

EUROPEAN PARLIAMENT



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A3-0225/94

REPORT

on the creation of an international criminal tribunal
Committee on Foreign Affairs and Security

Rapporteur: Mr Alexander LANGER

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PE 207.439/fin.
it - Or. es

- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
absolute majority of Parliament's component Members to give assent
except for simple majority under Articles 8a, 105, 106, 130d and 228 EC

- ***I Codecision procedure (first reading)
simple majority
- ***II Codecision procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members either to adopt a declaration of intent
to reject the common position, or to amend or confirm the rejection of the common position
- ***III Codecision procedure (third reading)
simple majority to approve the joint text
absolute majority of Parliament's component Members to reject the Council text

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At the sitting of 23 April 1993 the President of the European Parliament announced that he had forwarded the motion for a resolution by Mr Arbeloa Muru on the setting-up of an International War Crimes Tribunal, pursuant to Rule 45 of the Rules of Procedure, to the Committee on Foreign Affairs and Security as the committee responsible.

At its meeting of 11 June 1993 the committee decided to draw up a report and at its meeting of 20 July 1993 it appointed Mr Langer rapporteur.

At its meetings of 15 March and 6 April 1994 the committee considered the draft report.

At the latter meeting it adopted the resolution unopposed with 1 abstention.

The following were present for the vote: Crampton, vice-chairman; Langer, rapporteur; Aglietta, Balfe, Canavarro, Dillen, Gaibisso, Holzfuss, Jepsen, Lagakos (for Bethell), Lenz, Llorca Vilaplana, Magnani Noya, Pesmazoglou, Trivelli and Verde i Aldea.

The report was tabled on 7 April 1994.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

MOTION FOR A RESOLUTION

Resolution on the creation of an international criminal tribunal

The European Parliament,

- having regard to the motion for a resolution by Mr Arbeloa Muru on the setting up of an International War Crimes Tribunal (B3-0317/93),
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Foreign Affairs and Security (A3-0225/94),
- A. having regard to its resolutions of 11 March 1993, 27 May 1993, 16 September 1993, 1 December 1993 and 20 January 1994, concerning, inter alia, the International Tribunal for War Crimes in Former Yugoslavia,
- B. bearing in mind the important documents produced on the subject of international criminal jurisdiction by authoritative international assemblies such as the Council of Europe (1992), the International Commission of Jurists (1993) and the Legal Committee of the UN (1993),
- C. having regard to the outcome of the conference on the International Tribunal held at the EP on 3 and 4 March 1994 under the joint sponsorship of the Belgrade-based Anti-War Centre and the Croatian Helsinki Committee and attended by jurists and non-governmental bodies from all parts of former Yugoslavia,
- D. convinced of the urgent need to strengthen an international legal system, equipped with appropriate sanctions,
- E. whereas the International Tribunal must be completely independent of political pressure and opportunism, to enable it to establish a name for itself as a legal institution,
- F. expressing appreciation of the outstanding initiatives and decisions taken by the Secretary-General, the Security Council and the General Assembly of the United Nations with regard to punishing crimes against humanity committed in former Yugoslavia, in particular Security Council resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993,
- G. whereas the UN Security Council's decision to set up an International Tribunal for War Crimes in Former Yugoslavia is of enormous legal and political value and sets a precedent for further developments towards a stable form of international criminal jurisdiction,
- H. whereas an International Tribunal may be a major instrument for the prevention of crimes against humanity and the promotion of the legal order,

(a) with regard to the International Tribunal for War Crimes in Former Yugoslavia:

1. Welcomes the establishment and installation of the International Tribunal for War Crimes in Former Yugoslavia in the Hague on 17 November 1993 and considers that it constitutes an extremely important contribution on the part of the international community to restoring confidence in the law among the victims of the war in former Yugoslavia,

2. Considers that the success or otherwise of this institution will make a significant contribution to determining whether the prospect of a just international order gains or loses credibility and will exert great influence on the future of international law;

