

DANIKOVIC

EXTRA

PRODUCTIES

IN APPEL

LIJST VAN PRODUCTIES ZIJDENS EISERS IN EERSTE AANLEG

1. Resolutie van de Veiligheidsraad nr. 1199 (1998) van 23 september 1998
2. Resolutie van de Veiligheidsraad nr. 1160 (1998) van 31 maart 1998
3. Brief van de ministers van buitenlandse zaken en defensie van 8 oktober 1998 aan de Tweede Kamer over "De situatie in Joegoslavië"
4. Uitspraak van het Internationaal Gerechtshof van 8 juli 1996 over de rechtmatigheid van het dreigen met en het gebruik van kernwapens, in Nederlandse vertaling en uitgave in boekvorm onder de titel 'Rechtmatigheid van kernwapens ?' - LOS BIJGEVOEGD
5. Memorandum van de Staat der Nederlanden van 16 juni 1995 in het kader van de procedure voor het Internationaal Gerechtshof inzake de rechtmatigheid van kernwapengebruik en het dreigen daarmee
6. Uitspraak van het Human Rights Committee van 29 april 1993 inzake E. Wobbes et al/ the Netherlands
7. Rapport van het Harvard Study Team over de gevolgen van de oorlog tegen Irak (1991)
8. Uitspraak Amtsgericht Stuttgart, nr. B 8 Ds 1045/93 van 3 december 1996
9. a en b. Perspublicaties 1993 en 1996 inzake de praktijkervaringen met trefzekerheid bij het gebruik van kruisraketten
10. 'Westen laat rechtsgelijkheid varen - eenzijdige kruisiging Serviërs mystificeert Bosnische werkelijkheid' - Algemeen Dagblad 22 september 1995
11. a t/m d. Rapportages van Amnesty International van juni -augustus 1998 over de positie van minderheden in Kosovo in relatie tot het UCK
12. Informatie-compilatie inzake Westerse reacties met betrekking tot het militair optreden van Turkije tegen de Koerdische bevolking in de periode 1992-1993
13. a t/m c. Informatie-compilatie inzake de positie van de Serviërs in relatie tot de Krajina
14. a t/m c. Statuten van de Vereniging van Juristen voor de Vrede, de Vereniging van Anti-fascistische Oud-Verzetsstrijders; Bond van Anti-fascisten en de Stichting Tribunaal voor de Vrede

15. Eerste Advies van de Raad van State van 23 december 1983 inzake het wetsvoorstel tot goedkeuring van het Kruisraketten-verdrag
16. Tweede advies van de raad van State van 27 november 1985 inzake het wetsvoorstel tot goedkeuring van het Kruisraketten-verdrag
17. "De Politieke Rol van de Rechter in het International Recht"- prof. P.H. Kooijmans in de bundel 'Rechters en politiek - nationale en internationale beschouwingen', Tjeenk Willink, 1993
18. Goedkeuringswet Kruisraketten-verdrag - Voorlopig Verslag Tweede Kamer 1985-1986, 19290, nr. 7
19. Arrest Hof Den Haag van 26 september 1991 inzake Rost van Tonningen, rol.nr. 90/476
20. Conclusie van eis, tevens nadere memorie, in de zaak KG 99/69 voor de Haagse rechtbank
21. Vonnis Pres. Rb. Den Haag KG 99/69
22. Appèldagvaarding, houdende grieven inzake vonnis Pres. Rb. Den Haag, KG 99/69
23. Kamerstukken onder nr. 22 181 inzake 'De situatie in Joegoslavië'
24. Samenvatting standpuntbepaling door de leen van de Tweede Kamer inzake de volkenrechtelijke rechtmatigheid van geweld tegen Joegoslavië, onder de titel:

"Het politieke opportunisme en het volslagen gebrek aan enige volkenrechtelijke bezinning bij regering en parlement inzake het toepassen van Nederlands oorlogsgeweld tegen de Federale republiek Joegoslavië, alsmede het dreigen met zodanig oorlogsgeweld"

LIJST VAN PRODUCTIES ZIJDENS APPELLANTEN IN TWEEDE
AANLEG

- I. De Aanloop tot de NAVO-Oorlog tegen de Federale Republiek Joegoslavië om Kosovo, 1999' - een systematische analyse aan de hand van hoofdzakelijk Westers bronnenmateriaal
- IIA. Rapportage "Collateral damages " - more than 1000 dead civilians (dit aantal is recentelijk uiteindelijk gebleken nog veel hoger te liggen) - destruction of facilities of power generation

- IIB. Provisional Assessment of civilian casualties and destruction - Yugoslav government
- IIC. Chronology of crimes and dishonor by NATO - report
- IID. Information on the consequences of NATO aggression in the field of health care and protection - Serbian government
- III. Indictment with respect to NATO's war crimes
- IVA. NATO-Bombardments; Consequences for the environment and human settlements - UNEP-Report
- IVB. Appeal with regard to the environmental consequences of NATO's bombardments
- IVC. Okologische Folgen der NATO-bombardierung - Serbian government
- VA. Artikelen-compilatie over de gevolgen van het gebruik van verarmd uranium bij de NAVO-bombardementen
- VB. Verslag rapport van NAVO-secretaris Robertson aan VN-Secretaris Kofi Anan over de locaties van verarmd uranium in Joegoslavië als gevolg van de NAVO-bombardementen
- VI. Verslag Amerikaanse fact-finding commission over de humanitaire situatie in Kosovo tijdens de NAVO-oorlog
- VII. Days of Terror - Rapport over de terreur tegen de niet-Albanese bevolking na de NAVO-oorlog tegen Joegoslavië
- VIII. Albanian terrorism culminated after arrival of KFOR - publicatie
- IX. Terrorist and other acts of violence in Kosovo - report dated 20-1-2000 by Serbian Government
- X. The Kosovo Cover-Up; Newsweek May 2000
- XI. Belangrijkste regelingen van het Eerste Aanvullende Protocol bij de Verdragen van Genève
- XII. Agressie-definities naar internationaal recht
- XIII. De benoeming van een agressie-oorlog tot 'het meest ernstige oorlogsmisdrijf' door het tribunaal van Neurenberg - vindplaats uitspraak
- XIV. Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993)

- XV. Handvest van Neurenberg
- XVI. Veiligheidsraadsresolutie 1244 (1999)
- XVII. NATO Airstrikes against Yugoslavia and international law and morality - paper
- XVIII. De beruchte appendix B bij de Rambouillet-besprekingen
- XIX. 'Etnische Verrassing' - Servië als enige resterende multi-etnische smeltkroes in het voormalige Joegoslavië - Elsevier 20-9-1999
- XX. 'Humanitaire Interventie' - Rapport van de Adviesraad International Vraagstukken en van de Commissie van Advies inzake Volkenrechtelijke Vraagstukken
- XXI. 'NATO/Federal Republic of Yugoslavia - "collateral damage or unlawful killing ? - Violations of the Laws of War by NATO during Operation Allied Force' - Report Amnesty International June 2000
- XXII. 'Clusterbommen - NAVO wierp verboden explosieven' - Elsevier 11-3-2000
- XXIII. 'Kosovo one year on' - NATO-report by NATO secretary Robertson - april 2000
- XXIV. Artikelen-compilatie over de terreur tegen de niet-Albanese bevolkingsgroepen in Kosovo na machtsovername door NATO
- XXV. Artikelen-compilatie over het mislukken van de zgn. 'humanitaire doelstelling' van de NAVO-oorlog
- XXVI. January 2000 Report by Amnesty International with regard to the general situation in Kosovo
- XXVII. Artikelen-compilatie over de onwil van de NAVO-landen om de multi-ethniciteit in Kosovo in stand te houden
- XXVIII. Artikelen-compilatie over de valse NAVO-voorstellingen m.b.t. aantallen Albanese slachtoffers door Joegoslavië
- XXIX. Artikelen-compilatie over de kwade opzet van de NAVO om met Joegoslavië in oorlog te komen
- XXX. Manipulaties m.b.t. Racak - perspublicaties
- XXXI. Onthullingen van ministers van NAVO-landen over de opzettelijkheid van de NAVO-oorlog tegen Joegoslavië

- XXXII. Misleidingen over NAVO-aanval op Joegoslavische trein - perspublicatie 8 januari 2002
- XXXIII. "Hufeisen-Plan" wurde in Bonn, nich in Belgrad gemacht - Servische regering
- XXXIV. 'NATO Crimes in Yugoslavia' - 2 delen; Witboek van de Joegoslavische regering over de gevolgen van de NAVO-bombardementen van de burgerbevolking in Joegoslavië
- XXXV. 'Den Haag verrast door keus burgerdoelen' - perspublicatie
- XXXVI. Moedwillige afkapping van de discussie over rechtmatigheid van de oorlog tegen Joegoslavië in de Tweede Kamer - perspublicatie 17-4-1999
- XXXVII. 'Gedenkbuch - Helden der Vaterlandes' - rapportage over militaire slachtoffers NAVO-agressie - Joegoslavische regering
- XXXVIII. Pleitnota van appellanten bij pleidooi in appel inzake Dedovic e.a./Kok e.a. bij Hof A'dam - rolnr. 99/759

BELGRADE, 31 October 1999

ALBANIAN TERRORISM IN KOSOVO CULMINATED AFTER ARRIVAL OF KFOR

BELGRADE, October 31 - In the period from June 10 to September 28 this year, in the territory of Kosovo and Metohija armed terrorist "KLA" gangs have carried out 2,599 attacks, of which 2,564 on civilians. In those terrorist attacks were killed 216 Serbs and Montenegrins, 47 Albanians and four members of other national communities, and 348 civilians have been injured.

According to the Serbian Interior Ministry, in three and a half months since the arrival of KFOR in the territory of the southern Serbian province, have been committed daily on average 23.1 terrorist attacks on citizens, which is 11 times more than the daily average of attacks in 1998 and 1999 (till June 10), when Serbian Interior Ministry members were in charge of the security of citizens in the province.

Detailed data about the violence of Albanians in Kosovo, against non-Albanian residents, which escalated evidently after the arrival of KFOR in the territory of Serbia, were provided, pointing to terrorism and mass crimes, by Serbian Interior Ministry analysts Milos Nedeljkovic and Mile Novakovic at a recent symposium in Novi Sad held on the subject - NATO's aggression on FR Yugoslavia 99.

According to the authors of the report titled terrorism of Albanian separatists in Kosovo and Metohija and their methods of operation illustrates very well the security situation in that province and the inefficiency of KFOR and the international community in the realization of commitments from Security Council Resolution 1244 and the military-technical accord from Kumanovo.

That the attacks of Albanian terrorists have become synchronized and more frequent since the arrival of KFOR in Kosovo-Metohija is evident from the facts that on June 10 and June 12 were carried out three terrorist attacks, on June 13 eight, on June 14 as many as 9 terrorist attacks. After that, the number of attacks increases every day, especially following the incursion of armed terrorist gangs from Albania.

By opening state borders towards Albania, KFOR enabled the unimpeded entry of 20,000 armed "KLA" members, stationed in camps in northern Albania. It also enabled the entry into Kosovo and Metohija of armed Albanian criminal gangs who commit mass crimes on a daily basis, massacres, kidnappings, rapes, arsons and lootings against Serbian and other non-Albanian populations, and then return unpunished to the territory of the Republic of Albania.

It is characteristic, the authors of the report said, that terrorist attacks were at first directed at the ethnic cleansing of non-Albanian populations in villages and towns in Metohija, than in Serbian enclaves in Kosovo, especially in Pristina and its surroundings. The most intensive attacks and ethnic cleansing are currently directed at the regions of Gnjilane, Vitina, Kosovska Kamenica and other towns in Kosovo Pomoravlje, and in Kosovska Mitrovica.

Pointing to numerous examples, the analysts cited the case of the murder of a 14-year-old Serbian boy, Zoran Jankovic, while he was recovering from wounds sustained in a previous attack by Albanian terrorists on him and on his father Zivorad, in Gnjilane on July 15. The boy was brutally knifed to death in Pristina hospital.

Testifying to the systematic genocide and ethnic cleansing conducted by Albanian terrorists in the territory of Kosovo and Metohija are mass graves and mass liquidations and massacres of non-Albanian populations in Pec and surroundings, in the surroundings of Gnjilane, in Staro Gracko, in Ugljare, in the marketplace of the village of Bresje near Kosovo Polje and others.

Nedeljkovic and Novakovic said that terrorist "KLA" gangs in the territory of Kosovo and Metohija have formed more than 20 prisons (village Petrovo-Stimlje, Prizren, suburb Priskote - Djakovica, village Ponosevac and Radonjicko jezero, the village Bibe and Kamena glava - Urosevac, village Malisevo - Gnjilane, the village Vrelo - Istok, PKB Orvin and the village Zrze - Orahovac, the village Budisavce and Svrhe - Klina, the village Junik - Decane, several locations in Pristina), which has been confirmed partly by KFOR representatives.

Serbian police has at its disposal information that a number of kidnapped persons are in "KLA" camps and prisons in the territory of Albania, near the airport Rinas near Tirana and in Kukesh.

Albanian terrorist gangs also targeted ethnic Albanians, loyal citizens, whose only "sin" was that they considered Serbia and Yugoslavia as their state. Since January 1 last year till September 28 this year, Albanian terrorists have killed 243 members of the ethnic Albanian minority.

During this year, especially after the arrival of KFOR forces, has continued the showdown of "KLA" terrorist gangs with fellow ethnic Albanians, under the pretext that they had collaborated with Serbs. That is why a growing number of ethnic Albanian businessmen and private businessmen are leaving Pec, because they feel that their personal security and their property are endangered by Albanian robbers and terrorists who are on the rampage in that town.

Persecuted by Albanian terrorists is also an increasing number of ethnic Albanians of the Catholic faith, especially from Djakovica and surrounding villages (Pljancor, Novo Selo, Doblibare, Bardosan and others), and the

situation is similar in other towns and villages in Kosovo and Metohija.

Targeted also by Albanian separatists are members of the Turkish and Muslim ethnic communities, the Romanies, and Goranies, the authors said and cited the fact that since the arrival of KFOR forces (June 10) have been committed 49 attacks on members of national and ethnic communities living in Kosovo and Metohija.

Terrorist attacks targeted especially facilities of Serbian Interior Ministry members. In the period from January 1 last year till the withdrawal of Interior Ministry members from Kosovo and Metohija in June this year, in the territory of Kosovo and Metohija Albanian terrorists have committed a total of 1,849 attacks on Interior Ministry members and facilities in which were killed 287 and wounded 911 interior Ministry members.

The largest number of terrorist attacks on Interior Ministry members were committed in the course of 1998 (1,129) in which 115 were killed, 216 seriously wounded, and 187 slightly wounded Interior Ministry members. Moreover, Albanian terrorists kidnapped 15 policemen. Three policemen have been released, while the fate of nine policemen is still unknown.

The authors also called attention to the fact that only three days after an agreement was reached between Yugoslav President Slobodan Milosevic and U.S. special envoy Ambassador Richard Holbrooke, armed Albanian terrorist gangs attacked on October 17 last year policemen in the village Orlate, Glogovac municipality, killing three and seriously wounding two policemen.

Policemen and their family members were the target of attacks of terrorist groups also this year. Since January 1 till the departure of Interior Ministry members from Kosovo and Metohija, were committed 720 terrorist attacks on the police in which were killed 172 and wounded 508 Ministry members.

In the course of last year, a prime target of Albanian terrorists were also valuable cultural-historical monuments of the Serbian people, as the monastery in Devici and the church in the village Opterusa.

In Kosovo and Metohija have in the course of this year also, particularly since the arrival of KFOR forces to the region, have increased in frequency vandal attacks of Albanian terrorist gangs on the Serbian cultural-historical heritage, which is being ravaged, burned and looted.

The authors said that in Pristina have been destroyed monuments to the Montenegrin 19th century poet, Njegos, and to the Serbian language reformer, Vuk Karadzic, who also lived in the 19th century. In the center of Urosevac has been knocked down and destroyed a monument to emperor Uros, and in Prizren has been destroyed a monument to emperor Dusan. Terrorists have also damaged a monument to prince Lazar in Gnjilane, and in the village of Gornje Neredimlje they have damaged a monument to Serbian rulers from the

Nemanjic dynasty from the 14th century and the trunk of the tree planted 635 years ago by the Serbian emperor Dusan.

In the period from June 13 to September 18 this year, in the territory of Kosovo and Metohija, have been damaged and destroyed more than 60 (sixty) Serbian Orthodox churches and monasteries.

Since the arrival of KFOR, Albanian terrorists have occupied by force and usurped most schools and faculties (Pristina, Kosovska Mitrovica and others) from which they expelled all staff members of Serbian or Montenegrin nationality, as well as teachers and students, and there have also been murders and kidnappings.

Targeted by terrorists last year were especially those employed in public services and in socially-owned enterprises, and prominent businessmen - owners of private firms. Last year there were 89 terrorist attacks against 190 persons employed in public services and firms.

In the course of this year, and particularly since the arrival of KFOR, have been registered numerous intrusions of Albanian terrorists into public facilities and institutions, and terrorist attacks on some officials of public enterprises, faculties and medical institutions. In Pristina have been registered intrusions into the premises of the Medical center, the Federal Customs Administration, the public enterprise for water supply, the thermo-electric power plant Kosovo B, depots and gas stations of Jugopetrol and others.

