Council, transmitting the interim report of the Commission of Experts established pursuant to resolution 780 (1992) to provide the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia (S/25274); and letter dated 2 February 1993 from the representative of Denmark addressed to the Secretary-General, forwarding the final report of the investigative mission into the treatment of Muslim women in the former Yugoslavia (S/25240).

⁵⁷⁵ S/25314.

⁵⁷⁶ S/PV.3175, pp. 4-7.

⁵⁷⁷ *Ibid.*, p. 7.

to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia,

Having considered the interim report of the Commission of Experts established pursuant to resolution 780 (1992), in which the Commission observed that a decision to establish an ad hoc international tribunal in relation to events in the territory of the former Yugoslavia would be consistent with the direction of its work,

Expressing once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including reports of mass killings and the continuance of the practice of "ethnic cleansing",

Determining that this situation constitutes a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment of an international tribunal would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal,

Taking note with grave concern of the report of the European Community investigative mission into the treatment of Muslim women in the former Yugoslavia,

Taking note of the report of the committee of jurists submitted by France, the report of the commission of jurists submitted by Italy, and the report transmitted by the Permanent Representative of Sweden on behalf of the Chairman in Office of the Conference on Security and Cooperation in Europe,

1. *Decides* that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991;

2. *Requests* the Secretary-General to submit for consideration by the Council at the earliest possible date, and if possible no later than sixty days after the adoption of the present resolution, a report on all aspects of this matter, including specific proposals and where appropriate options for the effective and expeditious implementation of the decision contained in paragraph 1 above, taking into account suggestions put forward in this regard by Member States;

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

Speaking after the vote, the representative of France stated that the atrocities committed by all sides in the Yugoslav crisis had given rise to an intolerable situation which was fanning the flames of conflict and, therefore, constituted a threat to international peace and security. Prosecuting the guilty was necessary in order to do justice to the victims and to the international community. It would also send a clear message to those continuing to commit such crimes that they would be held responsible for their acts. For the United Nations and, particularly, for the Security Council, prosecuting the guilty was also a matter of doing their duty to maintain and restore peace. With those considerations in mind, the French Foreign Minister had asked a group of jurists to draw up a report on setting up an international criminal tribunal that could prosecute persons responsible for the serious violations of international humanitarian law that had been committed in the territory of the former Yugoslavia since the beginning of Yugoslavia's dissolution. The report had concluded that the creation of an international tribunal for the former Yugoslavia could be decided on by the Security Council, within the framework of its powers under Chapter VII of the Charter to maintain or restore international peace and security. France had endorsed that conclusion and had taken the initiative of proposing to the Security Council a draft resolution for its implementation. The speaker further observed that the Security Council had taken a decision of major significance. For the first time in history, the United Nations would be setting up an international criminal jurisdiction — one that would be competent to try those who had committed serious violations of international humanitarian law in the territory of the former Yugoslavia. The tribunal should be established as soon as possible, through a further decision of the Security Council under the provisions of Chapter VII, which established the Council's competence in the maintenance and restoration of international peace and security.⁵⁷⁸

The representative of the United States stated that her delegation strongly supported the historic resolution just adopted, which took the first step in establishing an ad hoc tribunal to prosecute persons accused of war crimes and other serious violations of international humanitarian law in the territory of the former Yugoslavia. Her delegation looked forward to working with the Secretary-General to accomplish

⁵⁷⁸ *Ibid.*, pp. 8-11.

expeditiously his task of providing the Council with options for a statute and rules of procedure of the tribunal. Once the Secretary-General's report had been received, the United States would act quickly, along with the other members of the Council, to establish a tribunal under Chapter VII.⁵⁷⁹

The representative of the United Kingdom said that it was vital that an international legal mechanism be established to bring those accused of war crimes, from whatever party to the conflict, to justice. His delegation welcomed the valuable work that had been done on possible mechanisms and which would contribute to the study by the Secretary-General of the most effective and feasible way of establishing a tribunal or a court. The Secretary-General's task would not be easy. The Commission of Experts in its interim report had noted the difficulties of identifying the perpetrators of those crimes. It was vital that whatever court or tribunal was established would be provided with the necessary evidence. The Commission must therefore be given adequate resources to continue its work. He noted that the "court" was an ad hoc legal framework to deal with war crimes committed only in the territory of the former Yugoslavia.⁵⁸⁰