3. Considers that the political weight and effectiveness of the Tribunal depend to a great extent on how much is known about its activities and on the democratic support it elicits from governments and the general public and therefore calls on all the media to devote attention to the activities of the International Tribunal;

4. Considers that the European Union should make every effort to ensure that the Tribunal can carry out its tasks fully and asks that to this end the Union should without delay include active support for the Tribunal - in the ways suggested here and in any other appropriate way - in the 'joint action in matters covered by the foreign and security policy' within the meaning of Title V of the Treaty on European Union;

5. Congratulates those Member States (for example, Italy, Spain, the Netherlands, Belgium and Luxembourg) which have already adopted important measures in support of the Tribunal and calls on the Union and all the Member States to support the work of the Tribunal for War Crimes in Former Yugoslavia in judicial terms, politically, financially and practically, by means of:

(a) legislative and government acts implementing the decisions of the tribunal, with particular reference to the summoning of defendants and witnesses, the capture and handing over of those against whom warrants for arrest have been issued, the necessary international judicial assistance and the measures required to guarantee that those who are sentenced are actually punished;

(b) the immediate provision of the funds needed for the work of the Tribunal via the payment - by the Member States of the Union - of the sum required for at least the first year of operation, into the special trust account set up by the UN Secretary General and guaranteed assistance in the international efforts needed to cover expenses in the future too,

(c) the provision, at the Tribunal's request, of specialized staff, documentation and data processing equipment, data and information collected by the police and other national judicial bodies, infrastructure (including prisons) and anything else which may prove necessary for the efficient operation of the Tribunal;

6. Considers that similar initiatives should be promoted jointly by the Member States of the Union within international institutions, in particular the Council

of Europe and the CSCE, and congratulates those states - for example, the United States and Finland - which have already offered tangible support;

7. Calls on the Union and the Member States to provide a substantial contribution to the overall budget of the Tribunal (currently set at US\$33 m) and to use their influence in the United Nations with a view to ensuring that the budget is approved and the necessary provision is made to finance it;

8. Calls on the European Union and its Member States to take steps in international fora to ensure that the issue of compensation is presented to the Tribunal in an appropriate way;

9. Calls on the Commission to draw up proposals for measures to support the civilian and non-governmental organizations involved, in the various regions of former Yugoslavia, in democratic activities, reconciliation work and in supporting the International Tribunal, helping these bodies to carry out work leading to the supplying of information, allegations and documentation to the Tribunal itself; calls on the Commission to release appropriate funds for the above purposes, using budget heading B7-52;

(b) with regard to the setting up of a permanent international criminal tribunal:

10. Considers that the time has come for international law to include a permanent international criminal tribunal, with clearly defined jurisdiction over crimes with special supranational implications ('international crimes'), including incitement to and perpetration of ethnic cleansing, to be defined by unequivocal sources of international law;

11. Recommends that the Union and all the international institutions use the setting up of the Tribunal for War Crimes in Former Yugoslavia as an opportunity for promoting the development of a permanent international criminal tribunal;

12. Notes with great interest the valuable preparatory work already carried out in this area with a view to the formulation of an international legal code and a draft statute for the tribunal, which is currently being examined by the General Assembly of the United Nations and urges the governments of the Member States to back this initiative in the Legal Committee (Sixth Committee) of the United Nations General Assembly and ensure that the draft can be submitted to the General Assembly before the end of 1994;

13. Calls on the Council of the Union to take steps in all international fora to promote the development of new international jurisdictional bodies, in both the criminal and environmental spheres, and to draw up a common position on this subject pursuant to Articles J.1 to J.3 of Title V of the Treaty on European Union and to make it the subject of joint action in the sphere of foreign and security policy;

14. Instructs its President to forward this resolution to the Commission and the Council, requesting that they inform the relevant committee of the European Parliament as soon as possible of the action taken on paragraphs 4, 7 and 13 in particular, and to forward it to the Secretaries General of the United Nations, the Council of Europe and the CSCE, the President of the International Tribunal for War Crimes in Former Yugoslavia and to the parliaments and governments of the republics of former Yugoslavia.