The authors of the report pointed out that in the course of last year Albanian terrorists used as an operation method the kidnapping of citizens of Serbian and Montenegrin nationality and also of ethnic Albanians loyal to Serbia and FR Yugoslavia.

In the period from January 1 to December 31 last year, in the region of Kosovo and Metohija Albanian terrorists have kidnapped 293 citizens, of which 173 Serbs and Montenegrins, 101 Albanians, 14 Romanies, one Macedonian national, one member of the Muslim national minority and one member of the Bulgarian national minority, and two persons of other national minorities. Among the kidnapped are 54 women and 14 minors, of whom 6 (six) children.

Of the total number of kidnapped, 31 have been killed, 110 have been released, nine have escaped, while the fate of 143 citizens is still unknown.

Kidnapping, mistreatment and murder of kidnapped citizens have been a frequent method of terrorist activity of Albanian separatists also in the course of 1999, particularly since the arrival of KFOR.

In the period from January 1 to September 28 this year Albanian terrorists have kidnapped a total of 557 persons, including 23 policemen. Most of the kidnapped are Serbs and Montenegrins (420), then follow ethnic Albanians (87). In that period have been killed 53 citizens and five policemen,

while 428 kidnapped persons are still missing. Of the 557 kidnapped this year, as many as 449 have been kidnapped in the period since the arrival of KFOR forces in Kosovo and Metohija.

Most of the attacks and kidnapping occurred before the eyes of KFOR and U.N. Civilian Mission members, who have been informed in advance about all those cases, but have undertaken very little, or nothing, to prevent the terrorist activity or to find and set free the kidnapped persons.

Analysts of the Serbian Interior Ministry Nedeljkovic and Novakovic assessed in their report that the real intentions of KFOR were best illustrated by the behaviour of members of the Belgium contingent of KFOR, which includes also Croats and Albanians, in the villages of Leska, Trebice and others, in Leposavic municipality. They, namely, in the evening hours often disturbed Serb villagers by banging on their doors.

Besides murders, rapes, beatings, burning down of houses and destruction of private property, Albanian separatists have in the past year also often destroyed transformer stations and water supply infrastructure, PTT equipment and lines, leaving populated areas without water and electric power, with the aim of giving rise to fear and insecurity.

The material damage determined in 1998 alone has been put at several million U.S. dollars, the authors of the report said, adding that in this year, especially since the arrival of KFOR, the material damage inflicted by Albanian terrorists to the community was huge, as well as the damage inflicted to citizens of Serbian and Montenegrin nationalities, whose property has been destroyed and houses burned down.

In the course of last year there were numerous examples of forcible mobilization of Albanians, who were forced by Albanian separatists to dig trenches, armed and forced to take part in terrorist actions. Those who resisted, were been dealt ruthlessly, Nedeljkovic and Novakovic said.

In the part of the report dealing with the sources of financing Albanian terrorism, the authors said that the terrorists use for acquiring arms a significant part of revenue obtained from illegal drug-trafficking in many West European countries and in the United States. Pointing to this are also data of Interpol from West European countries, according to which in the course of last year have been arrested, on drug-trafficking charges, 143 Yugoslav nationals, of whom 135 members of the Albanian national minority from Kosovo and Metohija.

For the purchase of arms for terrorists, in Switzerland has been founded also an Albanian endowment "The Homeland Calls" with branches in West European countries and in the United States, and Dardanija bank in Tirana. They collect illegal taxes imposed on Albanians abroad, of three percent of personal income, as well as voluntary contributions. According to acquired

information, these "funds" are managed by the self-proclaimed leader of the "Albanian government in exile" Bujar Bukoshi who is living in Germany, the report said. Albanian terrorists in Kosovo and Metohija possess arms of various origin. Large quantities of arms come from Albania and a significant part of the arms are purchased by the terrorists on the world illegal market of arms, which are the funnelled into Kosovo and Metohija mostly from Albania, Macedonia and the territories of the former Yugoslav republics. Terrorism in Kosovo and Metohija is undoubtedly in the service of the creation of an ethnically cleansed "Greater Albania," the authors said, and in that respect, terrorists are recruited, organized, armed and trained in camps and bases in northern Albania (Bajram Curi, Tropoja, Krum, Kukes, Peshkopeja, Elbasan, Dajit, Durres, Ljabinot etc. Over 4,000 Albanians from Kosovo and Metohija have been trained so far, while during NATO's aggression on Yugoslavia, in that part of the territory of Albania were concentrated over 15,000 armed "KLA" terrorists, who with the arrival of KFOR entered unimpeded Kosovo and Metohija, said the report of Nedeljkovic and Novakovic.

authorities): 677

Over 200 000 foreigners have illegally entered into the Province with the consent of UNMIK and KFOR. The Government of the FR of Yugoslavia has officially requested on several occasions their expulsion. These requests have not been met although those persons are international terrorists, criminals, drug dealers, mafia members, women and children traders, organizers of bordellos and other forms of international crime.

20) Registered number of stolen vehicles: over 12 000 vehicles. As a result of open borders with Macedonia and Albania 250 000 vehicles were brought into Kosovo and Metohija without payment of customs duties and most of these vehicles were stolen.

21) Registered number of criminal acts of illicit trafficking and possession of goods without appropriate documents: 137

22) Registered number of cases of violation of the land security zone by KFOR 236

REVIEW

OF TERRORIST AND OTHER ACTS OF VIOLENCE AND OF CERTAIN VIOLATIONS OF SECURITY COUNCIL RESOLUTION 1244 (1999) IN THE PROVINCE OF KOSOVO AND METOHIJA SINCE THE DEPLOYMENT OF KFOR AND UNMIK IN THE PERIOD FROM 12 JUNE 1999 TO 16 JANUARY 2000

Terrorism of Albanian separatists

Total number of terrorist attacks	3,688
- Serbs and Montenegrins	3,491
- Albanians	87
- members of other nationalities	110
A. Killed	793
- Serbs and Montenegrins	705
- Albanians	63
- members of other nationalities	25
B. Wounded	611
- Serbs and Montenegrins	572
- Albanians	18
- members of other nationalities	21
C. Kidnapped and missing	688
- Serbs and Montenegrins	630
- Albanians	36
- members of other nationalities	22
Fate of kidnapped and missing	
1. Killed	69
2. Escaped	6
3. Unaccounted-for	581
4. Released	32

BELGRADE, 20 January 2000

SPECIAL ISSUE

INTERVIEW

of terrorist and other acts of violence and of certain violations of Security Council resolution 1244 (1999) in the Province of Kosovo and Metohija since the arrival of KFOR and UNMIK in the period from 12 June 1999 to 16 January 2000

- 1) Number of terrorist attacks: 3,688
Out of which 3,491 were committed against Serbs and Montenegrins, 87 against Albanians and 110 against Roma, Muslims, Goranci, Turks and members of other nationalities.
- 2) Number of abducted and missing persons: 688
Out of whom 630 were Serbs and Montenegrins, 36 Albanians and 22 members of other nationalities.
The fate of 581 persons is still unknown; 69 abducted persons were killed, 6 persons escaped while 32 were released.
- 3) Number of killed persons: 793
Out of whom 705 were Serbs and Montenegrins (22 massacred, 84 mutilated and 5 burned to death), 63 were Albanians and 25 members of other nationalities in Kosovo and Metohija.
- 4) The latest brutal crimes:
 - Killing of the Skenderis, a four member Muslim family, in Prizren on 11 January 2000;
 - Rape and killing of a 11 year old Albanian girl by a KFOR member near Vitina on 13 January 2000;
 - Killing of three men of Serbian nationality who tried to return to their ancestors homes in the village of Pasjane on 16 January 2000.
- 5) Number of arbitrarily arrested persons by KFOR and UNMIK: 57
Arrested Serbs are detained in prisons in Priština, Prizren, Sojevo near Uroševac, Kosovska Mitrovica, Gnjilane, Lipjan and Kolokot Banja.
They have been arrested without any explanation or charges, only on the ground of information provided by the Albanians, most frequently by the members of the terrorist so-called "KLA".
- 6) Number of wounded persons: 611
- 7) Reported cases of physical assault, harassment and inflicted grave bodily harm: 416
- 8) Registered cases of serious threats: 356
- 9) Registered number of private dwellings broken into and forcibly taken occupancy of: 776 in Priština, over 200 in Kosovska Mitrovica, 190 in Gnjilane, 124 in Orahovac, a large number in Kosovo Polje and Lipjan.
- 10) Ethnic cleansing:
 - In the campaign of ethnic cleansing following the deployment of KFOR and UNMIK over 350 000 Serbs, Montenegrins, Roma, Muslims, Goranci, Turks and other non-Albanians were expelled from Kosovo

and Metohija, of whom 250 000 are Serbs.

- The following towns and villages are ethnically cleansed of Serbs, Roma, Muslims, Goranci and other non-Albanians:

Prizren, Djakovica, Pec, Srbica, Podujevo, Vucitn, Glogovac, as well as the villages of the municipality of Istok; Dzakovo, Osojane, Tucepom, Kos, @ac, Belica, Kmjine, Maricane, Kacanik, Stimlje, Kmetovacka Vrbica, surroundings of Urosevac, Slivovo, Nedakovac, Nevoljane, Vrpica, Ljestar, @egra (municipality of Gnjilane), @itnje, Pozaranje, Grmovo, Drobos, Kabas and Binac (municipality of Vitina).

- The ethnic cleansing has been in its final stages in Priština (all the Serbian population has been driven out of the largest residential quarters: Ulpijana, Sunčani Breg, Dardanija, Univerzitetsko Naselje), Gnjilane, Uroševac, Kosovska Mitrovica, Lipljan, Kosovo Polje where 80 per cent of the Serbian population has been expelled (houses burned down, looted, property seized from the owners of shops, Albanian terrorists maltreat and physically abuse Serbs, who refused to sell their houses and move out of Kosovo and Metohija, before the very eyes of the members of KFOR), Kosovska Kamenica, area of Vitina and Kosovsko Pomoravlje, as well as in the villages of Topličane, Rujice, Magure, Slovinja, Staro Gracko.

Members of the terrorist "KLA" make special pressure on the region of Gora populated by indigenous ethnic group - Goranci who are not allowed to use their mother tongue, i.e. the Serbian language, in schools and in everyday life, in an attempt to misrepresent this ethnic group as members of Albanian nationality.

11) Destruction of churches, monasteries and cultural monuments:

About 80 churches, monasteries and other cultural monuments were burned down, demolished or seriously damaged including the following: the Church of Assumption of Our Lady in Dolac, monastery of St. Marco in Koriša from 1467, monastery of Prophets Kosmo and Damien in Zaočište from 14th century, the church in Kijev from the 14th century, the Holy Trinity monastery from the 14th century near Mušutište, monastery Devič built in 1440, church of St. Paraskeva in Drenik from the 16th century, church of St. Dimitri near Peč, the Orthodox church in Grmovo near Vitina, church of St. Ilija in Žegra near Gnjilane, church of Holy Mother in Mušutište from 1315, church of St. Prophet Ilija in Bistrižin, church of Apostles Peter and Paul in Suva Reka, monastery of St. Uroš in Nerodimlje, monastery of St. Archangel Gabriel from the 14th century in Binač, church of the Holy Virgin from the 16th century in Belo Polje, church of St. John the Baptist in Pečka Banja, churches in the villages of Naklo, Vucitn, Petrovac, Uroševac, Podgorce, Djurakovac, Kruševo, Osojane, Samodreža, Dresna near Klina, Rekovac, Petrič, monastery Dinač near Vitina, Holy Trinity Cathedral in Djakovica.

Clergy, monks were terrorized and prosecuted. More than 150 parish residences were destroyed or damaged. Over 10 000 icons and other sacred objects most of which are cultural monuments under the special protection of the State, were stolen or destroyed.

The following cultural monuments were damaged and demolished:

- monuments in memory of giants of Serbian and Montenegrin literature Vuk Karadžić and Petar Petrović Njegoš in the very centre of Priština;
- monuments in memory of King Uroš in Uroševac and King Dušan in Prizren;
- memorial to Prince Lazar in Gnjilane and the memorial to Serbian rulers from the Nemanjić dynasty in the village of Gornje Nerodimlje.

12) Forced and illegal taking over of public institutions:

- Forcible and illegal take-overs of premises and buildings of post offices, banks, medical

institutions, water and power supply systems, university, elementary and secondary schools, municipal and other authorities of local administration, local communes, buildings of the Ministry of the Interior and the Army of Yugoslavia, factories, enterprises, cooperatives, etc. in Priština (premises of the Clinical centre "Priština" and the health station, the Federal Customs Administration, the Public Housing Company, Institute for Urban Planning, the public enterprise "Vodovod", thermal power plant "Kosovo B", depots and petrol stations of "Jugopetrol", the share-holding companies "Kosmet-Priština", "Kosovo-Trans", the public enterprise "Energoinvest", the public enterprise "Autopriština", "Car shock absorbers plant", "Jugotrans", etc.) as well as in Prizren, Dragaš, Podujevo, Lipjan, Štrpci, Kosovska Mitrovica, Kosovo Polje (with the assistance of the members of KFOR), Djakovica (with the assistance of the members of KFOR).

- By forced and illegal taking over of public enterprises and institutions over 20 000 employed Serbs, Montenegrins, Roma, Muslims, Goranci, Turks and other non-Albanians were sacked and left with no means for living.

13) Registered armed attacks on villages: Slovinj, Matičane, Orahovac, Konjuh, Berivojce, Gomja Bmjica, the villages around Kosovska Kamenica: Gmčar, Magila, Ajvalija, all the villages of the Istok-Klina region, Goraždevac near Peć, Svinjare, Klokot, Novo Brdo, Zjum, Donja and Gomja Gušterica, Sušica, Badavac, Bresje, Vrbovac, Vitina, Cernice, (municipality of Gnjilane), Dobruša, Veliko Ropotovo (municipality of Kosovska Kamenica), Parteš (municipality of Gnjilane), Pasjane (municipality of Gnjilane), Lještar, Budriča, Dobrotin (municipality of Lipjan), Gmčar, Binač, Ranilug, Silovo, Odovce, Rajanovce, Bosce, Čaglavica, Paravolo, Lebane, Gojbulja, in the following villages in the area of the municipality of Gora: Brodosvce, Belobrod, Kukavce - frequent attacks against the houses of Goranci, Muslims and Albanians who are loyal to the FR of Yugoslavia.

All this runs counter to the assertions about the disarming of the terrorist "KLA".

14) Siege of towns and villages: Gadnje, Orahovac and Velika Hoča, Koretin, villages around Gnjilane, Priluzje, Gomja Srbica, Goraždevac. About 3 500 Serbs, residents of Orahovac, have been living for more than seven months since the deployment of KFOR and UNMIK in the only concentration camp in Europe after the Second World War - under the siege of the terrorist "KLA".

15) Armed threats against villages and terror committed on a daily basis against non-Albanian population: Ugljari, Srpski Babuš, Štimlje, Novo Selo, Bresje, the area around Kosovo Polje, Miloševo (against which the armed attack was carried out), village of Zebnice (dramatic humanitarian situation), majority of the mainly Croatian Catholic population who lived in the villages of Letinice, Vmez, Vrnovo Kolo and Šašare have moved out, Drenovac (50 Serbs massacred), village of Cernice (series of incidents in which members of the US contingent of KFOR maltreated Serbs), Požaranje, Gotovuša, Gatnje, Zubin Potok, Veliki Alaš, Vrelo and Radevo.

16) The looted Serb villages from which the residents were forced out: Mužićani, Slivovo, Orlović, Dragaš, the area around Kosovo Polje, Sofalija, Livadice, Mirovac, Sirinička Župa, Medregovac, Grace, Zočište, Sofalije, Dragoljevac, Tomance, Koretin, Leštar, Donja Šipašnica.

17) Serb neighbourhoods set on fire: Istok, Klina, Donja Lapaštica, Obrandža, Velika Reka, Perane, Lauše, the villages around Podujevo, Grace, Donja Dubica, Zočište, Orahovac, Naklo, Vitomirice, Belo Polje, Kojlovica, Aloš-Toplicane, Krajište, Rudnik, Donji Strmac, Goleš (municipality of Lipjan), Orlović (municipality of Priština), Kpimej and Lauša (municipality of Podujevo), Mužićane (all Serbian houses burned down), Zaimovo, Denovac, Lesjane, Gomje and Donje Nerodimlje (all Serbian houses looted and then burned down), Sinaje (municipality of Istok), Belovac, Mali Talinovac, Ljubizda, Klobuka (municipality of Kosovska Kamenica).

18) Registered number of homes burnt down: about 50 000 houses of Serbs, Roma, Muslims, Goranci and other non-Albanians were burned down in Kosovo and Metohija.

19) Registered number of illegal entries of foreign citizens into the territory of the FR of Yugoslavia (Kosovo and Metohija) without the necessary papers (visas and registration of stay with the competent

EUROPE

NATO said it won a great victory, but the war did very little damage to Serb forces. By not conceding this, the Pentagon may mislead future presidents about the limits of U.S. power. A NEWSWEEK exclusive. BY JOHN BARRY AND EVAN THOMAS

The Kosovo Cover-Up

NEWSWEEK - 17th 2000

IT WAS ACCLAIMED AS THE MOST SUCCESSFUL air campaign ever. "A turning point in the history of warfare," wrote the noted military historian John Keegan, proof positive that "a war can be won by airpower alone." At a press conference last June, after Serbian strongman Slobodan Milosevic agreed to pull his Army from Kosovo at the end of a 78-day aerial bombardment that had not cost the life of a single NATO soldier or airman, Defense Secretary William Cohen declared, "We severely crippled the [Serb] military forces in Kosovo by destroying more than 50 percent of the artillery and one third of the armored vehicles." Displaying colorful charts, Chairman of the Joint Chiefs Gen. Henry Shelton claimed that NATO's air forces had killed "around 120 tanks," "about 220 armored personnel carriers" and "up to 450 artillery and mortar pieces."