The representative of the Russian Federation stated that the resolution just adopted reflected the international community's will to exert its influence on all parties to the conflict in order to accelerate the peace process. The legal basis, status, composition and powers of the international tribunal, and the modalities for its establishment and functioning, would be decided by the Council subsequently, but already the resolution should serve the purpose of "bringing to their senses" those who were ready to sacrifice the lives and dignity of hundreds of thousands of innocent people. The Russian delegation believed that resolution 808 (1993) would also serve as a warning to those guilty of mass crimes and flagrant violations of human rights in other parts of the world.⁵⁸¹

The representative of Hungary considered the Security Council's decision of the previous October to set up a Commission of Experts charged with studying and analyzing information on the grave violations of international humanitarian law in the former Yugoslavia, to be of great importance. Information and

reports from various sources confirmed that the gravity and massive nature of those violations constituted a threat to international peace and security. Consequently, there should be no doubt about the competence of the Security Council to deal with the matter.⁵⁸²

The representative of Spain stated that his delegation understood that some might harbour certain doubts about the competence of the Council to take the step of establishing a tribunal, as it was a novel one. Spain did not share those doubts, however, for it was a limited and precise action with the clear objective of restoring peace, which was perfectly in keeping with the competence of the Council. In fact, the Council was not attempting to establish a new jurisdictional or legislative framework of a permanent nature. It was not setting itself up as a permanent judge or legislator. It was only attempting to create an ad hoc mechanism that, by applying existing laws, would assign responsibility for acts committed in an ongoing conflict that had already been seen to threaten and undermine peace. That mechanism would contribute, by means of recourse to justice and punishment of the guilty, to restoring the peace and ensuring its maintenance, so as to deter the repetition of similar acts in the future. The speaker noted that Spain would have preferred the establishment of a criminal tribunal with universal jurisdiction, but it recognized that to create one would have required more time than was available. Nevertheless, the Spanish delegation was confident that the resolution just adopted was the first step towards the future creation of an international, universal, permanent criminal jurisdiction, and it would continue to support and promote the efforts towards that end being made in other forums within the Organization.⁵⁸³

**Decision of 25 May 1993 (3217th meeting):
resolution 827 (1993)**

On 3 May 1993, pursuant to resolution 808 (1993), the Secretary-General submitted to the Council a report on the establishment of an international tribunal to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, to which was annexed a draft statute.⁵⁸⁴ The Secretary-

⁵⁷⁹ Ibid., pp. 11-14.

⁵⁸⁰ Ibid., pp. 14-15.

⁵⁸¹ Ibid., p. 16.

⁵⁸² Ibid., pp. 18-21.

⁵⁸³ Ibid., pp. 21-26.

⁵⁸⁴ S/25704 and Add.1 and Corr.1.

General believed that the international tribunal should be established by a decision of the Security Council on the basis of Chapter VII of the Charter. Such a decision would constitute a measure to maintain or restore international peace and security, following the requisite determination of the existence of a threat to the peace, breach of the peace or act of aggression. It would also have the advantage of being expeditious and of being immediately effective, as all States would be under a binding obligation to take whatever action was required to carry out a decision taken as an enforcement measure under Chapter VII. The Secretary-General also believed that the establishment of the tribunal by means of a Chapter VII decision would be legally justified, both in terms of the object and purpose of the decision and of past Security Council practice. He recalled, in that regard, that the Council had on various occasions adopted decisions under Chapter VII, aimed at restoring of maintaining international peace and security, which had involved the establishment of subsidiary organs for a variety of purposes.

The Secretary-General pointed out that the Security Council would be establishing a subsidiary organ within the terms of Article 29 of the Charter, but one of a judicial nature. The organ would have to perform its functions independently of political considerations; it would not be subject to the authority or control of the Security Council with regard to the performance of its judicial functions. As an enforcement measure under Chapter VII, however, the lifespan of the tribunal would be linked to the restoration and maintenance of international peace and security in the territory of the former Yugoslavia. In assigning to the tribunal the task of prosecuting persons responsible for serious violations of international humanitarian law, the Security Council would not, however, be creating nor purporting to “legislate” that law. Rather, the international tribunal would have the task of applying existing international humanitarian law. The Secretary-General therefore proposed that the Security Council, acting under Chapter VII of the Charter, establish the international tribunal.