B

EXPLANATORY STATEMENT

- I. The need to strengthen international law and the penalties provided for under it - A demonstration by example: the Tribunal for former Yugoslavia

Building an international society founded on law is a slow, low-key, chaotic, and uncertain process. It will not satisfy lovers of sensational events or adventurers who look no further than the moment. Yet the patient steps forward being taken by international standards mark and underline the stages in the progress of universal morality. In every respect, the fact that an international tribunal has been set up to judge those responsible for violations of humanitarian law perpetrated in former Yugoslavia stands out as an example. Those were the words of the UN Secretary-General, Boutros Boutros Ghali, speaking on 17 November 1993, the day on which the Tribunal was established in The Hague.

The demise of the bipolar world, in which there were two political/military/ideological blocs led by two superpowers that also acted as the world's policemen, has added to the need swiftly to construct a system of international law with the power to lay down rules, impose penalties, and indeed ensure compliance with and enforce the decisions taken in due process of law. To proclaim the law without the possibility of underpinning its effectiveness is to run the risk of giving a purely moral testimony which, though important in itself, crumbles in the face of reality and hence, in the long run, might undermine the credibility of the law. On the other hand, it is not sufficient for proceedings and penalties for serious violations of international law to be instituted and imposed on the basis of an application by a party concerned, who may simply be the most powerful or the victor (as has happened many times, starting with the Nuremberg trials and, most recently, after the Gulf War). A credible and effective international legal system could not be established by such means: the danger would be that the exercise of collective public responsibilities might be more akin to usurpation than to a lawful act of a recognized authority.

The growing 'hunger and thirst' for international justice is today prompting calls and proposals from many quarters seeking to ensure that the international order is equipped to deal with the rising number of wounds, of increasingly varied kinds, being inflicted on human coexistence and the coexistence of man and nature. Among the examples which can be mentioned are crimes such as genocide or apartheid or other violent and widespread forms of 'ethnic cleansing', massive, systematic human rights violations, the extremely serious and often irreparable assaults on the ecosystem, the systematic use of torture or rape, drug trafficking, the war crimes referred to in numerous international conventions, but it may be necessary also to consider dangerous new forms of international outrage such as deliberate large-scale attacks on monetary stability, international public health, basic and vital social rights, or the physical and mental, and even biological and genetic, integrity of humankind and other living species. One day, perhaps, desecration of the essential artistic heritage and the irreparable decay that may befall it might be recognized as an international crime.

At a time when the above points are being discussed in the most diverse international political, legal, and philosophical forums, providing an

opportunity for a mind-set to emerge and take shape and proposals to be worked out, it is impossible not to recognize that a remarkable step forward has been taken with the establishment of an international tribunal to prosecute violations of humanitarian law in former Yugoslavia. This is an extraordinary response, brought about - after considerable democratic pressure had been exerted in many quarters, not only by governments, but by people throughout the world - by decision of the United Nations Security Council. It is certain to set a precedent and, indeed, make history, in terms of good and evil, beyond the tragic context in which the decision was taken to set it up and which it will be called upon to judge. To put it another way, the establishment of the Tribunal will henceforth have to be counted among the antecedents of any international war crimes tribunal that might be set up and, perhaps, of any international criminal court at all.

It is undeniable that the immense and still-growing complexity and the degree of interdependence of the modern world, no less than increasing moral awareness, imply that the use of force to obtain justice, not least in international relations, has to be proscribed and that it is necessary to rise above national sovereignty in the narrow sense, which has hitherto been the principal basis for, and posed the main obstacle to, law enforcement, depriving it of the impartiality and hence the 'justice' required of the rulings and penalties handed down by a judicial authority. It is increasingly frequently the case that the effects and consequences of breaches of the law cut across national frontiers: the law itself and its enforcement must therefore seek to attain supranational scope and authority. To establish and ensure compliance with an international monopoly whereby the legitimate use of force is undertaken by a joint authority is now a universal goal that is recognized at least in theory.