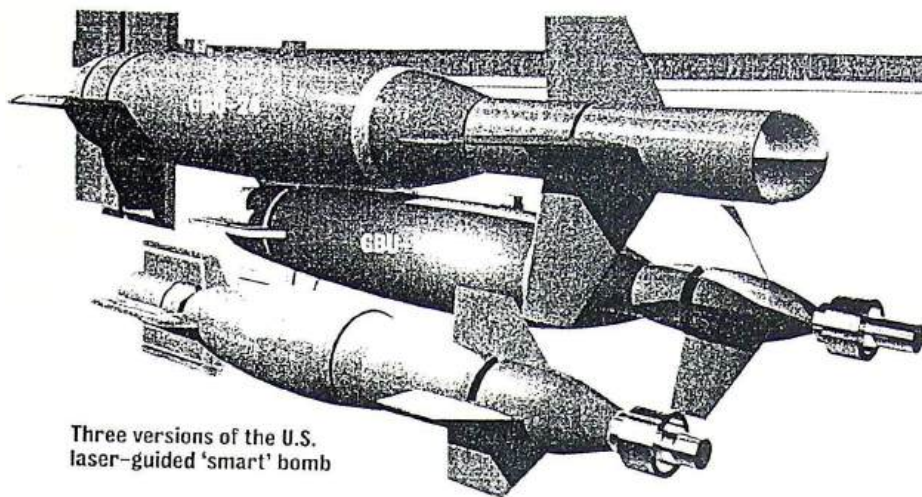
An antiseptic war, fought by pilots flying safely three miles high. It seems almost too good to be true—and it was. In fact—as some critics suspected at the time—the air campaign against the Serb military in Kosovo was largely ineffective. NATO bombs plowed up some fields, blew up hundreds of cars, trucks and decoys, and barely dented Serb artillery and armor. According to a suppressed Air Force report obtained by NEWSWEEK, the number of targets verifiably destroyed was a tiny fraction of those claimed: 14 tanks, not 120; 18 armored personnel carriers, not 220; 20 artillery pieces, not 450. Out of the 744 "confirmed" strikes by NATO pilots during the war, the Air Force investigators, who spent weeks combing Kosovo by helicopter and by foot, found evidence of just 58.

The damage report has been buried by top military officers and Pentagon officials, who in interviews with NEWSWEEK over the last three weeks were still glossing over or denying its significance. Why the evasions and dissembling, with the disturbing echoes of the inflated "body counts" of the Vietnam War? All during the Balkan war, Gen. Wesley Clark, the top NATO commander, was under pressure from Washington to produce positive bombing results from politicians who were desperate not to commit ground



A GAME OF HIDE-AND-SEEK: Serbian tanks emerge into the open and withdraw from Pristina, Kosovo's capital, last June

FROM LEFT: MICHAEL JIN BOVA/ES; YANNIS KONTOS—CORBIS SYGMA



Three versions of the U.S. laser-guided 'smart' bomb

Combat High Above the Clouds

The Air Force claimed it destroyed hundreds of Serbian tanks, armored personnel carriers and artillery pieces, mostly with laser-guided "smart" bombs dropped from high altitude. But under the conditions that prevailed in Kosovo, the smart bomb was far from a sure kill.

troops to combat. The Air Force protested that tanks are hard to hit from 15,000 feet, but Clark insisted. Now that the war is long over, neither the generals nor their civilian masters are eager to delve into what really happened. Asked how many Serb tanks and other vehicles were destroyed in Kosovo, General Clark will only answer, "Enough."

In one sense, history is simply repeating itself. Pilots have been exaggerating their "kills" at least since the Battle of Britain in 1940. But this latest distortion could badly mislead future policymakers. Air power was effective in the Kosovo war not against military targets but against civilian ones. Military planners do not like to talk frankly about terror-bombing civilians ("strategic targeting" is the preferred euphemism), but what got Milosevic's attention was turning out the lights in downtown Belgrade. Making the Serb populace suffer by striking power stations—not "plinking" tanks in the Kosovo countryside—threatened his hold on power. The Serb dictator was not so much defeated as pushed back into his lair—for a time. The surgical strike remains a mirage. Even with the best technology, pilots can destroy mobile targets on the ground only by flying low and slow, exposed to ground fire. But NATO didn't want to see pilots killed or captured.

Instead, the Pentagon essentially declared victory and hushed up any doubts about what the air war exactly had achieved. The story of the cover-up is revealing of the way military bureaucracies can twist the truth—not so much by outright lying, but by "reanalyzing" the problem and winking at inconvenient facts. Caught in the middle was General Clark, who last week relinquished his post in a controversial early retirement.

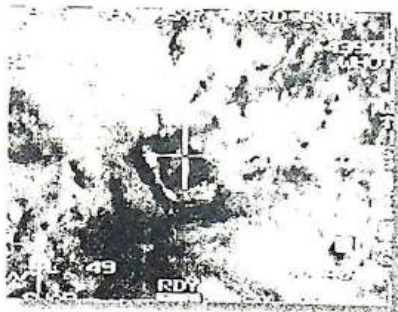


Laser-guided bomb

At 15,000 feet: The pilot looks his laser beam onto the target. This works best at lower altitudes and against large, fixed targets, such as bridges, not small, movable targets like tanks.

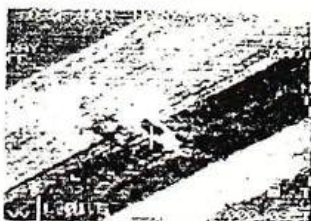
Laser beam

At high altitude, with moisture or dust in the air, a pilot may have trouble seeing a tank, much less getting it in his cross hairs, as seen here



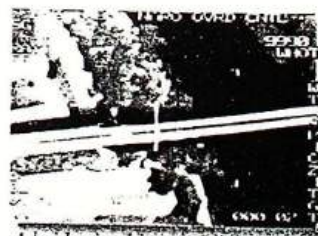
The Problems

① **Laser sighting:** Lasers travel in a straight line, while bombs fall in an arc. Dropped from too great a height, the bomb may miss a tank by 20 or 30 feet, sparing it from destruction.



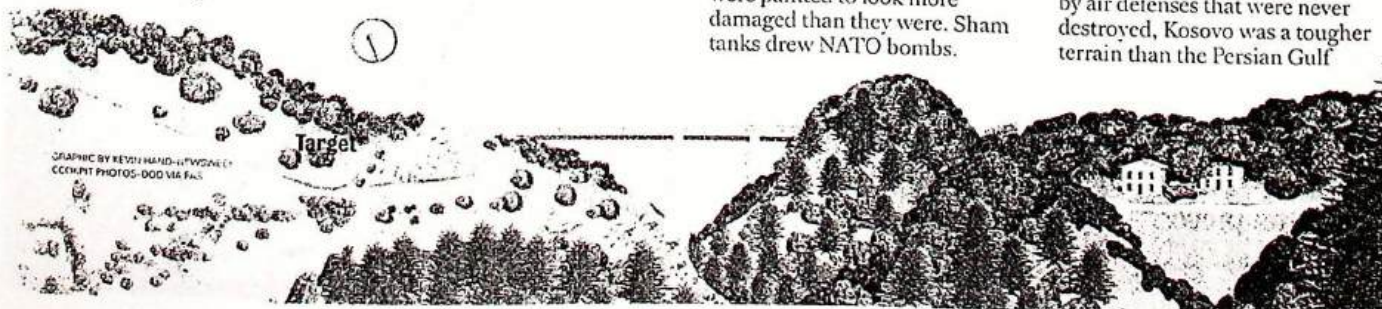
A roadside tank can be hard to spot

② **Decoys:** The Serbs became adept at building fakes. Bridges were painted to look more damaged than they were. Sham tanks drew NATO bombs.



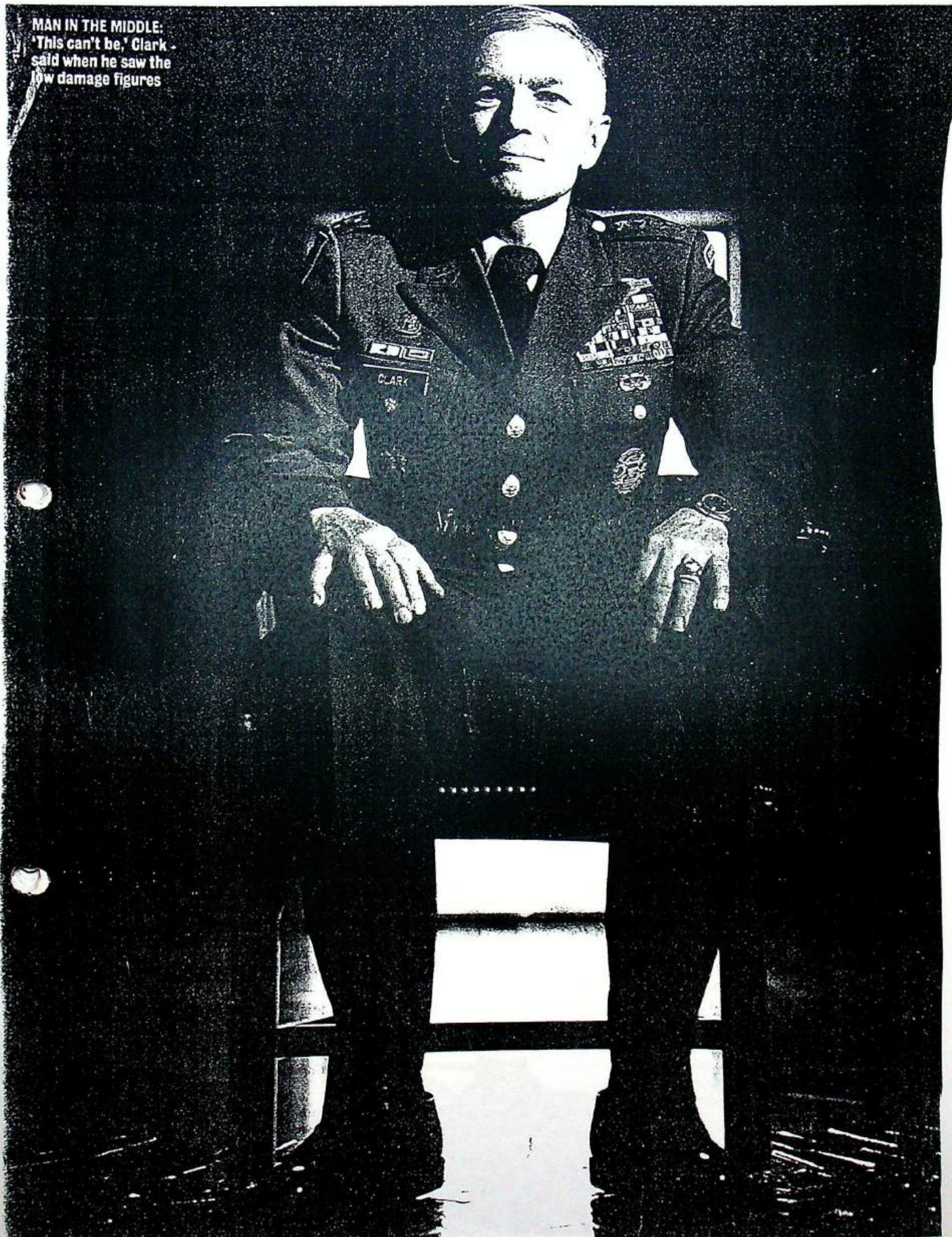
A bridge is a bigger, easier target

③ **Terrain:** Covered with hills, woods and houses, and guarded by air defenses that were never destroyed, Kosovo was a tougher terrain than the Persian Gulf



GRAPHIC BY KEVIN HANCOCK/STAGG
COMBAT PHOTOS: DOD VIA AP

MAN IN THE MIDDLE:
'This can't be,' Clark
said when he saw the
low damage figures



Mistrusted by his masters in Washington, Clark will retire from the Army next month with none of the fanfare that greeted other conquering heroes like Dwight Eisenhower after World War II or Norman Schwarzkopf after Desert Storm. To his credit, Clark was dubious about Air Force claims and tried—at least at first—to gain an accurate picture of the bombing in Kosovo. At the end of the war the Serbs' ground commander, Gen. Nobojša Pavkovic, claimed to have lost only 13 tanks. "Serb disinformation," scoffed Clark. But quietly, Clark's own staff told him the Serb general might be right. "We need to get to the bottom of this," Clark said. So at the end of June, Clark dispatched a team into Kosovo to do an on-the-ground survey. The 30 experts, some from NATO but most from the U.S. Air Force, were known as the Munitions Effectiveness Assessment Team, or MEAT. Later, a few of the officers would refer to themselves as "dead meat."

The bombing, they discovered, was highly accurate against fixed targets, like bunkers and bridges. "But we were spoofed," said one team member. The Serbs protected one bridge from the high-flying NATO bombers by constructing, 300 yards upstream, a fake bridge made of polyethylene sheeting stretched over the river. NATO "destroyed" the phony bridge many times. Artillery pieces were faked out of long black logs stuck on old truck wheels. A two-thirds scale SA-9 antiaircraft missile launcher was fabricated from the metal-lined paper used to make European milk cartons. "It would have looked perfect from three miles up," said a MEAT analyst.

The team found dozens of burnt-out cars, buses and trucks—but very few tanks. When General Clark heard this unwelcome



DECLARING VICTORY: Cohen, Shelton and President Clinton talk to journalists about the NATO ceasefire as the Serbs start to pull their troops out of Kosovo at war's end

news, he ordered the team out of their helicopters: "Goddammit, drive to each one of those places. Walk the terrain." The team grubbed about in bomb craters, where more than once they were showered with garbage the local villagers were throwing into these impromptu rubbish pits. At the beginning of August, MEAT returned to Air Force headquarters at Ramstein air base in Germany with 2,600 photographs. They briefed Gen. Walter Begert, the Air Force deputy commander in Europe. "What do you mean we didn't hit tanks?" Begert demanded. Clark had the same reaction. "This can't be," he said. "I don't believe

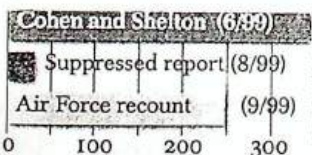
it." Clark insisted that the Serbs had hidden their damaged equipment and that the team hadn't looked hard enough. Not so, he was told. A 50-ton tank can't be dragged away without leaving raw gouges in the earth, which the team had not seen.

The Air Force was ordered to prepare a new report. In a month, Brig. Gen. John Corley was able to turn around a survey that pleased Clark. It showed that NATO had successfully struck 93 tanks, close to the 120 claimed by General Shelton at the end of the war, and 153 armored personnel carriers, not far off the 220 touted by Shelton. Corley's team did not do any new field research. Rather, they looked for any support for the pilots' claims. "The methodology is rock solid," said Corley, who strongly denied any attempt to obfuscate. "Smoke and mirrors" is more like it, according to a senior officer at NATO headquarters who examined the data. For more than half of the hits declared by Corley to be "validated kills," there was only one piece of evidence—usually, a blurred cockpit video or a flash detected by a spy satellite. But satellites usually can't discern whether a bomb hits anything when it explodes.

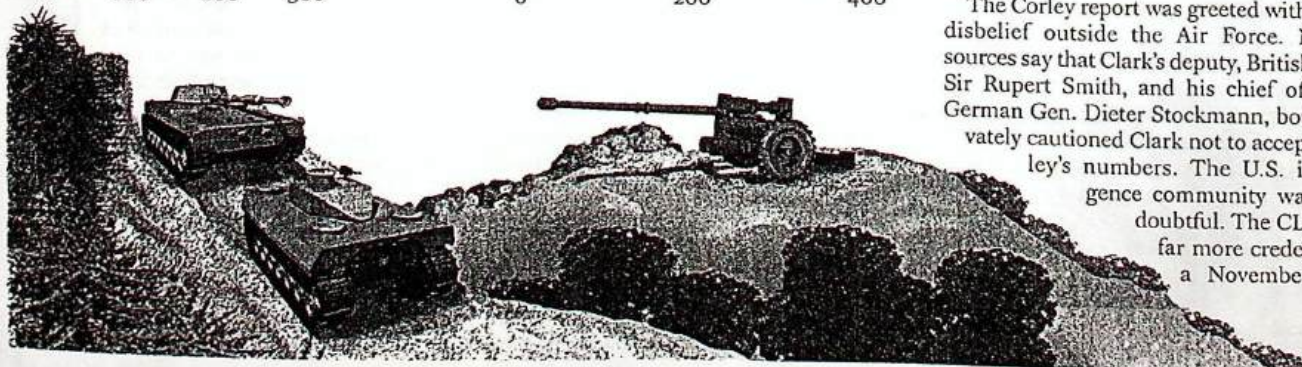
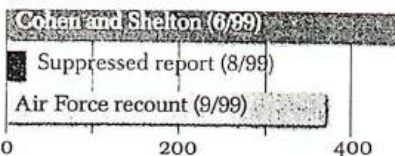
The Corley report was greeted with quiet disbelief outside the Air Force. NATO sources say that Clark's deputy, British Gen. Sir Rupert Smith, and his chief of staff, German Gen. Dieter Stockmann, both privately cautioned Clark not to accept Corley's numbers. The U.S. intelligence community was also doubtful. The CIA puts far more credence in a November get-

How Effective?