At its 3217th meeting, on 25 May 1993, the Council included the report of the Secretary-General in its agenda. Following the adoption of the agenda, the Council invited the representatives of Bosnia and Herzegovina and Croatia, at their request, to participate

in the discussion without the right to vote. The President (Russian Federation) drew the attention of the Council members to the text of a draft resolution submitted by France, New Zealand, the Russian Federation, Spain, the United Kingdom and the United States,⁵⁸⁵ and to several other documents.⁵⁸⁶

The draft resolution was then put to the vote and adopted unanimously as resolution 827 (1993), which reads:

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General of 3 and 17 May 1993 pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women and the continuance of the practice of “ethnic cleansing”, including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

⁵⁸⁵ S/25826.

⁵⁸⁶ Note verbale dated 12 March 1993 from the representative of Mexico addressed to the Secretary-General (S/25417); letters dated 31 March and 13 April 1993 from the representative of Canada addressed to the Secretary-General (S/25504 and S/25594); letter dated 5 April 1993 from the representative of the Russian Federation addressed to the Secretary-General (S/25537); letter dated 6 April 1993 from the representative of Brazil addressed to the Secretary-General (S/25540); letter dated 5 April 1993 from the representative of the United States addressed to the Secretary-General (S/25575); letter dated 20 April 1993 from the representative of Slovenia addressed to the Secretary-General (S/25652); note verbale dated 30 April 1993 from the representative of the Netherlands addressed to the Secretary-General (S/25716); letter dated 11 May 1993 from the representative of Canada addressed to the Secretary-General (S/25765); letter dated 19 May 1993 from the representative of Yugoslavia addressed to the Secretary-General (S/25801); and letter dated 24 May 1993 from the representatives of France, the Russian Federation, Spain, the United Kingdom and the United States addressed to the President of the Security Council (S/25829).

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal,

Reaffirming in this regard its decision in resolution 808 (1993) of 22 February 1993 that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the prosecutor of the international tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report,

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

1. *Approves* the report of the Secretary-General;

2. *Decides* hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the statute of the International Tribunal annexed to the report of the Secretary-General;

3. *Requests* the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in article 15 of the statute of the Tribunal;

4. *Decides* that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the statute of the Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the statute, including the obligation of States to

comply with requests for assistance or orders issued by a trial chamber under article 29 of the statute;

5. *Urges* States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. *Decides* that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. *Decides also* that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. *Requests* the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

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

Speaking after the vote, the representative of Venezuela recalled that his delegation had voted in favour of resolution 808 (1993), because it had been convinced of the duty incumbent upon the international community to reaffirm that the commission of crimes such as those committed in the former Yugoslavia could not pass without political condemnation and penal sanctions. The Venezuelan delegation recognized that the Tribunal was intended to deal with a specific and limited crisis that the Council had been addressing under Chapter VII of the Charter. It also recognized that the Tribunal, as a subsidiary organ of the Council, would not be empowered with — nor would the Council be assuming — the ability to set down norms of international law or to legislate with respect to those rights. The Tribunal simply applied existing international humanitarian law. It further acknowledged that, in adopting the draft statute, the Council was also taking exceptional action. Venezuela believed that the ad hoc Tribunal had thus been established to act in support of the purposes and principles of the Charter.⁵⁸⁷

The representative of France noted that, through resolution 827 (1993), the Council had established an International Tribunal that would prosecute, judge and

⁵⁸⁷ S/PV.3217, pp. 6-10.

punish people from any community who had committed or continued to commit crimes in the territory of the former Yugoslavia. He also noted that resolution 827 (1993) had been adopted under Chapter VII of the Charter. The threat to international peace and security created by the situation in the former Yugoslavia justified recourse to those provisions. As a decision within the meaning of Article 25 of the Charter, that resolution applied to all States, meaning that all States were required to cooperate fully with the Tribunal, even if that obliged them to amend certain provisions of their domestic law. The speaker also made comments relating to the statute of the Tribunal.⁵⁸⁸