The fact that an international tribunal has been set up to deal with former Yugoslavia shows that all the above matters are not only being discussed, but are beginning to become a reality at the practical level.

II. The call to set up an international criminal court and/or an international war crimes tribunal

International outrage - especially following the reports that rape was systematically being used as a weapon of war - and a political consensus (resulting in part from discomfiture at the evident inability of the international community to address itself to the Yugoslav conflict) have expedited the process of setting up an *ad hoc* international tribunal to examine violations of humanitarian law in former Yugoslavia. No similar spur has elicited a response to the more general demand to ensure proper compliance with international criminal law, despite the fact that the call has been made in numerous academic and political circles for the past 40 years.

In very recent times, influential international bodies have put forward proposals providing a sound, well thought-out basis for reconsidering the above-mentioned objective:

- (a) **Council of Europe: an international court to try crimes against peace, war crimes, and crimes against humanity**

When it adopted the report by Mrs Haller in March 1992, the Parliamentary Assembly of the Council of Europe recommended that support be given to the establishment of an international court. The arrangements should be laid down by a UN-sponsored international diplomatic conference, rather than by making the appropriate amendments to the United Nations Charter, securing a decision from the General Assembly, or adding a new criminal chamber to the Hague-based International Court of Justice. It is not deemed necessary to draw up an international code before setting up the court, since it may be assumed that crimes against peace, war crimes, and crimes against humanity have been defined in sufficiently clear terms in the international conventions currently in force, especially those constituting the legal basis of the United Nations, and form an indivisible whole of which the international community has an adequate understanding. The court should have exclusive and compulsory jurisdiction, and, as regards bringing actions before it, procedures should be modelled along the lines of the European Convention on Human Rights. Consequently, under the proposal, the right to apply to the court would be granted not only to countries, but also to international organizations, non-governmental bodies, and individuals. There are five fundamental attributes which the court must possess: stability, permanence, independence, effectiveness, and world-wide jurisdiction.

- (b) **International Commission of Jurists: a permanent international criminal court**

The first specific discussions on the establishment of an international criminal court date back to 1918, in the immediate aftermath of the First World War. Various discussions took place - without achieving a practical result - prompted, among other things, by the case of the Turks who had perpetrated the massive genocide of the Armenians. After the Second World War the Nuremberg and Tokyo trials were held, and, in subsequent years, repeated discussions have taken place in the different United Nations bodies, focusing mainly on the prosecution of offences 'against the peace and security of mankind'.

In May 1993 the International Commission of Jurists produced a document probing in detail into the problems associated with setting up an international criminal court. Its principal conclusions are as follows:

- the Commission calls for a permanent and independent international criminal court to be set up to try persons accused of crimes under international law; the crimes in question should be defined with reference to the draft code of offences against the peace and security of mankind, drawn up by the UN International Law Commission (which mentions, among other things, the crimes of genocide, apartheid, massive, systematic human rights violations, war crimes, drug trafficking, terrorism, etc.); however, the Commission explicitly states that reference may also be made to other sources of international law;

- the court should have exclusive jurisdiction in respect of certain serious international crimes and, if appropriate, concurrent jurisdiction with respect to a number of other offences that might need to be taken into consideration; the court's jurisdiction should not be regarded as 'foreign' in any country, as problems might otherwise arise in connection with extradition;
- the court should have the power to take cognizance of and judge the facts of a case and not just to act in an appellate capacity or as a supreme court of appeal;
- an independent prosecutor's department, separate from the body trying the case, should act as the prosecuting party, all the necessary guarantees being provided for;
- as regards establishment of the court, it is suggested that an appropriate international treaty be drawn up; the court should have formal relations with the UN.