Estimates varied on how many Serbian tanks and armored personnel carriers were destroyed.



There were equally large discrepancies on the number of artillery pieces knocked out.



together of U.S. and British intelligence experts, which determined that the Yugoslav Army after the war was only marginally smaller than it had been before. "Nobody is very keen to talk about this topic," a CIA official told NEWSWEEK.

Lately, the Defense Department has tried to fudge. In January Defense Secretary Cohen and General Shelton put their names to a formal After-Action Report to Congress on the Kosovo war. The 194-page report was so devoid of hard data that Pentagon officials jokingly called it "fiber-free." The report did include Corley's chart showing that NATO killed 93 tanks. But the text included a caveat: "the assessment provides no data

on what proportion of total mobile targets were hit or the level of damage inflicted." Translation, according to a senior Pentagon official: "Here's the Air Force chart. We don't think it means anything." In its most recent report extolling the triumph of the air war, even the Air Force stopped using data from the Corley report.

Interviewed by NEWSWEEK, General Clark refused to get into an on-the-record discussion of the numbers. A spokesman for General Shelton asserted that the media, not the military, are obsessed with "bean-counting." But there are a lot of beans at stake. After the November election, the Pentagon will go through one of its quadrennial reviews, as-

signing spending priorities. The Air Force will claim the lion's share. A slide shown by one of the lecturers at a recent symposium on air power organized by the Air Force Association, a potent Washington lobby, proclaimed: "It's no myth... the American Way of War."

The risk is that policymakers and politicians will become even more wedded to myths like "surgical strikes." The lesson of Kosovo is that civilian bombing works, though it raises moral qualms and may not suffice to oust tyrants like Milosevic. Against military targets, high-altitude bombing is overrated. Any commander in chief who does not face up to those hard realities will be fooling himself.

Milosevic, the Comeback Kid

Serbia seems to be rebuilding faster than Kosovo

By ZORAN CIRIAKOVIC

SLOBODAN MILOSEVIC was supposed to be in his final days. The Yugoslav strongman has lost every war he's started since he began fighting his neighbors nine years ago, and he's an indicted war criminal. In the last weeks of the Kosovo campaign, NATO bombers targeted Serbian infrastructure and key government-owned industries controlled by his cronies. At the time, many of his opponents predicted that his government wouldn't be able to provide the basic services necessary to sustain him in power for long. Some predicted that the destruction of Serbia's electrical network, in particular, would create hardship during the winter. With only the heat of their anger to keep them warm, Serbs would throw Milosevic out of office.

It has not turned out that way. If Milosevic lost the war in Kosovo, he's clearly winning the battle for survival in the Balkans. Not only did he manage to pull his army out of Kosovo largely intact, he supplied his people with electricity through the winter. In fact, Milosevic has gone on a rebuilding spree. He boasts that



WINNING THE BATTLE FOR SURVIVAL: The Yugoslav leader reopens an oil refinery damaged in the NATO bombing campaign

his government has rebuilt 38 road and railway bridges (out of 64 damaged or destroyed during the bombing), 470 housing units, eight schools, five hospitals and two animal farms. The state-run news agency Tanjug reports that 140,000 workers employed in 200 companies worked on the reconstruction, and the regime says rebuilding is underway at 76 more sites. The government-owned Zastava factory that makes Yugo cars and

weapons, almost destroyed during the NATO bombing, recently announced that it produced 3,242 cars and 180 trucks in the first quarter of this year. Advertisements for the new Yugos appear daily, emphasizing Milosevic's "victory" more than the company's famously rickety autos.

Some of those reconstruction figures are suspect. But Milosevic's efforts in Serbia may well be outstripping what the United Nations is

achieving in Kosovo. It took the United Nations till March to get Kosovo's postal system restarted, and parts of Pristina still suffer electricity and water shortages nearly a year after the war ended.

In surveys, Milosevic's approval rating, while lower than ever—17.2 percent in a poll last month—is still higher than all opposition leaders' combined. Meanwhile, the fragmented Kosovo Liberation Army isn't polling much higher among Kosovars.

How has Milosevic reasserted power and rebuilt—despite his nearly total isolation? Mainly by coercion and imposing "reconstruction taxes." He has also called in clits from rich industrialists close to the regime. The dictator, who recently indicated he doesn't intend to give up power, may also have injected some of his own money from offshore accounts. The Serbian state media, meanwhile, regularly reports on the achievements of "our builders."

Many Serbs, of course, find the propaganda laughable. "People still live very bad lives. Salaries are very small and pensions are late," says Zarko Korac, leader of the pro-Western Social Democratic Union Party. Still, he concedes, "There is always a tendency to underestimate Milosevic." Just about every one—including NATO—always has.

With JOSH HAMMER in Pristina

PROTOCOL I

Beleidsregio
Regels

In herinnering brengende, dat iedere Staat, overeenkomstig het Handvest van de Verenigde Naties, de plicht heeft zich in zijn internationale betrekkingen te onthouden van bedreiging met of gebruik van geweld, gericht tegen de soevereiniteit, de territoriale integriteit of de politieke onafhankelijkheid van een Staat, dan wel plaatsvindend op enige andere wijze die onverenigbaar is met de doelstellingen van de Verenigde Naties,

Van oordeel, dat het niettemin noodzakelijk is, de bepalingen ter bescherming van de slachtoffers van gewapende conflicten opnieuw te bevestigen en uit te breiden, en maatregelen toe te voegen met het oog op een strengere toepassing daarvan,

Hun overtuiging uitsprekende, dat geen enkele bepaling van dit Protocol of van de Verdragen van Genève van 12 augustus 1949 kan worden uitgelegd als rechtvaardiging van of machtiging tot enige daad van agressie of van enig ander gebruik van geweld, onverenigbaar met het Handvest van de Verenigde Naties,

Artikel 36

Nieuwe wapens

Op een Hoge Verdragsluitende Partij rust bij de bestudering, ontwikkeling, aanschaf of invoering van een nieuw wapen, een nieuw middel of een nieuwe methode van oorlogvoering de verplichting, vast te stellen of het gebruik daarvan, in bepaalde of in alle omstandigheden, door dit Protocol of door enige andere regel van het ten aanzien van de Hoge Verdragsluitende Partij toepasselijke volkenrecht is verboden.

DEEL IV

BURGERBEVOLKING

SECTIE I

ALGEMENE BESCHERMING TEGEN DE GEVOLGEN VAN DE VIJANDELIJKHEDEN

Hoofdstuk I

GRONDREGEL EN TOEPASSINGSGEBIED

Artikel 48

Grondregel

Ten einde te verzekeren, dat de burgerbevolking en de burgerobjecten worden ontzien en beschermd, dienen de partijen bij het conflict te allen tijde onderscheid te maken tussen de burgerbevolking en combattanten en tussen burgerobjecten en militaire doelen en dienen zij derhalve hun operaties uitsluitend tegen militaire doelen te richten.

Artikel 49

Definitie van aanvallen en toepassingsgebied

1. „Aanvallen” betekent: daden van geweld gericht tegen de tegenstander, hetzij offensieve hetzij defensieve.

2. De bepalingen van dit Protocol met betrekking tot aanvallen zijn van toepassing op alle aanvallen, op welk gebied ook uitgevoerd, met inbegrip van nationaal grondgebied dat aan een partij bij het conflict toebehoort maar door een tegenstander wordt beheerst.

3. De bepalingen van deze Sectie zijn van toepassing op alle krijgsv verrichtingen te land, in de lucht of ter zee die de burgerbevolking, de individuele burgers of burgerobjecten te land kunnen treffen. Zij zijn voorts van toepassing op alle aanvallen vanuit zee of uit de lucht op doelen op het land, maar laten overigens de regels van het volkenrecht, van toepassing bij gewapende conflicten ter zee of in de lucht, onverlet.

4. De bepalingen van deze Sectie vormen een aanvulling op de regels betreffende de humanitaire bescherming, neergelegd in het Vierde Verdrag, in het bijzonder in Deel II daarvan, en in andere voor de Hoge Verdragsluitende Partijen bindende internationale overeenkomsten, evenals op andere regels van het volkenrecht betreffende de bescherming van burgers en burgerobjecten te land, ter zee of in de lucht tegen de gevolgen van vijandelijkheden.

Hoofdstuk II

BURGERS EN BURGERBEVOLKING

Artikel 50

Definitie van burgers en burgerbevolking

1. Burger is ieder die niet behoort tot een van de categorieën personen, bedoeld in artikel 4, letter A, 1, 2, 3 en 6 van het Derde Verdrag en in artikel 43 van dit Protocol. Bij twijfel of iemand burger is, wordt hij als burger beschouwd.
2. De burgerbevolking omvat alle personen die burgers zijn.
3. De aanwezigheid onder de burgerbevolking van personen die niet onder de definitie van burgers vallen, ontnemt haar de civiele hoedanigheid niet.

Artikel 51

Bescherming van de burgerbevolking

1. De burgerbevolking en de afzonderlijke burgers genieten algemene bescherming tegen uit militaire operaties voortvloeiende gevaren. Om deze bescherming te verwezenlijken dienen de volgende regels, die een aanvulling vormen op de andere van toepassing zijnde regels van het volkenrecht, onder alle omstandigheden in acht te worden genomen.
2. Noch de burgerbevolking als zodanig, noch de afzonderlijke burgers mogen het doelwit van een aanval vormen. Daden van geweld of bedreiging met geweld, waarvan het belangrijkste oogmerk is de burgerbevolking angst aan te jagen, zijn verboden.
3. De burgers genieten de in deze Sectie verleende bescherming, behalve indien en zolang zij rechtstreeks aan de vijandelijkheden deelnemen.
4. Niet-onderscheidende aanvallen zijn verboden. Niet-onderscheidende aanvallen zijn:
 - (a) aanvallen die niet op een bepaald militair doel zijn gericht;
 - (b) aanvallen waarbij gebruik wordt gemaakt van strijdmiddelen of -methoden die niet op een bepaald militair doel kunnen worden gericht; of
 - (c) aanvallen waarbij gebruik wordt gemaakt van strijdmiddelen of -methoden waarvan de gevolgen niet kunnen worden beperkt zoals dit Protocol vereist;en die derhalve in alle genoemde gevallen naar hun aard, militaire doelen en burgers of burgerobjecten zonder onderscheid kunnen treffen.
5. De volgende soorten aanvallen dienen onder andere als niet-onderscheidend te worden beschouwd:
 - (a) aanvallen door middel van een bombardement, met welke middelen en methoden dan ook, waarbij een aantal duidelijk gescheiden en als zodanig te onderscheiden militaire doelen, gelegen in een stad, dorp of andere streek waarin zich een vergelijkbare concentratie burgers of burgerobjecten bevindt, worden aangemerkt als één enkel militair doel; en
 - (b) aanvallen die, naar kan worden verwacht bijkomend verlies van mensenlevens onder de burgerbevolking, verwonding van burgers, schade aan burgerobjecten of een combinatie daarvan ten gevolge zullen hebben, in een mate die buitensporig zou zijn in verhouding tot het verwachte tastbare en rechtstreekse militaire voordeel.
6. Aanvallen op de burgerbevolking of burgers bij wijze van represaille zijn verboden.

7. De aanwezigheid of de bewegingen van de burgerbevolking of van afzonderlijke burgers mogen niet worden gebruikt om bepaalde plaatsen of gebieden te vrijwaren voor militaire operaties, in het bijzonder niet wanneer daarbij wordt getracht militaire doelen tegen aanvallen af te schermen of militaire operaties te dekken, te begunstigen of te belemmeren. De partijen bij het conflict mogen de bewegingen van de burgerbevolking of van afzonderlijke burgers niet in een bepaalde richting leiden ten einde te trachten militaire doelen tegen aanvallen af te schermen of militaire operaties te dekken.

8. Geen enkele overtreding van deze verboden ontslaat de partijen bij het conflict van hun juridische verplichtingen met betrekking tot de burgerbevolking en de burgers, daaronder begrepen de verplichting om de in artikel 57 voorziene voorzorgsmaatregel te treffen.

Hoofdstuk III BURGEROBJECTEN

Artikel 52

Algemene bescherming van burgerobjecten

1. Burgerobjecten mogen niet het doelwit van een aanval worden en tegen die objecten mogen geen represailles worden genomen. Burgerobjecten zijn alle objecten die geen militaire doelen als omschreven in het tweede lid, zijn.

2. Aanvallen dienen strikt tot militaire doelen te worden beperkt. Voor zover het objecten betreft, zijn militaire doelen uitsluitend die objecten die naar hun aard, ligging, bestemming of gebruik een daadwerkelijke bijdrage tot de krijgsv verrichtingen leveren en waarvan de gehele of gedeeltelijke vernietiging, verovering of onbruikbaarmaking onder de omstandigheden van dat moment een duidelijk militair voordeel oplevert.

3. In geval van twijfel of een object dat gewoonlijk dienst doet voor civiele doeleinden, zoals plaatsen van godsdienstige verering, een huis of ander soort woning of een school, wordt gebruikt om een daadwerkelijke bijdrage te leveren aan de krijgsv verrichtingen, dient ervan te worden uitgegaan dat het niet voor het laatst genoemd doel wordt gebruikt.

Artikel 53

Bescherming van culturele goederen en plaatsen van godsdienstige verering

Onverminderd de bepalingen van het Verdrag van 's-Gravenhage inzake de bescherming van culturele goederen in geval van een gewapend conflict van 14 mei 1954 en van andere op deze bescherming betrekking hebbende internationale akten, is het verboden:

- (a) vijandelijke handelingen te verrichten, gericht tegen de historische monumenten, de kunstwerken of plaatsen van godsdienstige verering die het culturele of geestelijke erfgoed van de volkeren vormen;
- (b) dergelijke goederen te gebruiken ter ondersteuning van de militaire inspanning;
- (c) represailles tegen dergelijke goederen te nemen.

Artikel 54

Bescherming van voor het overleven van de burgerbevolking onmisbare objecten

1. Het uithongeren van burgers als methode van oorlogsvoering is verboden.

2. De volgende daden zijn verboden: het aanvallen, vernietigen, weghalen of onbruikbaar maken van voor het overleven van de burgerbevolking onmisbare objecten, zoals voedingsmiddelen, landbouwgebieden waar voedingsmiddelen worden geproduceerd, oogsten, vee, drinkwaterinstallaties en -voorraden en bevoelingswerken, met het oogmerk om, wegens de waarde welke die objecten voor het levensonderhoud hebben, de burgerbevolking of de tegenpartij daarvan te beroven, ongeacht of de beweegreden van een dergelijke daad is de burgers uit te hongeren, hen ertoe te bewegen weg te trekken, of welke andere beweegreden ook.

3. De verboden, neergelegd in het tweede lid, zijn niet van toepassing op de daarin bedoelde objecten die door een tegenpartij worden gebruikt:

- (a) uitsluitend voor het levensonderhoud van de leden van haar strijdkrachten; of
- (b) indien niet voor het levensonderhoud, dan toch als rechtstreekse ondersteuning van krijgsv verrichtingen, mits evenwel in geen geval

handelingen tegen die objecten worden ondernomen, waardoor naar kan worden verwacht voor-de burgerbevolking zo weinig voedsel of water zou overblijven dat zij zou verhongeren of worden gedwongen weg te trekken.

4. Tegen deze objecten mogen geen represailles worden genomen.

5. Gelet op het levensbelang dat iedere partij bij het conflict heeft bij de verdediging van haar grondgebied tegen invallen, mag zij binnen dat gebied, voor zover dat door haarzelf wordt beheerst, van de in het tweede lid neergelegde verboden afwijken, wanneer dat wegens dwingend-militaire noodzaak is geboden.

Artikel 55

Bescherming van het natuurlijk milieu

1. Bij de krijgsverrichtingen moet ervoor worden gewaakt, dat het natuurlijk milieu tegen omvangrijke, langdurige en ernstige schade wordt beschermd. Deze bescherming omvat mede het verbod van het gebruik van strijdmiddelen en -methoden die zijn bestemd om zodanige schade aan het natuurlijk milieu toe te brengen dat daardoor de gezondheid of de overleving van de burgerbevolking in gevaar wordt gebracht, of dat dergelijke schade naar kan worden verwacht, zal worden toegebracht.

2. Aanvallen gericht tegen het natuurlijk milieu bij wijze van represaille zijn verboden.

Artikel 56

Bescherming van werken en installaties die gevaarlijke krachten bevatten

1. Werken of installaties die gevaarlijke krachten bevatten, te weten stuwdammen, dijken en kerncentrales, mogen niet het doelwit van een aanval worden gemaakt, zelfs niet wanneer zij militaire doelen zijn indien die aanvallen het vrijkomen van gevaarlijke krachten zouden veroorzaken en daardoor zware verliezen aan mensenlevens onder de burgerbevolking teweeg zouden brengen. Andere militaire doelen gelegen op of in de nabijheid van die werken of installaties, mogen niet het doelwit van een aanval worden gemaakt indien die aanvallen het vrijkomen van gevaarlijke krachten uit die werken of installaties zouden veroorzaken en daardoor zware verliezen aan mensenlevens onder de burgerbevolking teweeg zouden brengen.