The representative of the United States stated that the crimes being committed in the former Yugoslavia were often the systematic and orchestrated crimes of Government officials, military commanders, and disciplined artillerymen and foot soldiers. The men and women behind those crimes were individually responsible for the crimes of those they purported to control; the fact that their power was often self-proclaimed did not lessen their culpability. Addressing those “who derided the tribunal as being powerless because the suspects may avoid arrest”, she argued that the tribunal would issue indictments whether or not suspects could be taken into custody. While they might be able to hide within the borders of Serbia or in parts of Bosnia or Croatia, they would be imprisoned for the rest of their lives within their own land. She further stressed that under the resolution just adopted every Government, including each one in the former Yugoslavia, would be obliged to hand over those indicted by the Tribunal. Regarding resolution 827 (1993), she made the following remarks. First, the Commission of Experts would continue to pursue its work of establishing a database and preparing evidence during the interim period before the appointment of the Tribunal’s Prosecutor, and hiring of staff to begin authoritative investigations and preparations for trials. At the appropriate time, her delegation expected that the Commission would cease to exist and its work would be “folded” into the Prosecutor’s office. Secondly, States were encouraged to submit proposals for the rules of evidence and procedure for consideration by the judges of the Tribunal. Thirdly, States should take measures under their domestic law to enable them to implement the provisions of the

⁵⁸⁸ Ibid., pp. 10-12.

Statute. The speaker also commented on the statute of the Tribunal.⁵⁸⁹

The representative of the United Kingdom stated that all parties in the former Yugoslavia shared some responsibility for the crimes committed and that it was important to emphasize that the Council’s action of that day was not aimed at one party alone. The Security Council had repeatedly demanded the immediate cessation of such atrocities, but those demands had not been heeded. It was essential that those who committed such acts be in no doubt that they would be held individually responsible and that those atrocities be investigated and the perpetrators called to account. The establishment of the Tribunal was an exceptional step needed to deal with exceptional circumstances. At the same time, the Government of the United Kingdom continued to support the work of the International Law Commission, which would result in the establishment of an international criminal court with general jurisdiction. Like the previous speakers, the speaker commented on the Statute of the Tribunal.⁵⁹⁰

The representative of New Zealand noted that the establishment of the Tribunal and the prosecution of persons suspected of crimes against international humanitarian law were closely related to the wider efforts to restore peace and security to the former Yugoslavia. He stressed that the Tribunal was a court, with the task of applying independently and impartially the rules of customary international law and conventional law applicable in the territory of the former Yugoslavia. The Tribunal must be left to carry out its work until it had discharged its mandate under its statute or until the Council decided that its work should be brought to an end.⁵⁹¹

The representative of Japan suggested that perhaps more extensive legal studies could have been undertaken on various aspects of the statute. At the same time, Japan fully shared the determination of the international community, which called for the exhaustion of all possible measures, including the expeditious establishment of the Tribunal, to put an end to the ongoing atrocities in the former Yugoslavia and to restore justice. That was why Japan supported the adoption of the resolution and why it intended to cooperate in its implementation to the best of its

⁵⁸⁹ Ibid., pp. 12-17.

⁵⁹⁰ Ibid., pp. 17-19.

⁵⁹¹ Ibid., pp. 22-23.

ability, in accordance with the spirit of international established principles on criminal matters and within its Constitution. The speaker contended that the statute of the Tribunal reflected the way of thinking of the Security Council. First, the commencement of activities by the Tribunal in no way relieved the parties of their obligation to enforce international humanitarian law. Secondly, such legal remedies in no way relieved the Security Council of its responsibility to address the Yugoslav crisis in its entirety. Thirdly, cooperation and assistance on the part of the States concerned was essential to guarantee the smooth functioning of the Tribunal. All States must exhaust all means to cooperate in good faith. Before concluding, the speaker stated that the Security Council was obliged to take the exceptional measures it was taking that day. Yet it could not be argued that those measures lay outside the Council's jurisdiction, for the complexity of the threat and the gravity of the crisis had made the Council's action inevitable. On the contrary, it might be argued that, without a comprehensive strategy on the part of the international community, the complex situation in the former Yugoslavia could not be properly addressed.⁵⁹²