(c) UN International Law Commission: international code of offences against the peace and security of mankind, draft statute for an international criminal court

In the early 1980s the UN General Assembly called on the International Law Commission to draw up an international code of offences against the peace and security of mankind. At its session held from 3 May to 23 July 1993 in Geneva, the Commission, proceeding on the basis of those instructions, framed a draft statute for an international criminal court. Since 26 October 1993 the draft has been before the Sixth Committee of the General Assembly and the member states: the General Assembly is due to consider the matter at some point in 1994; the member states should deliver their opinion by the end of February. On 23 November 1993 the Sixth Committee adopted a resolution inviting the member states to submit their comments on the draft statute by 15 February 1994 and calling on the International Law Commission to continue its work with a view to ensuring that a draft statute might be finalized in time for the Committee's 46th session.

In a report on proceedings in the Sixth Committee, Parliamentarians for Global Action note there does not yet seem to be sufficient support to lay down a fixed deadline requiring the Legislative Committee to complete its draft before the end of 1994; the most vehement opposition appears to have come from the United States and a group of developing countries, including China, which regard national sovereignty as a highly sensitive issue. The main bone of contention at present appears to be the pace of the work rather than its substance.

The six chapters of the draft statute deal separately with the following points:

- establishment and membership of the court (relations with the UN, status, constituent bodies, selection of and guarantees afforded to judges, role, staffing, and operation of the prosecutor's department, etc.); it is proposed to set up a court, a prosecutor's department, and a registry;

- jurisdiction and applicable law; various possibilities are considered; there are a number of alternatives, including some that are not mutually exclusive, for example those derived from international treaties which define criminal acts within the meaning of international law or treaties whereby national legislative bodies are required to make provision in their law for given types of criminal offence; cases may assigned to the jurisdiction of the court either by express decision of a signatory state of the statute or by virtue of the law, i.e. under the treaty defining the crime;
- conduct of investigations and the institution of prosecutions;
- enforcement of judgments;
- appeal and judicial review;
- international cooperation and judicial assistance (letters rogatory, extradition, service of documents, etc.).

No decision has been taken as to the extent to which the court is to be considered a body within the United Nations system.

The UN Security Council would have the right to refer cases to the jurisdiction of the court, for instance if it elected not to set up special courts.

(d) European Parliament: support for the Tribunal for former Yugoslavia (and call for the necessary funding); special focus on women

The European Parliament has called on a number of occasions for new international courts to be set up (an international environmental tribunal, for example), although, to date, it has not conducted a thorough study or drawn up a detailed resolution on the subject.

As regards the war crimes committed in former Yugoslavia, the most significant and specific resolution was adopted on 11 March 1993, following an *ad hoc* hearing held by the Committee on Women's Rights on 18 February 1993 and shortly after the Security Council had approved resolution 808 (1993), which is explicitly applauded. The EP resolution (B3-0374, 0412, and 0430/93) calls, among other things, for the Tribunal to be set up promptly, in accordance with the UN decision, and urges that the necessary resources be made available. Particular attention is devoted to the rape of women: the resolution insists that the crimes concerned have to be included among those to be tried by the Tribunal, calls for the burden of proof to be reversed, requests that women be adequately represented among the members of the Tribunal, and proposes that an effective legal advisory service be set up for the victims. The EP has also returned to the matter on several subsequent occasions: on 27 May 1993 it called for the Tribunal to be set up rapidly, on 16 September 1993 it renewed that call, appealing to the governments of the Member States, and, most recently, on 15 December 1993, it criticized the Council of the Union for its failure to raise the problem of the funding required for the Tribunal and called once again on the Member States to lend their vigorous support.