2. De in het eerste lid voorziene bijzondere bescherming tegen aanvallen eindigt:

- (a) wat stuwdammen of dijken betreft, alleen indien deze worden gebruikt voor andere dan hun gebruikelijke bestemming en voor geregelde, aanzienlijke en rechtstreekse ondersteuning van de militaire operaties, en indien die aanvallen het enige praktisch uitvoerbare middel vormen om die ondersteuning te beëindigen;
- (b) wat kerncentrales betreft, alleen indien deze elektrische energie leveren voor geregelde, aanzienlijke en rechtstreekse ondersteuning van de militaire operaties, en indien die aanvallen het enige praktisch uitvoerbare middel vormen om die ondersteuning te beëindigen;
- (c) wat de andere militaire doelen, gelegen op of in de nabijheid van die werken of installaties betreft, alleen indien deze worden gebruikt voor geregelde, aanzienlijke en rechtstreekse ondersteuning van de militaire operaties, en indien die aanvallen het enige praktisch uitvoerbare middel vormen om die ondersteuning te beëindigen.

3. In alle gevallen kan de burgerbevolking en kunnen de individuele burgers blijvend aanspraak maken op de volledige bescherming, hun door het volkenrecht verleend, met inbegrip van de bescherming, voortvloeiende uit de in artikel 57 voorziene voorzorgsmaatregelen. Indien de bescherming eindigt en een van de in het eerste lid vermelde werken, installaties of militaire doelen wordt aangevallen, moeten alle praktisch uitvoerbare maatregelen worden genomen om het vrijkomen van de gevaarlijke krachten te verhinderen.

4. Het is verboden represailles te nemen tegen de in het eerste lid vermelde werken, installaties of militaire doelen.

5. De partijen bij het conflict moeten trachten te vermijden, militaire doelen in de nabijheid van de in het eerste lid vermelde werken of installaties te plaatsen. Niettemin zijn installaties, gebouwd met het uitsluitende doel de beschermde werken of installaties tegen aanvallen te verdedigen, toegestaan en mogen deze zelf geen doelwit van een aanval worden gemaakt, mits zij niet worden gebruikt bij de vijandelijkheden, behalve voor defensieve handelingen die noodzakelijk zijn om aanvallen op de beschermde werken of installaties te beantwoorden, en mits hun bewapening is beperkt tot wapens die slechts geschikt zijn om een vijandelijke actie tegen de beschermde werken of installaties af te weren.

6. Aan de Hoge Verdragsluitende Partijen en de partijen bij het conflict wordt dringend verzocht, onderling nadere overeenkomsten te sluiten om objecten die gevaarlijke krachten bevatten, aanvullende bescherming te verschaffen.

7. Ten einde de herkenbaarheid van de door dit artikel beschermde objecten te bevorderen, kunnen de partijen bij het conflict deze voorzien van een bijzonder kenteken, bestaande uit een groep van drie feloranje, op één as geplaatste cirkels, als aangegeven in artikel 16 van Bijlage I bij dit Protocol. De afwezigheid van een zodanige aanduiding ontheft geen enkele partij bij het conflict in enig opzicht van haar verplichtingen krachtens dit artikel.

Hoofdstuk IV

VOORZORGSMATREGELEN

Artikel 57

Voorzorgen bij aanvallen

1. Bij het uitvoeren van de militaire operaties moet er voortdurend voor worden gewaakt, dat de burgerbevolking, de burgers en de burgerobjecten worden ontzien.

2. Met betrekking tot aanvallen dienen de volgende voorzorgen te worden genomen:

(a) zij die een aanval voorbereiden of tot een aanval besluiten dienen:

(i) al het praktisch uitvoerbare te doen om zich ervan te vergewissen, dat de aan te vallen doelen geen burgers of burgerobjecten zijn en geen bijzondere bescherming genieten, maar militaire doelen vormen in de zin van artikel 52, tweede lid, en dat de bepalingen van dit Protocol niet verbieden deze aan te vallen;

(ii) alle praktisch uitvoerbare voorzorgen te nemen bij de keuze van de middelen en methoden voor de aanval, ten einde bijkomend verlies van mensenlevens onder de burgerbevolking, verwonding van burgers en schade aan burgerobjecten te voorkomen en deze in elk geval tot het uiterste te beperken;

(iii) af te zien van enige aanval die naar kan worden verwacht mede bijkomend verlies van mensenlevens onder de burgerbevolking, verwonding van burgers, schade aan burgerobjecten of een combinatie daarvan zal veroorzaken, in een mate welke buitensporig zou zijn in verhouding tot het te verwachten tastbare en rechtstreekse militaire voordeel;

(b) een aanval dient te worden afgelast of opgeschort, wanneer blijkt dat het doel geen militair doel is of een bijzondere bescherming geniet, of wanneer blijkt dat de aanval naar kan worden verwacht mede bijkomend verlies van mensenlevens onder de burgerbevolking, verwonding van burgers, schade aan burgerobjecten of een combinatie daarvan zou veroorzaken, in een mate welke buitensporig zou zijn in verhouding tot het te verwachten tastbare en rechtstreekse militaire voordeel;

(c) omtrent aanvallen die ook de burgerbevolking zouden kunnen treffen, dient op effectieve wijze vooraf een waarschuwing te worden gegeven, tenzij de omstandigheden dat niet toelaten.

3. Wanneer een keuze mogelijk is tussen verschillende militaire doelen om een gelijkwaardig militair voordeel te behalen, dient dat doel te

worden uitgekozen, waarop de aanval naar kan worden verwacht het minste gevaar voor de levens van de burgerbevolking en voor de burgerobjecten oplevert.

4. Bij het uitvoeren van militaire operaties ter zee of in de lucht dient elke partij bij het conflict, in overeenstemming met haar rechten en verplichtingen krachtens de regels van volkenrecht, toepasselijk in gewapende conflicten alle redelijke voorzorgen te nemen om verlies van mensenslevens onder de burgerbevolking en schade aan burgerobjecten te voorkomen.

5. Geen enkele bepaling van dit artikel mag worden uitgelegd als machtiging tot enige aanval op de burgerbevolking, burgers of burgerobjecten.

Artikel 58

Voorzorgen tegen de gevolgen van aanvallen

De partijen bij het conflict dienen voor zover dat ook maar enigszins praktisch uitvoerbaar is:

- (a) onverminderd het bepaalde in artikel 49 van het Vierde Verdrag, te trachten de burgerbevolking, de individuele burgers en de burgerobjecten onder hun gezag uit de nabijheid van militaire doelen te verwijderen;
- (b) te vermijden, militaire doelen in of nabij dichtbevolkte gebieden te plaatsen;
- (c) alle andere noodzakelijke voorzorgen te nemen om de burgerbevolking, de individuele burgers en de burgerobjecten onder hun gezag tegen de uit de militaire operaties voortvloeiende gevaren te beschermen.

91/415

EDMUND JAN OSMANČZYK

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"The American Republics... animated by the desire of preserving the peace and prosperity of the continent, for which it is indispensable that their mutual relations be based upon principles of justice and upon respect for law, solemnly declare as a fundamental concept of American international law, that, without criticizing territorial acquisitions effected in the past, and without reference to existing controversies -

"In the future territorial acquisitions obtained by means of war or under the menace of war or in presence of an armed force, to the detriment of any American Republic, shall not be lawful; and that

"Consequently territorial acquisitions effected in the future by these means can not be invoked as conferring title; and that

"Those obtained in the future by such means shall be considered null in fact and in law"

1928, Resolution of the Sixth International Conference of American States:

"Resolves:

"1. All aggression is considered illicit and as such is declared prohibited.

"2. The American States will employ all pacific means to settle conflicts which may arise between them"

Documents illustrating the origins of the policy of non-recognition of the American Republics, in *International Conciliation*, No. 293, New York, October 1933, pp. 461-477.

AGGRESSION, UN DEFINITION, 1974. A definition adopted by the UN General Assembly Res. 3314/XXIX, Dec. 14, 1974. The text is as follows:

"The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330 'XXII' of Dec. 18, 1967, covering the work of its seventh session held from Mar. 11 to Apr. 12, 1974, including the draft Definition of Aggression adopted by the Special Committee by Consensus and recommended for adoption by the General Assembly,

Deeply convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. Approves the Definition of Aggression, the text of which is annexed to the present resolution;

2. Expresses its appreciation to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;

3. Calls upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;

4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

Annex. Definition of Aggression. The General Assembly,

Basing itself on the facts that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.

Recalling that the Security Council, in accordance with art. 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with arts. 41 and 42, to maintain or restore international peace and security.

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice. Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations.

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destructions, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present integrity.

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures of the threat thereof.

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Convinced that the adoption of a definition on aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim. Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination.

Adopts the following Definition of Aggression:

Art. 1. Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State" (a) is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;

(b) includes the concept of a "group of States" where appropriate.

Art. 2. The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the act concerned or their consequences are not of sufficient gravity.

Art. 3. Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of art. 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Art. 4. The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Art. 5. 1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Art. 6. Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Art. 7. Nothing in this Definition, and in particular art. 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Art. 8. In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions."

(Explanatory notes on arts. 3 and 5 are to be found in par. 20 of the report of the Special Committee on the Question of Defining Aggression (A/9619 and Corr. (1)). Statements on the Definition are contained in pars. 9 and 10 of the report of the Sixth Committee (A/9890) *L.V. Yearbook* 1974, pp. 846-848.

AGLINET. Union List of Serials, one of the information systems of the > FAO

AGING. > Elderly and Aged.

AGM. An abbreviation for air-to-ground missile.

AGRARIANISM. A doctrine claiming that agriculture constitutes the basis of national economy; developed in the interwar period in Central and East Europe; applied after World War II to colonial regions, and subsequently to the Third World countries.

AGRARIAN REFORM. The distribution of large private or state landownings among the landless and small-farm-holders in order to alter the agrarian structure; subject of international debates and UN recommendations. Res. 401/V of the General Assembly, Nov. 20, 1950 recommended that ECOSOC propose measures with a view to improving the living conditions of the rural populations and laid special emphasis on the institution of agrarian reform. ECOSOC studies gave rise to Res. 524/V of the UN General Assembly, Jan. 12, 1952, which acknowledged that the general program of agrarian reform requires large-scale investment and addressed all governments which wished to realize the reform program to pay special attention to the necessity of raising adequate funds. The UN General Assembly's further concern with the promotion of agrarian reform is reflected in Res. 625/VII of Dec. 21, 1952 and 826/IX of Dec. 11, 1954 as well as ECOSOC recommendations Res. 370/XIII of Sept. 7, 1951, 512/XVII of Apr. 30, 1954, 649B/XXIII of Dec. 2, 1957, and 712/XXVII of Apr. 17, 1961. Adopted on Dec. 5, 1959 on the initiative of Mexico was UN General Assembly Res. 1426/XIV recognizing the significance of changes in agrarian structure to many less-developed countries as well as Res. 1526/XV of Dec. 15, 1960 in which for the first time it recognized that agrarian reform very often is one of the basic factors of the general development of agriculture. Held in June-July 1966 was the First UN World Conference on Agrarian Reform which recommended

International Law Principles, UN Declaration, 1970

states, on Oct. 24, 1972 adopted Res. 2625-XXVII, prepared by the Special Committee in Geneva, Mar. 30-May 1, 1970. Declaration on the Principles of International Law concerning friendly relations and co-operation among states, in accordance with the UN Charter.

Recently, both regional and universal international organizations are growing in importance due to the fact that they have acquired numerous rights, which previously were vested only in states (e.g. the right to conclude international agreements).

Regional codification of international law forms a separate chapter in the development of international law in the second half of the 20th century, connected with processes of integration in Europe, Africa and Latin America, where the traditions of legal congresses held in 1877, 1883, 1888 are still vital and the treaties and conventions adopted by the International American Conferences between 1889 and 1948. The United Nations in its numerous publications keeps detailed documentation of the growth of international law, such as *UN Legislative Series*, *UN Treaty Series*, *Yearbook of International Law Commission*, *Reports of International Arbitral Awards* and others. An auxiliary publication is the *Cumulative Index of the UN Series*. These publications help to promote the dissemination of international law, a task entrusted to the Special Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law, established in 1968 by UN Res. 1968/XVIII. At the same time, the UN General Assembly requested the Committee to keep a world register of experts and lectures in international law.

(1) WRIGHT, *International Law and the UN*, New York, 1960; J. ROBINSON, *International Law and Organization*, Leiden, 1967; U. THANT, "International Law and the UN", in *Monthly Chronicle*, August 1968; K. WOLFFKE, *Rozwoj i kodyfikacja prawa międzynarodowego. Wybrane zagadnienia z polityki OZ*, Wrocław, 1972; H. BOKOR-SZEGO, *The Role of the UN in International Legislation*, Amsterdam, 1978.

INTERNATIONAL LAW COMMISSION. A UN Commission established Dec. 11, 1946, initiated its activity on June 17, 1948. The International Law Commission is an expert group involved in the progressive development of international law and its codification. The Commission seeks to make international law a more effective means of implementing the purposes and principles set forth in the Charter of the United Nations. Most of its work consists of drafting articles on various aspects of international law which could ultimately be included in international conventions of other legal instruments. The 34 members of the Commission serve five-year terms, which will expire on 31 Dec 1986. The membership is as follows:

Richard Osoolale A. Akinjide (Nigeria), Riyadh Mahmoud Sami Al-Qaysi (Iraq), Balanda Mikuin Lelal Balanda (Zaire), Julio Barboza (Argentina), Boutros Boutros-Ghali (Egypt), Carlos Calero Rodriguez (Brazil), Jorge Castañeda (Mexico), Leonardo Diaz Gonzalez (Venezuela), Khalafalla El Rasheed Mohamed-Ahmed (Sudan), Jens Evensen (Norway), Constantin Flitan (Romania), Laurel B. Francis (Jamaica), Jorge E. Illueca (Panama), Andreas J. Jacovides (Cyprus), S.P. Jagota (India), Abdul G. Goroma (Sierra Leone), Jose Manuel Lacleta-Munoz (Spain), Ahmed Mahiou (Algeria), Chafic Malek (Lebanon), Stephen C. McCaffrey (United States), Zhengyu Ni (China), Frank X. Njenga (Kenya), Motoo Ogiso (Japan), Syed Sharifuddin Pirzada (Pakistan), Robert Quentin-Baxter (New Zealand), Edilbert Razafindralambo (Madagascar), Paul Reuter

(France), Willem Riphagen (Netherlands), Sir Ian Sinclair (United Kingdom), Constantin A. Stravropoulos (Greece), Sompong Suchantikul (Thailand), Doudou Thiam (Senegal), Nikolai A. Ushakov (Soviet Union) and Alexander Yankov (Bulgaria). Since 1949 the ILC issues annually the Yearbook of the International Law Commission, in two volumes, containing summary records of sessions and documents; also Annual Report of the ILC to the General Assembly.

"Commission Continues Broad Effort at Developing International Law", in *UN Chronicle*, October, 1983, pp. 23-26.

INTERNATIONAL LAW PRINCIPLES POSTULATED IN 1944. Early in 1942 a number of American and Canadian internationalists in a series of exploratory meetings in United States and Canada prepared Postulates, Principles and Proposals to aid in revitalizing and strengthening international law after World War II. The text of the Principles served as a basis for the American draft of the UN Charter. The text is as follows:

"Principle 1. Each State has a legal duty to carry out in full good faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty.

Principle 2. Each State has a legal duty to see that conditions prevailing within its own territory do not menace international peace and order, and to this end it must treat its own population in a way which will not violate the dictates of humanity and justice or shock the conscience of mankind.

Principle 3. Each State has a legal duty to refrain from intervention in the internal affairs of any other State.

Principle 4. Each State has a legal duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of any other State.

Principle 5. Each State has a legal duty to cooperate with other States in establishing and maintaining agencies of the Community of States for dealing with matters of concern to the Community, and to collaborate in the work of such agencies.

Principle 6. Each State has a legal duty to employ pacific means and none but pacific means in seeking to settle its disputes with other States, and failing settlement by other pacific means to accept the settlement of its disputes by the competent agency of the Community of States.

Principle 7. Each State has a legal duty to refrain from any use of force and from any threat to use force in its relations with another State, except as authorized by the competent agency of the Community of States, but subject to immediate reference to and approval by the competent agency of the Community of States, a State may oppose by force an unauthorized use of force made against it by another State.

Principle 8. Each State has a legal duty to take, in co-operation with other States, such measures as may be prescribed by the competent agency of the Community of States for preventing or suppressing a use of force by any State in its relations with another State.

Principle 9. Each State has a legal duty to conform to the limitations prescribed by the competent agency of the Community of States and to submit to the supervision and control of such an agency, with respect to the size and type of its armaments.

Principle 10. Each State has a legal duty to refrain from entering into any agreement with another State, the performance of which would be inconsistent with the discharge of its duties under general international law."

The text of the Postulates is as follows:

"Postulate 1. The States of the world form a community, and the protection and advancement of the common interests of their peoples require effective organization of the Community of States.

Postulate 2. The law of the Community of States is international law. The development of an adequate system of international law depends upon continuous collaboration by States to promote the common welfare of all peoples and to maintain just and peaceful relations between States.