The representative of Morocco noted that it had always been his delegation's view that an international tribunal must be but one element of a plan, based on the principles of the Charter, to put an end to Serb aggression, to demand the return of territory acquired by force and "ethnic cleansing" and fully to restore the territorial integrity, unity and sovereignty of Bosnia and Herzegovina. The Tribunal must seek to punish serious violations of international humanitarian law in the broadest sense as crimes against international peace and security. He argued that the legitimacy and legality of the Tribunal should not be questioned, and that the Tribunal should hand down deterrent sentences both for those who committed crimes and for their accomplices, and should not ignore appropriate compensations for victims and their families, nor the responsibility of States for breaches of international law attributable to them. He also stressed that States had the obligation to cooperate with and support the Tribunal.⁵⁹³

The representative of Cape Verde expressed the belief that the establishment of the Tribunal should be

⁵⁹² *Ibid.*, pp. 23-26.

⁵⁹³ *Ibid.*, pp. 26-28.

but the first step in a long and complex process. His delegation considered that the establishment of the Tribunal would be a positive step only if it was viewed as closely connected to a suitably comprehensive peace plan capable of preserving international peace and security throughout the territory of the former Yugoslavia. His delegation considered the establishment of the Tribunal to be an instrument for the promotion of international peace and security.⁵⁹⁴

The representative of Pakistan argued that "ethnic cleansing", genocide and other heinous crimes had been committed in Bosnia and Herzegovina, in flagrant violation of international humanitarian law, with the specific objective of acquiring territory and as a deliberate campaign to exterminate Bosnia and Herzegovina, a sovereign State Member of the United Nations. His delegation hoped that the establishment of the Tribunal would help to halt such crimes and would lead to the vacating by the aggressors of territories forcefully occupied and to the full restoration of the unity, territorial integrity and sovereignty of Bosnia and Herzegovina. Pakistan believed that the resolution just adopted was an important element of the Vance-Owen plan and fell squarely within its ambit. The speaker further stated that the international community must halt the aggression, reverse it through withdrawals from all territories occupied by the use of force and "ethnic cleansing" and restore international legality. He contended that the Security Council needed to move swiftly to take further appropriate and effective enforcement actions in that direction. The Pakistan delegation could not accept, even by implication, the status quo imposed by aggression, the use of force and "ethnic cleansing", as that would set a dangerous precedent for the civilized world.⁵⁹⁵

The representative of China stated that, bearing in mind the particular circumstances in the former Yugoslavia and the urgency of restoring and maintaining world peace, the Chinese delegation had voted in favour of the resolution just adopted. He cautioned, however, that that should not be construed as an endorsement of the legal approach involved. China had always held that, to avoid setting any precedent for abusing Chapter VII of the Charter, a prudent attitude should be adopted with regard to the establishment of an international tribunal by means of

⁵⁹⁴ *Ibid.*, pp. 28-31.

⁵⁹⁵ *Ibid.*, pp. 31-32.

Security Council resolutions under Chapter VII. It was the consistent position of the Chinese delegation that an international tribunal should be established by concluding a treaty so as to provide a solid legal foundation for it and ensure its effective functioning. Furthermore, the statute of the Tribunal just adopted was a legal instrument with the attributes of an international treaty, involving complicated legal and financial questions. It ought to become effective only after having been negotiated and concluded by sovereign States and ratified by their national legislative organs in accordance with domestic laws. Therefore, to adopt by a Security Council resolution a statute that gave the Tribunal both preferential and exclusive jurisdiction was not in compliance with the principle of State judicial sovereignty. The adoption of the Statute of the International Tribunal by the Security Council through a resolution invoking Chapter VII meant that United Nations Member States must implement it to fulfil their obligations under the Charter. That would bring many problems and difficulties both in theory and in practice. For that reason, China had consistently maintained its reservations. In short, the Chinese delegation emphasized that the Tribunal established in the current manner could only be an ad hoc arrangement, suited only to the special circumstances of the former Yugoslavia. It should not constitute a precedent.⁵⁹⁶