- (e) **Preliminary conclusion: the goal of an international criminal court can be pursued with reasonable flexibility and keen determination**

The countless theoretical, practical, and, above all, political difficulties revealed by the discussion on the possibility of establishing an international criminal court (either as a body having general jurisdiction or for the more specific purpose of punishing war criminals or given individual crimes) and the fairly substantial body of authoritative preparatory work which has been conducted for decades in various forums point to the inescapable conclusion that the proposal is amply justified, but daring, and encountering understandable resistance in many quarters, stemming first and foremost from the defence of so-called national sovereignty and the so-called national interests of individual states. If the desire is to attain the appointed goal, which now enjoys support within the United Nations and among the grass roots in many countries, as well as in highly qualified specialist legal and academic circles, it will be necessary, at the political level, to act with great determination and secure a very wide consensus and, at the practical level, to show a great deal of common sense, guided by rule of thumb. There is no other option but to proceed from the points of law and factual details that can be assumed to have secured a large measure of acceptance and a degree of consensus, that is to say, as regards the criminals to be punished, the powers to be conferred on an international court, the law to be applied, the possible form of organization of the court, and the place which it might occupy within the United Nations system and the international legal framework.

III. The international Tribunal set up to try those responsible for violations of humanitarian law committed in former Yugoslavia

In the light of the foregoing paragraphs, it is easier to understand the truly 'revolutionary' departure marked by Security Council resolutions 808 (1993) (adopted on 22 February 1993) and 827 (1993) (adopted on 25 May 1993), which set up the special Tribunal for crimes against humanity in former Yugoslavia. The aim - and hope - was to establish an international judicial body that could restore a degree of confidence in international humanitarian law and provide a specific forestalling example, acting as a deterrent to those tempted to resort to force beyond the pale and in defiance of international law. The outcome of this first vital experience will to a large extent determine whether and how far it will be possible in the future to equip the international legal framework and the United Nations system with a permanent judicial body to prosecute international crimes that could scarcely be properly and credibly tried and punished at national level.

The decision to set up the Tribunal was brought about within a short space of time as a result of growing political resolve, spurred by the ever more appalling events seen in the war in former Yugoslavia. In resolution 771 (adopted on 13 August 1992) the Security Council, responding to the numerous violations of international humanitarian law, not least those deriving from the practice of 'ethnic cleansing', called on member states and international humanitarian organizations to gather information about the violations of humanitarian law being committed on the territory of former Yugoslavia (including the serious violations of the Geneva Conventions) and make it available to the Security Council. In resolution 780 (adopted on 6 October 1992) it was decided to set up a 'Commission of Experts' to

investigate the violations taking place in former Yugoslavia. Shortly afterwards, in resolution 787 (adopted on 16 November 1992), the Security Council noted with satisfaction that the Commission had been set up and asked it to continue its inquiries, especially where ethnic cleansing was concerned. However, only a handful of countries (Canada, Denmark, New Zealand, Norway, Sweden, the United States, and the Netherlands, which has at least promised to do so) are contributing to the special 'Trust Fund' set up by the United Nations Secretary-General, and, out of the necessary \$1.8 m, just \$1 m had been collected by the end of 1993.

The London Conference, which was held under joint UN and EC auspices and ended on 27 August 1992, stated that international action must specifically seek, among other things, to ensure that all persons fulfil the obligations incumbent on them under international humanitarian law, take all possible legal steps with a view to prosecuting persons who have committed, or ordered others to commit, serious infringements of the Geneva Conventions, and compile a register of proven infringements of international humanitarian law. Among other moves in the same direction were the demands endorsed by non-governmental representatives of all the former Yugoslav republics and regions at the first session of the Verona Forum for Peace and Reconciliation in the Territory of Former Yugoslavia (held in Verona from 17 to 20 September 1992) and the follow-up 'Conference on the Punishment of War Criminals' (also sponsored by NGOs from former Yugoslavia and organized by the Belgrade-based Anti-War Centre), held in San Remo from 4 to 6 December 1992. By deciding to send an *ad hoc* fact-finding mission to investigate the systematic use of rape, the Edinburgh European Council (held on 11 and 12 December 1992) likewise opted for a similar policy. The above events formed the context that gave rise to the two key Security Council resolutions, 808 and 827.

