(b) Constitutional and Institutional Developments

*Compiled by Åsa Rydberg**

1. AGREEMENTS CONCLUDED BETWEEN THE ICTY AND STATES

On 10 February 1999, H.E. Ms. Anna Lindh, Minister for Foreign Affairs of Sweden visited the International Criminal Tribunal for the former Yugoslavia (ICTY) to sign an Agreement with the United Nations on the enforcement of sentences of the ICTY.[1] The Agreement with Sweden differs from the previously concluded agreements with Italy, Finland and Norway in that it is limited to convicted persons with strong ties to Sweden.[2]

2. PRESIDENT OF ICTY TO RESIGN AT THE END OF PRESIDENCY

The second President of the ICTY, Judge Gabrielle Kirk McDonald, has announced in a letter to all staff members of the ICTY that she will leave the Tribunal at the end of the first term of her presidency. The President's resignation will thus become effective as of 17 November 1999, or as soon as the cases to which the President is assigned have been completed.[3]

According to the Rules of Procedure and Evidence of the ICTY (the Rules), the President is elected for a term of two years and may be re-elected once. The President is elected by a majority of the votes of the Judges composing the Tribunal.[4]

3. STATEMENTS RELATING TO THE SITUATION IN KOSOVO

The situation in Kosovo has been the subject of several letters and public statements by the Prosecutor and the President of the ICTY.

---

* Associate Legal Officer, Registry of the International Criminal Tribunal for the former Yugoslavia, The Hague, The Netherlands. The selection of events and the interpretation of these are those of the author and do not necessarily represent those of the International Tribunal or the United Nations.

1. Press release 382, 18 February 1999.
2. Art. 2(2)(d) of the Agreement Between the United Nations and the Government of Sweden on the Enforcement of Sentences of the International Criminal Tribunal for the Former Yugoslavia. On the topic of enforcement of sentences of the ICTY, *see* D. Tolbert, *The International Criminal Tribunal for the former Yugoslavia and Enforcement of Sentences*, 11 LJIL 655-669 (1998).
3. Press release 385, 16 March 1999.
4. Rule 18 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, UN Doc. IT/142.

https://doi.org/10.1017/S0922156599000217 Published online by Cambridge University Press

In January 1999, Justice Louise Arbour, Prosecutor of the ICTY, reported that the Federal Republic of Yugoslavia (FRY) had denied her office access to Kosovo for investigation purposes in connection with the Račak massacre.[5]

During the Kosovo peace talks at Rambouillet in France, the President of the ICTY wrote the Foreign Ministers of France and the United Kingdom, stressing that the repeated refusal of the FRY "renders it imperative that the [peace] agreement's provisions concerning the Tribunal make explicit reference to its legal right to access to Kosovo and to conduct investigative activities there."[6]

On 16 March 1999 the President of the ICTY once again reported to the Security Council the continuing refusal of the FRY to co-operate with the ICTY. The President noted that "[t]he reason for making this report are the continuing and additional instances in which the Federal Republic has refused to permit the Prosecutor and her investigations to enter Kosovo, in order to initiate investigations into alleged crimes committed in that territory."[7] The report to the Security Council was submitted in accordance with Rule 7 *bis* (B) of the Rules, which provides that when the Prosecutor satisfies the President of the ICTY that a state has failed to comply with its obligations under the Statute of the ICTY, "the President shall notify the Security Council thereof."[8]

Following the escalation of the situation in Kosovo, the Prosecutor wrote President Milošević and other senior officials in Belgrade and Kosovo a letter, which was made public on 26 March 1999, in which she reminded them of their responsibilities under international law.[9] A few days later the President of the ICTY echoed the Prosecutors calls on President Milošević to exercise his authority over his subordinates in order to prevent the commission of further crimes and to take the necessary steps to punish any crimes that have been committed. The President also reminded President Milošević and the government of FRY that "just eight months ago, the International Criminal Tribunal for Rwanda convicted the former Prime Minister of Rwanda of genocide. In so doing, the court affirmed that governments have a responsibility to ensure that their citizens live in peace and security. The resulting trust and authority that governments enjoy applies equally, if not more so, to heads of State."[10]

In a public statement on 31 March 1999, the Prosecutor of the ICTY made public the existence of an indictment against Željko Ražnjatović, also known as Arkan. The Prosecutor stated that the decision on the public disclosure was made in light of reports of Arkan's alleged involvement in Kosovo and added that "[i]f the public disclosure of this arrest warrant reduces somewhat the pos-

5. *See further* Press release 378, 19 January 1999 and Press release 379, 20 January 1999.
6. Press release 383, 23 February 1999.
7. UN Doc. S/1999/383.
8. Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia, *supra* note 4, Rule 7*bis*(B)
9. Press release 389, 26 March 1999.
10. Press release 392, 31 March 1999.

https://doi.org/10.1017/S0922156599000217 Published online by Cambridge University Press

sibility of his arrest outside Yugoslavia, it will nevertheless serve to put on notice those who might be inclined to retain his services, or to obey his orders, that they too will be tainted by their association with an indicted war criminal."[11]

On 6 April 1999 the President wrote to the Ministers of Foreign Affairs of the NATO member states regarding the situation in Kosovo. It was noted that while the ICTY has the mandate to investigate, prosecute and conduct trials, it can not do so without the active assistance of the states of the international community. In this regard, the President requested that "[a]ll States and organisations in possession of information pertaining to the alleged commission of crimes within the jurisdiction of the Tribunal should make such information available without delay to the Prosecutor."[12]

11. Press release 391, 31 March 1999.
12. Press release 394, 8 April 1999.

https://doi.org/10.1017/S0922156599000217 Published online by Cambridge University Press