The representative of Brazil observed that the proposals for the establishment by the Security Council of an international tribunal had posed intricate and not unimportant legal difficulties, many of which had not been resolved to the satisfaction of his delegation. It had only been the consideration of the “unique and exceptionally serious circumstances” in the former Yugoslavia that had determined the vote cast by Brazil on the resolution just adopted. The positive Brazilian vote should not be construed as an overall endorsement of legal formulas involved in the foundation or in the statute of the Tribunal. The speaker believed that the matter should also have been brought to the attention of the General Assembly. The views of the Government of Brazil on the main legal issues had been expressed when the Council had adopted resolution 808 (1993). In particular, Brazil had expressed the view that the most appropriate and effective method for establishing the Tribunal would have been the conclusion of a convention setting up an ad hoc international criminal

⁵⁹⁶ Ibid., pp. 33-34.

jurisdiction and containing the terms of reference for its exercise. The option of establishing the Tribunal through a resolution of the Security Council, which Brazil had not favoured, left unresolved a number of serious legal issues relating to the powers and competencies attributed to the Council by the Charter. It was the view of the Brazilian delegation that the resolution just adopted was aimed at addressing a specific and unique situation with a view to producing one specific result: bringing to justice the persons responsible for serious violations of international humanitarian law in the former Yugoslavia. Both the resolution and the statute it adopted were thus not meant to establish new norms or precedents of international law. The representative of Brazil stated that by adopting the resolution, the Council was not creating, nor purporting to legislate, international humanitarian law. Rather, the Tribunal would have the task of applying existing norms of international humanitarian law. Before concluding, the speaker noted that for the work of the Tribunal to be effective, it would need to receive the fullest cooperation from all States. That was a clear obligation resulting from the resolution just adopted.⁵⁹⁷

The representative of Spain stated that the statute of the Tribunal could be improved upon. Nevertheless, Spain had preferred to retain the form proposed by the Secretary-General in its entirety for several reasons. First, certain clarifications could be found by reading the statute in the light of the explanations provided in the Secretary-General’s report with respect to each article. Other clarifications could be contributed by the Tribunal itself when it drafted its rules of procedure and began carrying out its judicial activities. Moreover, the goal of restoring peace in the territory of the former Yugoslavia required prompt action, which might have been compromised through a prolonged and detailed discussion of a statute which satisfied the fundamental prerequisites for ensuring the achievement of that goal. Although the statute lacked express provisions in that respect, the tribunal was clearly an independent organ and that such independence was not at all incompatible with the Tribunal’s formal character as a subsidiary organ of the Council, as was borne out by the International Court of Justice with respect to the United Nations Administrative Tribunal and its relations with the General Assembly. Second, the Tribunal was an impartial body governed by the law

⁵⁹⁷ Ibid., pp. 34-37.

itself in fulfilling its duties. Its jurisdiction encompassed all of the territory of the former Yugoslavia and actions by all parties involved in the conflict. Third, as there was a wish for the Tribunal to be effective, it was indispensable to impose upon States an obligation to cooperate with the Tribunal that was based upon Chapter VII of the Charter. That obligation implied the duty to promulgate any domestic legal measures that might be necessary. A particularly important feature of that obligation was the primacy accorded the Tribunal over national courts. Lastly, the resolution created an ad hoc body with a jurisdiction limited not only geographically and temporally, but also materially, in that it would be circumscribed to applying the international law in force. In fact, with the establishment of the Tribunal the aim was not to create new international law nor to change existing law, but to guarantee respect for that law.⁵⁹⁸

The President, speaking in his capacity as the representative of the Russian Federation, stated that his delegation favoured the establishment of the Tribunal because it saw it as an instrument of justice to restore international legality and the faith of the world community in the triumph of justice and reason. That was why the Security Council had assumed, in accordance with the Charter of the United Nations, the responsibility for implementing the appropriate specific measures contained in the resolution just adopted, including the establishment of the Tribunal. While supporting the tribunal, the Russian delegation believed that that body would not abolish nor replace national tribunals. The speaker further stated that the establishment of the Tribunal, apart from possessing great juridical meaning, also represented an important political act taken by the international community, which at the same time fulfilled a preventive function and promoted the restoration of peace in the region.⁵⁹⁹

**Decision of 20 August 1993 (3265th meeting):
resolution 857 (1993)**

At its 3265th meeting, on 20 August 1993, the Council resumed its consideration of the item and included in its agenda the sub-item entitled "Establishment of the list of candidates for judges". Following the adoption of the agenda, the President (United States) drew the attention of the Council

⁵⁹⁸ Ibid., pp. 38-41.