(a) UN Security Council resolutions 808 and 827

On the basis of a report by the Commission of Experts set up previously, the first of the two resolutions laid down a decision to the effect that an international tribunal would be established to try the persons responsible for serious violations of international humanitarian law committed on the territory of former Yugoslavia in 1991 and thereafter and instructed the Secretary-General to submit the fullest possible report to the Security Council within 60 days, setting out specific proposals with a view to implementation of the decision. On 3 May 1993 the Secretary-General submitted his report to the Council, in which he stated his views as regards the legal bases for establishment of the Tribunal, its powers, its organization, inquiry and pretrial procedures, rules governing the conduct of proceedings, appeals against sentences, cooperation, and judicial assistance, and certain matters relating to costs, the operation of the Tribunal, and its statute.

The Secretary-General's proposal finds a surprising and creative way - so much so as to warrant the epithet 'revolutionary' with which one person has chosen to describe it - of overcoming many of the problems which had hitherto prevented an international criminal court from being set up: the procedure does not involve a new international treaty, or amendment of the UN Charter, or any complex ratification or international accession process. Instead, the basis is Chapter VII of the Charter, which speaks of 'measures ... to maintain or restore international peace and security'. All member states are thus automatically obliged to accept decisions taken pursuant to Chapter VII.

The Tribunal, at all events, is a 'subsidiary organ' of the United Nations, within the meaning of Article 29 of the Charter, and, because its role is to administer justice, must of necessity enjoy the requisite independence. The applicable law is to be inferred from both formal (i.e. deriving from treaties or conventions) and consuetudinary humanitarian law: consequently, the question whether certain countries will accede to a particular international convention no longer arises, despite the fact that the Tribunal is a newly established body. By reason of the subject matter, the jurisdiction of the Tribunal can truly be said to be very wide.

As regards the sentences it might wish to pass, the Tribunal will be required to follow the law of former Yugoslavia but will not, under any circumstances, be permitted to impose the death penalty. It will not proceed in the absence of the defendants, a point which appears to presage quite a number of possibly insurmountable obstacles that could severely undermine the Tribunal's effectiveness.

(b) Establishment of the Tribunal - Selection of judges

In addition to the above, in resolution 827 the Security Council:

- endorsed the Secretary-General's report;
- established an *ad hoc* international tribunal for the sole purpose of trying persons responsible for serious violations of humanitarian law committed on the territory of former Yugoslavia from 1 January 1991 up to a date to be determined by the Security Council;
- adopted the statute of the Tribunal;
- addressed an urgent appeal to member states and international organizations to provide funds and qualified staff;
- laid down practical arrangements to enable the Tribunal to be set up promptly.

The subsequent resolution 857 (adopted on 20 August 1993) gave unanimous endorsement to a list of 23 nominated judges to be submitted to the General Assembly, which was called upon to elect 11 to serve for a four-year term. Following a vote on 17 September 1993, the General Assembly, acting by an absolute majority, elected the 11 judges, who represent the world's principal legal systems. The judges are: Georges Michel Abi-Saab (Egypt), Antonio Cassese (Italy), Jules Deschenes (Canada), Adolphus Godwin Karibi-Whyte (Nigeria), Germain Le Foyer de Costil (France), Haopei Li (China), Gabrielle Kirk McDonald (United States), Elizabeth Odio Benito (Costa Rica), Rustam S. Sidhwa (Pakistan), Sir Ninian Stephen (Australia), and Lal Chand Vohrah (Malaysia).

On 21 October 1993 the Security Council appointed the prosecutor attached to the Tribunal, Ramón Escobar Salom, the Venezuelan Attorney-General.

The Tribunal held its first session in The Hague from 17 to 30 November 1993, given over to the inaugural ceremony, the swearing-in ceremony, and an initial working session - later adjourned until January 1994 (17 January - 11 February 1994) - for the purpose of laying down its rules of procedure and assessing evidence and witnesses'

testimonies. Further sessions are to take place from 25 April to 29 July and 19 September to 4 November 1994, and the Prosecutor will present the charges in the first cases to be heard.