Postulate 3. The conduct of each State in its relations with other States and with the Community of States is subject to international law, and the sovereignty of a State subject to the limitations of international law.

Postulate 4. Any failure by a State to carry out its obligations under international law is a matter of concern to the Community of States.

Postulate 5. Any use of force or any threat to use force by a State in its relations with another State is a matter of concern to the Community of States.

Postulate 6. The maintenance of just and peaceful relations between States requires orderly procedures by which international situations can be readjusted as need arises."

"The International Law of the Future. A Statement of a Community of Views by North America", in: *International Conciliation*, No. 399, April, 1944, pp. 251-373.

INTERNATIONAL LAW PRINCIPLES, UN DECLARATION, 1970. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, adopted unanimously by the UN General Assembly, Res. 2625-XXV, on Oct. 24, 1970. The text is as follows.

"The General Assembly,

Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and co-operation among States.

Having considered the report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States which met in Geneva from 31 March to 1 May, 1970.

Emphasizing the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States.

Deeply convinced that the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations on the occasion of the twenty-fifth anniversary of the United Nations would contribute to the strengthening of world peace and constitute a landmark in the development of international law and of relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter.

Considering the desirability of the wide dissemination of the text of the Declaration,

(1) Approves the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution;

(2) Expresses its appreciation to the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States for its work resulting in the elaboration of the Declaration;

(3) Recommends that all efforts be made so that the Declaration becomes generally known.

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Preamble

The General Assembly, Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations, Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems of the levels of their development.

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations.

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States in accordance with the Charter is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations.

Noting that the great political, economic and social changes in scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on.

Recalling the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use of occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security.

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State.

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter.

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations.

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security.

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality.

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter.

Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles.

Considering that the progressive development and codification of the following principles:

(a) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

(b) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

(c) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

(d) The duty of States to co-operate with one another in accordance with the Charter.

(e) The principle of equal rights and self-determination of peoples.

(f) The principle of sovereign equality of States.

(g) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations.

Having considered the principles of international law relating to friendly relations and co-operation among States.

1. Solemnly proclaims the following principles.

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force. The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting.

(a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or

(b) The powers of the Security Council under the Charter. All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective. Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of

the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

Every State shall settle its international disputes with other States by peaceful means, in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them. States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the peaceful settlement of international disputes.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraph shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The duty of States to co-operate with one another in accordance with the Charter.

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principles of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(a) To promote friendly relations and co-operation among States; and

(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for an observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the rights of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit to the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter. The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles. Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(a) States are juridically equal;

(b) Each State enjoys the rights inherent in full sovereignty;

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

General Part

2. Declares that:

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles

Nothing in this declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. Declares further that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles."

UN Yearbook 1970: UN Monthly Chronicle, November, 1970

INTERNATIONAL MARITIME ORGANIZATION. > IMO

INTERNATIONAL MARITIME SATELLITE ORGANIZATION. > INMARSAT.

INTERNATIONAL METEOROLOGICAL ORGANIZATION, IMO, 1878-1947. One of the oldest intergovernmental organizations; its successor is the > WMO. The acronym > IMO in the UN system, since 1982 means International Maritime Organization.

INTERNATIONAL MILITARY TRIBUNAL. > Military Tribunal, International, IMT, for Germany, 1945-46.

INTERNATIONAL MILITARY TRIBUNAL CHARTER. > Charter of International Military Tribunal, IMT, 1945.

INTERNATIONAL MILITARY TRIBUNAL FOR FAR EAST. > Military Tribunal, International for Far East, 1946-48.

INTERNATIONAL MONETARY FUND. > IMF.

INTERNATIONAL ORGANIZATION. > Organizations International.

INTERNATIONAL PEACE BUREAU. Bureau international de la paix. Internationales Friedensbureau, f. 1892 in Rome, with headquarters in Berne until 1919, afterwards in Geneva. Nobel Peace Prize 1910. Promotes consultation and co-operative action among international and national peace organizations. Members: national committees in Austria, France, the FRG, Japan, Norway, Switzerland and the UK.

A H. FRIED, *Handbücher der Friedensbewegung*, 2 Vols., Berne, 1911-1913, *Yearbook of International Organizations*

INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT. > Red Cross.

INTERNATIONAL RESEARCH AND TRAINING INSTITUTE FOR THE ADVANCEMENT OF WOMEN, INSTRAW. A UN institute est. 1976, Teheran, by the ECOSOC as an autonomous body under the auspices of the UN. The Institute will give special attention to the needs of developing countries.

Yearbook of International Organizations.

INTERNATIONAL TRADE ORGANIZATION. > ITO.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. The Tribunal was est. on Dec. 10, 1982, by the Sea Law Convention, 1982 Art. 1 of the Statute of the ITLS read as follows:

"1. The International Tribunal for the Law of the Sea is constituted and shall function in accordance with the provision of this Convention and Statute.

2. The seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany.

3. The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.

4. A reference of a dispute to the Tribunal shall be governed by the provisions of Parts XI and XV."

UN *The Law of the Sea, United Nations Convention on the Law of the Sea*, New York, 1983, pp. 140-152.

INTERNATIONAL WATERS. > Waters, International.

INTERNATIONAL WORKING MEN'S ASSOCIATION, 1864. The first international organization *sensu stricto*, est. Sept. 28, 1864 in London during a meeting of solidarity with the uprising in Poland by representatives of the revolutionary movements of England, France, Italy, Germany, Poland and Switzerland; beginning of a workers' movement organized on a world-wide scale; commonly known as the > International. For 8 years the headquarters were in London, then from 1872 to 1876 in New York. The Association was dissolved by a motion of Marx and Engels at a conference held in Philadelphia in Sept. 1876.

La première Internationale. Recueil de documents publiés sous la direction de J. Freymond, 2 Vols., Genève, 1962.

INTERNATIONAL YEAR OF PEACE, 1985/1986. The UN General Assembly adopted on Dec. 7, 1983 Res. 38/56 proclaiming on the fortieth anniversary of the UN on Oct. 24, 1985 the International Year of Peace. One of the main objectives of the Year would be to stimulate effective action to promote peace on the part of the UN system and its member States, disarmament and the prevention of the nuclear catastrophe. The Year would also encourage reflection on peace as a pre-condition for security, national independence, justice, human rights, development and social progress.

Charter (art. 2, item 7) and is a generally accepted rule of international law. Individual or collective self-defense provided for under UN Charter is not considered intervention; states taking measures to effect their right to self-defense are obliged to notify the UN Security Council to this effect. Intervention was widely used as an instrument of foreign policy in ancient times, particularly by the Roman Empire. In the Middle Ages intervention was used in the context of the competing imperial and papal rules. In the 19th century, international law adopted the principle of intervention as a Pan-European principle, which was expressed by the Holy Alliance; it was to be used against revolutionary governments of Europe in defense of legitimate governments and systems "pour conserver ce qui est légalement établi" (the Ljubljana note of Austria, Prussia and Russia of May 12, 1821). On the basis of this principle interventions were undertaken, e.g. by Austria in Naples (1821), by France in Spain (1823), by the Western Powers during the Turkish-Russian war (1853-56) and by France in support of the Pope (1867). Stipulations were included in treaties concerning "the right to intervene", such as the Berlin Treaty of 1878 allowing European powers to interfere into internal affairs of Turkey and Africa. In the late 19th century, under the influence of Latin American states endangered by intervention not only on the part of European powers but also by the USA, there was a departure from the principle of intervention in favor of non-intervention. Nevertheless, there were still numerous cases of intervention, e.g., the provisions of treaties between the USA and Cuba and between the USA and Panama of 1903 authorizing US intervention. Intervention was undertaken by the Entente in Soviet Russia during 1919-20.

After World War II the Truman Doctrine confirmed the principle of intervention, which intensified the struggle within the UN in favor of non-intervention and non-interference into internal affairs of states. After World War II in both East and West various forms of intervention have been recorded; military intervention consisting of attempts at or actual occupation of a part or whole territory of an alien state, diplomatic intervention which may take the form of direct diplomatic pressure through diplomatic channels or diplomatic conspiracy to exert pressure by a group of states; economic intervention which may take the form of a boycott, customs barriers or waging customs wars, refusing to implement contractual provisions, economic embargo, economic blockade; and intervention "on humanitarian grounds" consisting of diplomatic pressure or threats of economic intervention to induce a country to abandon a policy of discrimination - racial, religious or political - against a group of its citizens (e.g., the Republic of South Africa in the context of its policy of apartheid). In the 1980's the UN General Assembly and the UN Security Council discussed the case of Afghanistan 1980 and the case of Grenada 1983 as problems of intervention.

E.C. STOWELL, *Intervention in International Law*, Washington, DC, 1921; P.H. WIENFIELD, "The History of Interventions", in: *The British Yearbook of International Law 1922-1923*; Ch G. FENWICK, "Intervention", in: *American Journal of International Law*, No. 39, 1945; T. KOMARNICKI, "La intervention en droit international moderne", in: *Revue générale du droit international public*, No. 55, 1955; A. VAN WYEN, A.J. THOMAS, *La No-Intervención*, Buenos Aires, 1959; *UN Chronicle*, March, 1980, pp. 5-17 and January, 1984, pp. 4-8.

INTERVENTION, UN DECLARATION ON THE INADMISSIBILITY OF, 1965. The UN Declaration on the Inadmissibility of Intervention

in Internal Affairs of States and on the Protection of their Independence and Sovereignty, was adopted on Dec. 21, 1965 by the UN General Assembly Res. 2131 XX and reads as follows:

"The General Assembly, deeply concerned at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

Considering that the United Nations, according to their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State,

Recognizing that, in fulfillment of the principle of self-determination, the General Assembly, by the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in Res. 1514(XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development,

Recalling that in the Universal Declaration of Human Rights the Assembly proclaimed that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, without distinction of any kind,

Reaffirming the principle of non-intervention, proclaimed in the charters of the Organization of American States, the League of Arab States and of the Organization of African Unity and affirmed in the Conferences of Montevideo, Buenos Aires, Chapultepec and Bogota, as well as in the decisions of the Afro-Asian Conference in Bandung, the Conference of Non-Aligned Countries in Belgrade, in the 'Programme for Peace and International Co-operation' adopted at the end of the Cairo Conference of Non-Aligned Countries, and in the Declaration on subversion adopted in Accra by the Heads of State or Government of the African States,

Recognizing that full observance of the principle of the non-intervention of States in the internal and external affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations,

Considering that armed intervention is synonymous with aggression, and as such is contrary to the basic principles on which peaceful international co-operation between States should be built,

Considering further that direct intervention, subversion, as well as all forms of indirect intervention are contrary to these principles and, consequently, a violation of the Charter of the United Nations,

Mindful that violation of the principle of non-intervention poses a threat to the independence and freedom and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

Fully aware of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions,

In the light of the foregoing considerations, the General Assembly of the United Nations solemnly declares:

(1) No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently armed intervention as well as all other forms of interference or attempted threats against the personality of the States or against its political, economic and cultural elements, are condemned,

(2) No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed to the

violent overthrow of the regime of another State, or interfere in civil strife in another State,

(3) The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention,

(4) The strict observance of these obligations is an essential condition to ensure that the nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter but also leads to the creation of situations which threaten international peace and security,

(5) Every State has an inalienable right to choose its political, economic, social and cultural systems without interference in any form by another State,

(6) All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations,

(7) For the purpose of this Declaration, the term State covers both individual States and groups of States,

(8) Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII.

On Dec. 19, 1966 the UN General Assembly Res. 2225/XXI adopted an appeal to all states to respect unconditionally the UN Declaration on Inadmissibility of Intervention by 114 votes to 0, with 2 abstentions.

The text is as follows:

"The General Assembly, Deeply concerned at the evidence of unceasing armed intervention by certain States in the domestic affairs of other States in different parts of the world and at other forms of direct or indirect interference committed against the sovereign personality and political independence of States, resulting in increased international tension,

Reaffirming all the principles and rules embodied in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, contained in its Res. 2131/XX of Dec. 21, 1965,

Deems it to be its bounden duty:

(a) To urge the immediate cessation of intervention, in any form whatever, in the domestic or external affairs of States,

(b) To condemn all forms of intervention in the domestic or external affairs of States as a basic source of danger to the cause of world peace;

(c) To call upon all States to carry out faithfully their obligations under the Charter of the United Nations and the provisions of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty and to urge them to refrain from armed intervention or the promotion or organization of subversion, terrorism or other indirect forms of intervention for the purpose of changing by violence the existing system in another State or interfering in civil strife in another State."

UN Yearbook, 1965 and 1966.

INTERVISION. Intergovernmental organization of Bulgaria, Czechoslovakia, Finland, the GDR, Hungary, Poland, Romania and the USSR set up by the OIRT on Jan. 28, 1960 in Budapest to organize exchange of TV programs between member countries and Eurovision and other continents by means of telecommunications satellites.

Yearbook of International Organizations.

INTERVODOCHISTKA. A specialized CMEA agency, f. Feb. 8, 1978 in Sofia by intergovernmental agreement to organize co-operation of member states in the field of rational utilization and protection of water resources.

Notitie

Aan	Afdeling
Minister BZK	
Van	Afdeling
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Kenmerk	Datum
AB1999/N75978	5 juli 1999

Onderwerp
ongrondwettigheid en misdadigheid NAVO-aanvallen op Joegoslavië/
aangifteplicht ingevolge art. 162 Wetboek van Strafvordering

1. Inleiding

Bij notitie d.d. 27 april 1999, nr. AB1999/N67198 (een afschrift daarvan is bij deze gevoegd), heb ik u geïnformeerd omtrent het feit dat de luchtbombardementen van luchtmachtcrachten van NAVO-lidstaten op de Federale Republiek Joegoslavië strijdig waren met het geweldsverbod en bovendien, voor zover deze bombardementen doelbewust waren gericht tegen civiele objecten, onverenigbaar met het humanitair oorlogsrecht. Als zodanig vormen deze luchtbombardementen misdrijven tegen de vrede en tevens, voor zover zij gericht zijn tegen civiele objecten, oorlogsmisdaden in enge zin. Hiermee is dan tevens art. 90 van de Grondwet geschonden.

Ik heb in mijn vorenbedoelde notitie tevens aangegeven dat, indien Nederland een rechtsstaat wenst te zijn, het niet anders kan dan dat de ministers die verantwoordelijk zijn voor de Nederlandse deelname aan de lucht-aanvallen op Joegoslavië daarvoor worden berecht.

Ik teken hierbij aan dat ik als uw ambtenaar in dezen heb gehandeld op grond van mijn persoonlijke achtergrond en deskundigheid. Als gewezen luchtmachtofficier ben ik diep doordrongen van het belang van het geweldsverbod en het dwingendrechtelijk karakter van zowel dat verbod als het internationale oorlogsrecht (de wetten en gebruiken van de oorlog, bedoeld in art. 8 Wet Oorlogsstrafrecht). Evenzeer ben ik doordrongen van de juistheid en algemene geldigheid van de beginselen van het internationale recht die tot uitdrukking zijn gebracht in het vonnis van het Internationale Militaire Tribunaal van Neurenberg, waaruit ik hier het volgende citeer (H.M. Attorney-General (ed.): The Trial of German Major War Criminals, Part 22, HMSO, London 1950):

"To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole." (p. 421)



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REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 2 OF SECURITY COUNCIL RESOLUTION 808 (1993)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction	1 - 17	3
I. THE LEGAL BASIS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL	18 - 30	6
II. COMPETENCE OF THE INTERNATIONAL TRIBUNAL	31 - 68	9
A. Competence <u>ratione materiae</u> (subject-matter jurisdiction)	33 - 49	9
B. Competence <u>ratione personae</u> (personal jurisdiction) and individual criminal responsibility	50 - 59	14
C. Competence <u>ratione loci</u> (territorial jurisdiction) and <u>ratione temporis</u> (temporal jurisdiction)	60 - 63	16
D. Concurrent jurisdiction and the principle of <u>non-bis-in-idem</u>	64 - 68	16
III. THE ORGANIZATION OF THE INTERNATIONAL TRIBUNAL	69 - 92	18
A. The Chambers	72 - 84	18
1. Composition of the Chambers	72 - 73	18
2. Qualifications and election of judges	74 - 78	19
3. Officers and members of the Chambers	79 - 82	21
4. Rules of procedure and evidence	83 - 84	21

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
B. The Prosecutor	85 - 89	22
C. The Registry	90 - 92	23
IV. INVESTIGATION AND PRE-TRIAL PROCEEDINGS	93 - 98	24
V. TRIAL AND POST-TRIAL PROCEEDINGS	99 - 124	25
A. Commencement and conduct of trial proceedings	99 - 105	2
B. Rights of the accused	106 - 107	27
C. Protection of victims and witnesses	108 - 109	28
D. Judgement and penalties	110 - 115	28
E. Appellate and review proceedings	116 - 120	29
F. Enforcement of sentences	121 - 124	30
VI. COOPERATION AND JUDICIAL ASSISTANCE	125 - 127	31
VII. GENERAL PROVISIONS	128 - 138	32
A. The status, privileges and immunities of the International Tribunal	128 - 130	32
B. Seat of the International Tribunal	131 - 132	33
C. Financial arrangements	133 - 134	33
D. Working languages	135 - 136	34
E. Annual report	137 - 138	34
<u>Annex.</u> Statute of the International Tribunal		36

Introduction

1. By paragraph 1 of resolution 808 (1993) of 22 February 1993, the Security Council decided "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. By paragraph 2 of the resolution, the Secretary-General was requested "to submit for consideration by the Council at the earliest possible date, and if possible no later than 60 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 [to establish an international tribunal], taking into account suggestions put forward in this regard by Member States."
3. The present report is presented pursuant to that request. 1/

A

4. Resolution 808 (1993) represents a further step taken by the Security Council in a series of resolutions concerning serious violations of international humanitarian law occurring in the territory of the former Yugoslavia.
5. In resolution 764 (1992) of 13 July 1992, the Security Council reaffirmed that all parties to the conflict are bound to comply with their obligations under international humanitarian law and 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.
6. In resolution 771 (1992) of 13 August 1992, the Security Council expressed grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina, including reports of mass forcible expulsion and deportation of civilians, imprisonment and abuse of civilians in detention centres, deliberate attacks on non-combatants, hospitals and ambulances, impeding the delivery of food and medical supplies to the civilian population, and wanton devastation and destruction of property. The Council strongly condemned any violations of international humanitarian law, including those involved in the practice of "ethnic cleansing", and demanded that all parties to the conflict in the former Yugoslavia cease and desist from all breaches of international humanitarian law. It called upon States and international humanitarian organizations to collate substantiated information relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia and to make this information available to the Council. Furthermore, the Council decided, acting under Chapter VII of the Charter of the United Nations, that all parties and others concerned in the former Yugoslavia, and all military forces

in Bosnia and Herzegovina, should comply with the provisions of that resolution, failing which the Council would need to take further measures under the Charter.