⁵⁹⁹ Ibid., pp. 43-46.

members to the text of a draft resolution that had been prepared in the course of the Council's prior consultations⁶⁰⁰ and to revisions to be made to the draft in its provisional form.

The draft resolution, as orally revised in its provisional form, was then put to the vote and adopted unanimously as resolution 857 (1993), 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 received by the Secretary-General before 16 August 1993,

Establishes the following list of candidates in accordance with article 13 of the statute of the International Tribunal:

- Mr. Georges Michel ABI-SAAB (Egypt)
- Mr. Julio A. BARBERIS (Argentina)
- Mr. Raphaël BARRAS (Switzerland)
- Mr. Sikhe CAMARA (Guinea)
- Mr. Antonio CASSESE (Italy)
- Mr. Hans Axel Valdemar CORELL (Sweden)
- Mr. Alfonso DE LOS HEROS (Peru)
- Mr. Jules DESCHENES (Canada)
- Mr. Jerzy JASINSKI (Poland)
- Mr. Heike JUNG (Germany)
- Mr. Adolphus Godwin KARIBI-WHYTE (Nigeria)
- Mr. Valentin G. KISILEV (Russian Federation)
- Mr. Germain LE FOYER DE COSTIL (France)
- Mr. LI Haopei (China)
- Ms. Gabrielle Kirk McDONALD (United States of America)
- Mr. Amadou N'DIAYE (Mali)
- Mr. Daniel David Ntanda NSEREKO (Uganda)
- Ms. Elizabeth ODIO BENITO (Costa Rica)
- Mr. Hüseyin PAZARCI (Turkey)
- Mr. Moragodage Christopher Walter PINTO (Sri Lanka)
- Mr. Rustam S. SIDHWA (Pakistan)
- Sir Ninian STEPHEN (Australia)
- Mr. Lal Chan VOHRAH (Malaysia)

**Decision of 21 October 1993 (3296th meeting):
resolution 877 (1993)**

At its 3296th meeting, on 21 October 1993, the Council resumed its consideration of the item and included in its agenda the sub-item entitled "Appointment of the Prosecutor". Following the adoption of the agenda, the President (Brazil) drew the attention of the Council members to the text of a draft

⁶⁰⁰ S/26331.

resolution that had been prepared in the course of the Council's prior consultations.⁶⁰¹

The Council then adopted the draft resolution, without a vote, as resolution 877 (1993), which reads:

The Security Council,

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

Having regard to article 16, paragraph 4, of the statute 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,

Having considered the nomination by the Secretary-General of Mr. Ramón Escovar-Salom for the position of Prosecutor of the International Tribunal,

Appoints Mr. Ramón Escovar-Salom as Prosecutor of the International Tribunal.

**Decision of 8 July 1994 (3401st meeting):
resolution 936 (1994)**

At its 3401st meeting, on 8 July 1994, the Council resumed its consideration of the item and the sub-item entitled "Appointment of the Prosecutor". Following the adoption of the agenda, the President (Pakistan) drew the attention of the Council members to the text of a draft resolution that had been prepared in the course of the Council's prior consultations.⁶⁰²

The Council then adopted the draft resolution, without a vote, as resolution 936 (1994), which reads:

The Security Council,

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

Having regard to article 16, paragraph 4, of the statute 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,

Having considered the nomination by the Secretary-General of Mr. Richard J. Goldstone for the position of Prosecutor of the International Tribunal,

Appoints Mr. Richard J. Goldstone as Prosecutor of the International Tribunal.

⁶⁰¹ S/26608.

⁶⁰² S/1994/805.

**Decision of 25 July 1994: letter from the
President to the Secretary-General**

By a letter dated 14 July 1994 addressed to the President of the Security Council,⁶⁰³ the Secretary-General transmitted copies of the agreement between the United Nations and the Netherlands concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia since 1991 and requested that the Security Council confirm that the arrangements were acceptable and that the seat of the Tribunal had been determined to be at The Hague.