Following the formal inaugural ceremony, the proceedings continued in camera, and a number of key decisions were taken, all unanimously. The Tribunal elected the Italian judge Antonio Cassese to be its president and Elizabeth Odio Benito (Costa Rica) as its vice-president. It decided that the term of office in each instance would run for two years and incumbents could be re-elected once only. The Tribunal has been divided into two criminal chambers, each consisting of three members (the two presidents are Gabrielle Kirk McDonald and Adolphus Godwin Karibi-Whyte), and an appeals chamber, headed by the President of the Tribunal, Mr Cassese. Membership of the chambers is to be organized according to a system of rotation. The official name of the Tribunal has also been chosen: the International Tribunal for Crimes in Former Yugoslavia. Many practical details have at least begun to be worked out, for example, setting up a registry, the appointment of a registrar and an assistant prosecutor, documentation, etc.

The apparently most difficult problems to have emerged so far relate, among other things, to gathering documentary evidence and testimonies, summonses to appear and the actual appearance of accused persons before the Tribunal, and funding of the Tribunal. In addition, the Tribunal has requested the UN Secretary-General to approach the member states with a view to securing the necessary guarantees and recognition, backup facilities, appropriately qualified staff, and so forth.

IV. Measures by Parliament and the European Union

The EP report will have to focus primarily on an assessment of the tasks and political significance both of the *ad hoc* Tribunal and of a future international criminal court, with particular reference to:

- (a) measures to be taken by the EP and the European Union in support of the Tribunal for former Yugoslavia;
- (b) measures to be taken by the EP and the European Union with the aim of enabling a permanent international criminal court to be set up to try those who have committed war crimes or, if wider-ranging tasks are to be assigned to the court, to prosecute those responsible for serious international crimes.

With respect to the first point, the EP could recommend, for example, that common measures to be implemented by the Union under Title V of the Treaty on European Union should encompass appropriate steps taken either in the United Nations and other international bodies or more directly in relation to the Tribunal itself. The Council must be requested to make substantial provision for political, financial, and practical support for the Tribunal's activities and as regards staffing and funding, gathering information and documents, and summonses and the appearance of defendants and witnesses. Moreover, the Union and its Member States should be called upon to give a specific undertaking also to finance the activities of the Commission of Experts set up by the Security Council, since it is undoubtedly in the best position at present to obtain documents and evidence. However, a special effort should likewise be made to assist all independent democratic bodies operating in the various former

Yugoslav territories (and first and foremost Serbia and Montenegro) that have been endeavouring for many months to bring crimes to wider notice, gather evidence and documents, and identify the culprits and, with the urgency born of desperation, calling for international justice to be allowed to take its course, not least in relation to the leaders of their countries and governments.

As far as the second point is concerned, the EP could endorse the goal of establishing an international criminal court at an early date, urging above all that the progress achieved to date in the UN be turned to account and calling on the Union and the Member States to use their influence to help bring this about; steps in that direction could likewise be taken to most useful effect under the common foreign and security policy. All possible lessons will have to be learned from the experience of the *ad hoc* Tribunal for former Yugoslavia. Parliament could also point to the need for bold and unconventional exploration of the political, legal, and philosophical worlds with the aim of determining what types of international offence should now constitute the priorities as regards prevention and punishment at international level.

MOTION FOR A RESOLUTION

(B3-0317/93)

by Mr Arbeloa Muru, pursuant to rule 63 of the Rules of Procedure, on the setting-up of an International War Crimes Tribunal

The European Parliament,

- A. having regard to Recommendation 1189(1992) of the Parliamentary Assembly of the Council of Europe,
- B. whereas, as international law is organized at present, there is no court competent to judge war crimes, combining crimes against peace with crimes against humanity, including the crime of genocide, all of which are defined in several international texts,
- C. supporting the resolution adopted by the Inter-Parliamentary Union at its meeting in Santiago, Chile, in October 1991,

Calls on the Council of Ministers and the Member States to take the necessary steps within the United Nations Organization to convene an international diplomatic conference to draw up an agreement on the setting up of an appropriate legal body and to support its activities thereafter.