7. In resolution 780 (1992) of 6 October 1992, the Security Council requested the Secretary-General to establish an impartial Commission of Experts to examine and analyse the information as requested by resolution 771 (1992), together with such further information as the Commission may obtain through its own investigations or efforts, of other persons or bodies pursuant to resolution 771 (1992), with a view 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.

8. On 14 October 1992 the Secretary-General submitted a report to the Security Council pursuant to paragraph 3 of resolution 780 (1992) in which he outlined his decision to establish a five-member Commission of Experts (S/24657). On 26 October 1992, the Secretary-General announced the appointment of the Chairman and members of the Commission of Experts.

9. By a letter dated 9 February 1993, the Secretary-General submitted to the President of the Security Council an interim report of the Commission of Experts (S/25274), which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including wilful killing, "ethnic cleansing", mass killings, torture, rape, pillage and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests. In its report, the Commission noted that should the Security Council or another competent organ of the United Nations decide to establish an ad hoc international tribunal, such a decision would be consistent with the direction of its work.

10. It was against this background that the Security Council considered and adopted resolution 808 (1993). After recalling the provisions of resolutions 764 (1992), 771 (1992) and 780 (1992) and, taking into consideration the interim report of the Commission of Experts, the Security Council expressed 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 continuation of the practice of "ethnic cleansing". The Council determined that this situation constituted a threat to international peace and security, and stated that it was determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them. The Security Council stated its conviction 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.

11. The Secretary-General wishes to recall that in resolution 820 (1993) of 17 April 1993, the Security Council condemned once again all violations of international humanitarian law, including in particular, the practice of "ethnic cleansing" and the massive, organized and systematic detention and rape of women, and reaffirmed that those who commit or have committed or order or have ordered the commission of such acts will be held individually responsible in respect of such acts.

B

12. The Security Council's decision in resolution 808 (1993) to establish an international tribunal is circumscribed in scope and purpose: the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The decision does not relate to the establishment of an international criminal jurisdiction in general nor to the creation of an international criminal court of a permanent nature, issues which are and remain under active consideration by the International Law Commission and the General Assembly.

C

13. In accordance with the request of the Security Council, the Secretary-General has taken into account in the preparation of the present report the suggestions put forward by Member States, in particular those reflected in the following Security Council documents submitted by Member States and noted by the Council in its resolution 808 (1993): the report of the committee of jurists submitted by France (S/25266), the report of the commission of jurists submitted by Italy (S/25300), and the report submitted by the Permanent Representative of Sweden on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE) (S/25307). The Secretary-General has also sought the views of the Commission of Experts established pursuant to Security Council resolution 780 (1992) and has made use of the information gathered by that Commission. In addition, the Secretary-General has taken into account suggestions or comments put forward formally or informally by the following Member States since the adoption of resolution 808 (1993): Australia, Austria, Belgium, Brazil, Canada, Chile, China, Denmark, Egypt,* Germany, Iran (Islamic Republic of),* Ireland, Italy, Malaysia,* Mexico, Netherlands, New Zealand, Pakistan,* Portugal, Russian Federation, Saudi Arabia,* Senegal,* Slovenia, Spain, Sweden, Turkey,* United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. He has also received suggestions or comments from a non-member State (Switzerland).

14. The Secretary-General has also received comments from the International Committee of the Red Cross (ICRC) and from the following non-governmental organizations: Amnesty International, Association Internationale des Jeunes Avocats, Ethnic Minorities Barristers' Association, Fédération internationale des femmes des carrières juridiques, International Criminal Police Organization, Jacob Blaustein Institution for the Advancement of Human Rights, Lawyers Committee for Human Rights, National Alliance of Women's Organisations (NAWO), and Parliamentarians for Global Action. Observations have also been received from international meetings and individual experts in relevant fields.

* On behalf of the members of the Organization of the Islamic Conference (OIC) and as members of the Contact Group of OIC on Bosnia and Herzegovina.

15. The Secretary-General wishes to place on record his appreciation for the interest shown by all the Governments, organizations and individuals who have offered valuable suggestions and comments.

D

16. In the main body of the report which follows, the Secretary-General first examines the legal basis for the establishment of the International Tribunal foreseen in resolution 808 (1993). The Secretary-General then sets out in detail the competence of the International Tribunal as regards the law it will apply, the persons to whom the law will be applied, including considerations as to the principle of individual criminal responsibility, its territorial and temporal reach and the relation of its work to that of national courts. In succeeding chapters, the Secretary-General sets out detailed views on the organization of the international tribunal, the investigation and pre-trial proceedings, trial and post-trial proceedings, and cooperation and judicial assistance. A concluding chapter deals with a number of general and organizational issues such as privileges and immunities, the seat of the international tribunal, working languages and financial arrangements.

17. In response to the Security Council's request to include in the report specific proposals, the Secretary-General has decided to incorporate into the report specific language for inclusion in a statute of the International Tribunal. The formulations are based upon provisions found in existing international instruments, particularly with regard to competence ratione materiae of the International Tribunal. Suggestions and comments, including suggested draft articles, received from States, organizations and individuals as noted in paragraphs 13 and 14 above, also formed the basis upon which the Secretary-General prepared the statute. Texts prepared in the past by United Nations or other bodies for the establishment of international criminal courts were consulted by the Secretary-General, including texts prepared by the United Nations Committee on International Criminal Jurisdiction, 2/ the International Law Commission, and the International Law Association. Proposals regarding individual articles are, therefore, made throughout the body of the report; the full text of the statute of the International Tribunal is contained in the annex to the present report.

I. THE LEGAL BASIS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL

18. Security Council resolution 808 (1993) states 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. It does not, however, indicate how such an international tribunal is to be established or on what legal basis.

19. The approach which, in the normal course of events, would be followed in establishing an international tribunal would be the conclusion of a treaty by which the States parties would establish a tribunal and approve its statute. This treaty would be drawn up and adopted by an appropriate international body (e.g., the General Assembly or a specially convened conference), following which

it would be opened for signature and ratification. Such an approach would have the advantage of allowing for a detailed examination and elaboration of all the issues pertaining to the establishment of the international tribunal. It also would allow the States participating in the negotiation and conclusion of the treaty fully to exercise their sovereign will, in particular whether they wish to become parties to the treaty or not.

20. As has been pointed out in many of the comments received, the treaty approach incurs the disadvantage of requiring considerable time to establish an instrument and then to achieve the required number of ratifications for entry into force. Even then, there could be no guarantee that ratifications will be received from those States which should be parties to the treaty if it is to be truly effective.

21. A number of suggestions have been put forward to the effect that the General Assembly, as the most representative organ of the United Nations, should have a role in the establishment of the international tribunal in addition to its role in the administrative and budgetary aspects of the question. The involvement of the General Assembly in the drafting or the review of the statute of the International Tribunal would not be reconcilable with the urgency expressed by the Security Council in resolution 808 (1993). The Secretary-General believes that there are other ways of involving the authority and prestige of the General Assembly in the establishment of the International Tribunal.

22. In the light of the disadvantages of the treaty approach in this particular case and of the need indicated in resolution 808 (1993) for an effective and expeditious implementation of the decision to establish an international tribunal, the Secretary-General believes that the International Tribunal should be established by a decision of the Security Council on the basis of Chapter VII of the Charter of the United Nations. 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.

23. This approach would have the advantage of being expeditious and of being immediately effective as all States would be under a binding obligation to take whatever action is required to carry out a decision taken as an enforcement measure under Chapter VII.

24. In the particular case of the former Yugoslavia, the Secretary-General believes that the establishment of the International Tribunal by means of a Chapter VII decision would be legally justified, both in terms of the object and purpose of the decision, as indicated in the preceding paragraphs, and of past Security Council practice.

25. As indicated in paragraph 10 above, the Security Council has already determined that the situation posed by continuing reports of widespread violations of international humanitarian law occurring in the former Yugoslavia constitutes a threat to international peace and security. The Council has also decided under Chapter VII of the Charter that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, shall comply with the provisions of resolution 771 (1992), failing which it

would need to take further measures under the Charter. Furthermore, the Council has repeatedly reaffirmed that all parties in the former Yugoslavia are bound to comply with the obligations under international humanitarian law and 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.

26. Finally, the Security Council stated in resolution 808 (1993) that it was convinced that in the particular circumstances of the former Yugoslavia, the establishment of an international tribunal would bring about the achievement of the aim of putting an end to such crimes and of taking effective measures to bring to justice the persons responsible for them, and would contribute to the restoration and maintenance of peace.

27. The Security Council has on various occasions adopted decisions under Chapter VII aimed at restoring and maintaining international peace and security, which have involved the establishment of subsidiary organs for a variety of purposes. Reference may be made in this regard to Security Council resolution 687 (1991) and subsequent resolutions relating to the situation between Iraq and Kuwait.

28. In this particular case, the Security Council would be establishing, as an enforcement measure under Chapter VII, a subsidiary organ within the terms of Article 29 of the Charter, but one of a judicial nature. This organ would, of course, 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 life span of the international tribunal would be linked to the restoration and maintenance of international peace and security in the territory of the former Yugoslavia, and Security Council decisions related thereto.

29. It should be pointed out that, in assigning to the International Tribunal the task of prosecuting persons responsible for serious violations of international humanitarian law, the Security Council would not be creating or purporting to "legislate" that law. Rather, the International Tribunal would have the task of applying existing international humanitarian law.

30. On the basis of the foregoing considerations, the Secretary-General proposes that the Security Council, acting under Chapter VII of the Charter, establish the International Tribunal. The resolution so adopted would have annexed to it a statute the opening passage of which would read as follows:

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, 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 (hereinafter referred to as "the International Tribunal") shall function in accordance with the provisions of the present Statute.

II. COMPETENCE OF THE INTERNATIONAL TRIBUNAL

31. The competence of the International Tribunal derives from the mandate set out in paragraph 1 of resolution 808 (1993). This part of the report will examine and make proposals regarding these fundamental elements of its competence: ratione materiae (subject-matter jurisdiction), ratione personae (personal jurisdiction), ratione loci (territorial jurisdiction) and ratione temporis (temporal jurisdiction), as well as the question of the concurrent jurisdiction of the International Tribunal and national courts.

32. The statute should begin with a general article on the competence of the International Tribunal which would read as follows:

Article 1

Competence of the International Tribunal

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

A. Competence ratione materiae (subject-matter jurisdiction)

33. According to paragraph 1 of resolution 808 (1993), the international tribunal shall prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. This body of law exists in the form of both conventional law and customary law. While there is international customary law which is not laid down in conventions, some of the major conventional humanitarian law has become part of customary international law.

34. In the view of the Secretary-General, the application of the principle nullum crimen sine lege requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise. This would appear to be particularly important in the context of an international tribunal prosecuting persons responsible for serious violations of international humanitarian law.

35. The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims; 3/ the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 4/ the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948; 5/ and the Charter of the International Military Tribunal of 8 August 1945. 6/

36. Suggestions have been made that the international tribunal should apply domestic law in so far as it incorporates customary international humanitarian

law. While international humanitarian law as outlined above provides a sufficient basis for subject-matter jurisdiction, there is one related issue which would require reference to domestic practice, namely, penalties (see para. 111 below).

Grave breaches of the 1949 Geneva Conventions

37. The Geneva Conventions constitute rules of international humanitarian law and provide the core of the customary law applicable in international armed conflicts. These Conventions regulate the conduct of war from the humanitarian perspective by protecting certain categories of persons: namely, wounded and sick members of armed forces in the field; wounded, sick and shipwrecked members of armed forces at sea; prisoners of war, and civilians in time of war.

38. Each Convention contains a provision listing the particularly serious violations that qualify as "grave breaches" or war crimes. Persons committing or ordering grave breaches are subject to trial and punishment. The lists of grave breaches contained in the Geneva Conventions are reproduced in the article which follows.

39. The Security Council has reaffirmed on several occasions that persons who commit or order the commission of grave breaches of the 1949 Geneva Conventions in the territory of the former Yugoslavia are individually responsible for such breaches as serious violations of international humanitarian law.

40. The corresponding article of the statute would read:

Article 2

Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;

(g) unlawful deportation or transfer or unlawful confinement of a civilian;

(h) taking civilians as hostages.

Violations of the laws or customs of war

41. The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto comprise a second important area of conventional humanitarian international law which has become part of the body of international customary law.

42. The Nürnberg Tribunal recognized that many of the provisions contained in the Hague Regulations, although innovative at the time of their adoption were, by 1939, recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war. The Nürnberg Tribunal also recognized that war crimes defined in article 6(b) of the Nürnberg Charter were already recognized as war crimes under international law, and covered in the Hague Regulations, for which guilty individuals were punishable.

43. The Hague Regulations cover aspects of international humanitarian law which are also covered by the 1949 Geneva Conventions. However, the Hague Regulations also recognize that the right of belligerents to conduct warfare is not unlimited and that resort to certain methods of waging war is prohibited under the rules of land warfare.

44. These rules of customary law, as interpreted and applied by the Nürnberg Tribunal, provide the basis for the corresponding article of the statute which would read as follows:

Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

(a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

(b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;

(d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;

(e) plunder of public or private property.

Crimes against humanity

47. Crimes against humanity were first recognized in the Charter and Judgement of the Nürnberg Tribunal, as well as in Law No. 10 of the Control Council for Germany. 8/ Crimes against humanity are aimed at any civilian population and are prohibited regardless of whether they are committed in an armed conflict, international or internal in character. 9/

48. Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. In the conflict in the territory of the former Yugoslavia, such inhumane acts have taken the form of so-called "ethnic cleansing" and widespread and systematic rape and other forms of sexual assault, including enforced prostitution.

49. The corresponding article of the statute would read as follows:

Article 5

Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportatation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

8. Competence *ratione personae* (personal jurisdiction)
and individual criminal responsibility

50. By paragraph 1 of resolution 808 (1993), the Security Council decided that the 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. In the light of the complex of resolutions leading up to resolution 808 (1993) (see paras. 5-7 above), the ordinary meaning of the term "persons responsible for serious violations of international humanitarian law" would be natural persons to the exclusion of juridical persons.

51. The question arises, however, whether a juridical person, such as an association or organization, may be considered criminal as such and thus its members, for that reason alone, be made subject to the jurisdiction of the International Tribunal. The Secretary-General believes that this concept should not be retained in regard to the International Tribunal. The criminal acts set out in this statute are carried out by natural persons; such persons would be subject to the jurisdiction of the International Tribunal irrespective of membership in groups.

52. The corresponding article of the statute would read:

Article 6

Personal jurisdiction

The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Individual criminal responsibility

53.. An important element in relation to the competence *ratione personae* (personal jurisdiction) of the International Tribunal is the principle of individual criminal responsibility. As noted above, the Security Council has reaffirmed in a number of resolutions that persons committing serious violations of international humanitarian law in the former Yugoslavia are individually responsible for such violations.

54. The Secretary-General believes that all persons who participate in the planning, preparation or execution of serious violations of international humanitarian law in the former Yugoslavia contribute to the commission of the violation and are, therefore, individually responsible.

55. Virtually all of the written comments received by the Secretary-General have suggested that the statute of the International Tribunal should contain provisions with regard to the individual criminal responsibility of heads of State, government officials and persons acting in an official capacity. These suggestions draw upon the precedents following the Second World War. The Statute should, therefore, contain provisions which specify that a plea of head of State immunity or that an act was committed in the official capacity of the accused will not constitute a defence, nor will it mitigate punishment.

56. A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present statute. But he should also be held responsible for failure to prevent a crime or to deter the unlawful behaviour of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew or had reason to know that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them.

57. Acting upon an order of a Government or a superior cannot relieve the perpetrator of the crime of his criminal responsibility and should not be a defence. Obedience to superior orders may, however, be considered a mitigating factor, should the International Tribunal determine that justice so requires. For example, the International Tribunal may consider the factor of superior orders in connection with other defences such as coercion or lack of moral choice.