By a letter dated 25 July 1994,⁶⁰⁴ the President of the Security Council informed the Secretary-General of the following:

I have the honour to refer to your letter of 14 July 1994 transmitting copies of the agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters 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 and the Agreement for Tenancy of Churchillplein 1, The Hague.

I have the honour to inform you that, in accordance with paragraph 6 of its resolution 827 (1993) of 25 May 1993 and without prejudice to consideration of the arrangements by the General Assembly, the Security Council finds the arrangements between the United Nations and the Netherlands acceptable. The Council confirms that the seat of the Tribunal has been determined to be in The Hague.

**Decision of 23 September 1994: letter from the
President to the Secretary-General**

By a letter dated 23 September 1994,⁶⁰⁵ the President of the Security Council informed the Secretary-General of the following:

Article 27 of the statute of the International Tribunal for the Former Yugoslavia, adopted by the Security Council in its resolution 827 (1993) of 25 May 1993, prescribes that imprisonment imposed by the International Tribunal on a convicted person shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Council their willingness to accept convicted persons. In the report on the statute of the International Tribunal presented by the Secretary-General to the Council, it is suggested that the Council make appropriate arrangements to obtain from States an

⁶⁰³ S/1994/848.

⁶⁰⁴ S/1994/849.

⁶⁰⁵ S/1994/1090.

indication of their willingness to accept convicted persons. This information would be communicated to the Registrar of the International Tribunal who would prepare a list of States in which the enforcement of sentences would be carried out.

On behalf of the Security Council, I hereby kindly request that you assist the Council in obtaining such indications from States.

F. Participation of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the work of the Economic and Social Council

Initial proceedings

Decision of 28 April 1993 (3204th meeting): resolution 821 (1993)

At its 3204th meeting, on 28 April 1993, the Security Council included the item entitled "Participation of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the work of the Economic and Social Council" in its agenda. Following the adoption of the agenda, the President (Pakistan) drew the attention of the Council members to the text of a draft resolution submitted by France, Spain and the United Kingdom,⁶⁰⁶ and read out a revision to be made to the draft in its provisional form. He also informed the Council members that the United States had joined as a sponsor of the draft resolution.

The draft resolution, as orally revised in its provisional form, was then put to the vote and adopted by 13 votes to none, with 2 abstentions (China, Russian Federation) as resolution 821 (1993), which reads:

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Considering that the State formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist,

Recalling its resolution 757 (1992) of 30 May 1992, in which it noted that "the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted",

Recalling also its resolution 777 (1992) of 19 September 1992, in which it recommended to the General Assembly that it

⁶⁰⁶ S/25675.

decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly,

Recalling further that the General Assembly in its resolution 47/1 of 22 September 1992, having received the recommendation of the Security Council of 19 September 1992, considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and therefore decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly,

Recalling that in its resolution 777 (1992) it decided to consider the matter again before the end of the main part of the forty-seventh session of the General Assembly, and that in December 1992 the members of the Council agreed to keep the subject-matter of resolution 777 (1992) under continuous review and to consider it again at a later date,

1. *Reaffirms* that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations, and therefore recommends to the General Assembly that, further to the decisions taken in Assembly resolution 47/1, it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Economic and Social Council;

2. *Decides* to consider the matter again before the end of the forty-seventh session of the General Assembly.

Speaking after the vote, the representative of China recalled that his delegation had always held that all the Republics of the former Yugoslavia should take their own seats in the United Nations, and that no Republic should be excluded lightly. His delegation considered that the resolution just adopted was a transitory arrangement. It hoped that the question of the seat of the Federal Republic of Yugoslavia might be settled properly and that the Federal Republic of Yugoslavia would be able to obtain its own seat in the United Nations and the organs belonging to the United Nations system.⁶⁰⁷

The representative of the United States stated that her delegation had voted in favour of the resolution just adopted, as it continued to believe that the claim of the Federal Republic of Yugoslavia to membership in international organizations was legally invalid. The United States would support the application of the Federal Republic of Yugoslavia for membership in the

⁶⁰⁷ S/PV.3204, pp. 3-6.