58. The International Tribunal itself will have to decide on various personal defences which may relieve a person of individual criminal responsibility, such as minimum age or mental incapacity, drawing upon general principles of law recognized by all nations.

59. The corresponding article of the statute would read:

Article 7

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

C. Competence ratione loci (territorial jurisdiction) and
ratione temporis (temporal jurisdiction)

60. Pursuant to paragraph 1 of resolution 808 (1993), the territorial and temporal jurisdiction of the International Tribunal extends to serious violations of international humanitarian law to the extent that they have been "committed in the territory of the former Yugoslavia since 1991".
61. As far as the territorial jurisdiction of the International Tribunal is concerned, the territory of the former Yugoslavia means the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters.
62. With regard to temporal jurisdiction, Security Council resolution 808 (1993) extends the jurisdiction of the International Tribunal to violations committed "since 1991". The Secretary-General understands this to mean anytime on or after 1 January 1991. This is a neutral date which is not tied to any specific event and is clearly intended to convey the notion that no judgement as to the international or internal character of the conflict is being exercised.
63. The corresponding article of the statute would read:

Article 8

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

D. Concurrent jurisdiction and the principle of
non-bis-in-idem

64. In establishing an international tribunal for the prosecution of persons responsible for serious violations committed in the territory of the former Yugoslavia since 1991, it was not the intention of the Security Council to preclude or prevent the exercise of jurisdiction by national courts with respect to such acts. Indeed national courts should be encouraged to exercise their jurisdiction in accordance with their relevant national laws and procedures.
65. It follows therefore that there is concurrent jurisdiction of the International Tribunal and national courts. This concurrent jurisdiction, however, should be subject to the primacy of the International Tribunal. At any stage of the procedure, the International Tribunal may formally request the national courts to defer to the competence of the International Tribunal. The details of how the primacy will be asserted shall be set out in the rules of procedure and evidence of the International Tribunal.

STAATSBAD

VAN HET

KONINKRIJK DER NEDERLANDEN.

(No. G 5.)

BESLUIT van 4 Januari 1946, bepalende de bekendmaking in het Staatsblad van de toetreding van Nederland tot de te Londen op 8 Augustus 1945 onderteekende Overeenkomst tussen de Regeering van het Vereenigd Koninkrijk van Groot-Britannië en Noord-Ierland, de Regeering van de Vereenigde Staten van Amerika, de Voorloopige Regeering van de Franse Republiek en de Regeering van de Unie van Socialistische Sovjet-Republieken naar de vervolging en bestroffing van de groote oorlogsmisdadigers van de Europeesche As.

WIL WILHELMINA, BIJ DE GRATIE GODS, KONINGIN DER NEDERLANDEN, PRINSES VAN ORANJE-NASSAU, ENZ., ENZ., ENZ.

Gerlen de te Londen, op 8 Augustus 1945 onderteekende Overeenkomst tussen de Regeering en het Vereenigd Koninkrijk van Groot-Britannië en Noord-Ierland, de Regeering van de Vereenigde Staten van Amerika, de Voorloopige Regeering der Franse Republiek en de Regeering van de Unie van Socialistische Sovjet-Republieken voor de vervolging en bestroffing van de groote oorlogsmisdadigers van de Europeesche As;

Overwegende, dat Nederland tot genoemde Overeenkomst is toegetreden en dat die toetreding op 25 September 1945 ter kennis van de Regeering van het Vereenigd Koninkrijk van Groot-Britannië en Noord-Ierland is gebracht;

Overwegende mede, dat die toetreding op 25 September 1945 is van kracht geworden;

Op de voordracht van Onze Ministers van Buitenlandse Zaken a.i. d.d. 8 December 1945, Directie van het Protocol

en Afdeling Politieke Zaken, No. 22885, en van Justitie van 27 December 1945, 2e Afdeling A, No. 1108;

Hebben goedgevonden en verstaan:

lovenbedeelde toetreding te doen bekendmaken door de planting van dit besluit in het *Staatsblad*.

Een afdruk en een vertaling van genoemde Overeenkomst, alsmede een opgave van de landen, die tot vermelde Overeenkomst zijn toegetreden, zijn bij dit besluit gevoegd.

Onze Ministers, Hoofden van Departementen van Algemeen Bestuur, zijn, ieder voor zooveel hem aangaat, belast met de uitvoering van hetgeen ten deze wordt vereischt.

's-Gravenhage, den 4den Januari 1946.

WILHELMINA.

De Minister van Buitenlandse Zaken a.i.,
J. H. VAN ROYEN.

De Minister van Justitie,
KOLFSCHOTEN.

Uitgegeven den vijf en twintigsten Januari 1946.

De Minister van Justitie,
KOLFSCHOTEN.

Agreement by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis.

London, 8th August, 1945.

Whereas the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice;

And whereas the Moscow Declaration of the 30th October, 1943, on German atrocities in Occupied Europe stated that those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

And whereas this Declaration was stated to be without prejudice to the case of major criminals whose offences have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

Now therefore the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorised thereto have concluded this Agreement.

Article 1.

There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offences have no particular

geographical location whether they be accused individually or in their capacity as members of organisations or groups or in both capacities.

Article 2.

The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this agreement, which Charter shall form an integral part of this Agreement.

Article 3. Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavours to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Article 4.

Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Article 5.

Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

Article 6.

Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.

Article 7.

This Agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

In witness whereof the Undersigned have signed the present Agreement.

Done in quadruplicate in London this 8th day of August, 1945, each in English, French and Russian, and each text to have equal authenticity.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

JOWITT.

For the Government of the United States of America:

ROBERT H. JACKSON.

For the Provisional Government of the French Republic:

ROBERT FALCO.

For the Government of the Union of Soviet Socialist Republics:

I. NIKITCHENKO.

A. TRAININ.

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL.

1. *Constitution of the International Military Tribunal.*

Article 1.

In pursuance of the Agreement signed on the 8th August, 1945, by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Article 2.

The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfil his functions, his alternate shall take his place.

Article 3.

Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a trial, other than by an alternate.

Article 4.

- (a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.
- (b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote

of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive; provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Article 5.

In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II. *Jurisdiction and General Principles.*

Article 6.

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) *Crimes against peace*: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) *War crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) *Crimes against humanity*: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the

war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7.

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8.

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9.

At the trial of any individual member of any group or organisation the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organisation of which the individual was a member was a criminal organisation.

After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organisation will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organisation. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10.

In cases where a group or organisation is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organisation is considered proved and shall not be questioned.

Article 11.

Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organisation and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organisation.

Article 12.

The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Article 13.

The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

III. Committee for the Investigation and Prosecution of Major War Criminals.

Article 14.

Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

- (a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,
- (b) to settle the final designation of major war criminals to be tried by the Tribunal,
- (c) to approve the Indictment and the documents to be submitted therewith,
- (d) to lodge the Indictment and the accompanying documents with the Tribunal,
- (e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Article 15.

The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

- (a) investigation, collection and production before or at the Trial of all necessary evidence,
- (b) the preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,
- (c) the preliminary examination of all necessary witnesses and of the Defendants,
- (d) to act as prosecutor at the Trial,
- (e) to appoint representatives to carry out such duties as may be assigned to them,
- (f) to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.

It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV. Fair Trial for Defendants.

Article 10.

In order to ensure fair trial for the Defendants, the following procedure shall be followed:

- (a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.
- (b) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.
- (c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

(d) A Defendant shall have the right to conduct his own defence before the Tribunal or to have the assistance of Counsel.

(e) A Defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defence, and to cross-examine any witness called by the Prosecution.

V. Powers of the Tribunal and Conduct of the Trial. Article 17.

The Tribunal shall have the power

- (a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,
- (b) to interrogate any Defendant,
- (c) to require the production of documents and other evidentiary material,
- (d) to administer oaths to witnesses,
- (e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Article 18.

The Tribunal shall

- (a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,
- (b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,
- (c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article 19.

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

Article 20.

The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Article 21.

The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

Article 22.

The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23.

One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him.

The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereby by the Tribunal.

Article 24.

The proceedings at the Trial shall take the following course:

- (a) The Indictment shall be read in court.
- (b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty".
- (c) The Prosecution shall make an opening statement.
- (d) The Tribunal shall ask the Prosecution and the Defence what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.
- (e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defence. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defence.
- (f) The Tribunal may put any question to any witness and to any Defendant, at any time.
- (g) The Prosecution and the Defence shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.

(h) The Defence shall address the court.

(i) The Prosecution shall address the court.

(j) Each Defendant may make a statement to the Tribunal.

(k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25.

All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

VI. Judgment and Sentence.

Article 26.

The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Article 27.

The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Article 28.

In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof, for such action as they may consider proper, having regard to the interests of justice.

VII. Expenses.

Article 30.

The expenses of the Tribunal and of the Trials, shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

Overeenkomst tussen de Regering van het Vereenigd Koninkrijk van Groot-Brittannië en Noord-Ierland, de Regering van de Vereenigde Staten van Amerika, de Voorloopige Regering van de Fransche Republiek en de Regering van de Unie van Socialistische Sowjet-Republieken voor de vervolging en bestraffing van de groote oorlogsmisdadigers van de Europeesche As.

Londen, 8 Augustus 1945.

Aangezien de Vereenigde Naties van tijd tot tijd verklaringen hebben afgelegd omtrent haar bedoeling, dat oorlogsmisdadigers zullen worden berecht;

En aangezien de Verklaring van Moskou van 30 October 1943 met betrekking tot Duitse wredeheden in bezet-Europa bepaalt, dat die Duitse officieren en manschappen en leden van de Nazi-partij, die verantwoordelijk zijn geweest voor of door hun toestemming te geven hebben deelgenomen aan wredehanden en misdrijven, zullen worden teruggezonden naar de landen, waar hun afschuwelijke daden werden verricht, opdat zij overeenkomstig de wetten van deze bevrijde landen en van de vrije Regeringen, die aldus zullen worden opgericht, zullen worden berecht en gestraft;

En aangezien vastgesteld werd, dat deze Verklaring geen inbreuk zou plegen op de zaak van de groote misdadigers, wier misdrijven niet aan een bijzondere aardrijkskundige plaats gebonden zijn en die gestraft zullen worden door de gezamenlijke bevestiging van de Regeringen van de Geallieerden;

Zoo is het, dat de Regering van het Vereenigd Koninkrijk van Groot-Brittannië en Noord-Ierland, de Regering van de Vereenigde Staten van Amerika, de Voorloopige Regering van de Fransche Republiek en de Regering van de Unie van Socialistische Sowjet-Republieken (hieronder genoemd „de Ondertekenaars”), die in het belang van alle Vereenigde Naties handelen, door tusschenkomst van hun van-behoorlijke volmachten voorziet in het vaststellen van deze Overeenkomst hebben gesloten.

Artikel 1.

Er zal na overleg met den Raad van Toezicht voor Duitschland een Internationale Militaire Rechtbank worden ingesteld voor de berechting van oorlogsmisdadigers, wier misdrijven niet aan een bijzondere aardrijkskundige plaats gebonden zijn, hetzij zij beschuldigd worden individueel, hetzij in hun hoedanigheid van leden van organisaties of groepen of wel in beide hoedanigheden.

Artikel 2.

De samenstelling, rechtsmacht en functies van de Internationale Militaire Rechtbank zullen zijn als uiteengezet in het Handvest, dat aan deze Overeenkomst is toegevoegd, welk Handvest een integreerend deel van deze Overeenkomst vormt.

Artikel 3.

Ieder van de Ondertekenaars zal de noodige stappen doen om voor het onderzoek van de beschuldigingen en de berechting de groote oorlogsmisdadigers ter beschikking te stellen, die door hen in hechtenis worden gehouden, en die door de Internationale Militaire Rechtbank zullen worden berecht. De Ondertekenaars zullen eveneens al het mogelijke doen om voor het onderzoek van de beschuldigingen en de berechting voor de Internationale Militaire Rechtbank zoodanige groote oorlogsmisdadigers, die zich niet bevinden op de geallieerde gebieden van een van de Ondertekenaars, beschikbaar te stellen.

Artikel 4.

Niets in deze Overeenkomst zal inbreuk maken op de bepalingen vastgesteld door de Verklaring van Moskou betreffende den terugkeer van oorlogsmisdadigers naar de landen, waar zij hun misdrijven hebben begaan.

Artikel 5.

Iedere Regering van de Vereenigde Naties kan tot deze Overeenkomst toetreden door middel van een kennisgeving langs diplomatieken weg aan de Regering van het Vereenigd Koninkrijk, welke Regering de andere ondertekende en toetredende Regeringen in kennis zal stellen van iedere zoodanige toetreding.

Artikel 6.

Niets in deze Overeenkomst zal inbreuk maken op de rechtsmacht of de bevoegdheden van een nationale rechtbank of van een rechtbank van een bezetter, welke voor de berechting van oorlogsmisdadigers opgericht is of opgericht zal worden op Geallieerd grondgebied of in Duitschland.

Artikel 7.

Deze Overeenkomst zal in werking treden op den dag van ondertekening en zal van kracht blijven voor den termijn van één jaar en zal daarna blijven gelden, behoudens het recht van iederen Ondertekenaar om langs diplomatieken weg met een opzeggingstermijn van één maand zijn voornemen te kennen te geven deze Overeenkomst te beëindigen. Deze beëindiging zal geen inbreuk maken op een proces, dat reeds is begonnen, of op een uitspraak, die reeds krachtens deze Overeenkomst is gegeven.

Tor oorkonde waarvan de ondertekende deze Overeenkomst hebben ondertekend.

Gedaan in viervoud te Londen op dezen Staten dag van Augustus 1945, ieder van deze in het Engelsch, Fransch en Russisch, met dien verstande, dat ieder van deze teksten gelijkelijk authentiek zal zijn.

Voor de Regering van het Vereenigd Koninkrijk van Groot-Britannië en Noord-Ierland:

JOWITT.

Voor de Regering van de Vereenigde Staten van Amerika:

ROBERT H. JACKSON.

Voor de Voorloopige Regering van de Fransche Republiek:

ROBERT FALCO.

Voor de Regering van de Unie van Socialistische Sowjet-Republieken:

I. NIKITCHENKO.

A. TRAININ.

HANDVEST VAN DE INTERNATIONALE MILITAIRE RECHTBANK.

I. Samenstelling van de Internationale Militaire Rechtbank.

Artikel 1.

Krachtens het Verdrag, dat op 8 Augustus 1945 door de Regering van het Vereenigd Koninkrijk van Groot-Britannië en Noord-Ierland, de Regering van de Vereenigde Staten van Amerika, de Voorloopige Regering van de Fransche Republiek en de Regering van de Unie van Socialistische Sowjet-Republieken is ondertekend, zal worden opgericht een Internationale Militaire Rechtbank (hieronder genoemd „de Rechtbank”) voor de rechtvaardige en snelle berechting en bestraffing van de groote oorlogsmisdadigers van de Europeesche As.

Artikel 2.

De Rechtbank zal bestaan uit vier leden, ieder met een plaatsvervanger. Eén lid en één plaatsvervanger zullen door ieder van de Ondertekenaars worden benoemd. De plaatsvervangers zullen, voor zoover zij daartoe in staat zijn, tegenwoordig zijn bij alle zittingen van de Rechtbank. Ingeval van ziekte van een lid van de Rechtbank of indien een lid om een andere reden niet in staat is zijn functies te vervullen, zal zijn plaatsvervanger zijn plaats innemen.

Artikel 3.

Noch de Rechtbank noch haar leden noch hun plaatsvervangers kunnen door het Openbaar Ministerie of door de vertoogen of hun raadslieden worden gewraakt. Iedere Ondertekenaar kan zijn lid van de Rechtbank of diens plaatsvervanger om redenen van gezondheid of om andere geldige redenen vervangen, met dien verstande, dat tijdens de terechtzitting geen andere vervanging mag plaats hebben dan door een plaatsvervanger.

Artikel 4.

(a) De aanwezigheid van alle vier leden van de Rechtbank, of van den plaatsvervanger voor een lid, dat afwezig is, zal noodig zijn om het quorum te vormen.

(b) De leden van de Rechtbank zullen, voordat een proces begint, met elkander tot overeenstemming komen omtrent de verkiezing tot Voorzitter van een van hen, en de Voorzitter zal gedurende dat proces deze functie vervullen, tenzij met de stemmen van niet minder dan drie leden anders zal worden overeengekomen. Het beginsel van rouleering van het voorzitterschap voor opeenvolgende processen wordt aanvaard. Indien echter een zitting van de Rechtbank plaats heeft op het grondgebied van één van de vier Onderteekenaars, zal de verlegenvaardiger van dien Onderteekenaar in de Rechtbank presidenten.

(c) Behoudens hetgeen hierboven is bepaald zal de Rechtbank haar beslissingen nemen met gewone meerderheid en indien de stemmen staken, is de stem van den Voorzitter beslissend, met dien verstande evenwel, dat schuldigbevindingen en vonnissen alleen kunnen worden uitgesproken, indien minstens drie leden van de Rechtbank zich hiervoor uitspreken.

Artikel 5.

Ingeval van noodzaak en naar gelang van het aantal zaken, die berecht moeten worden, kunnen andere Rechtbanken worden ingesteld; de oprichting, functies en procedure van iedere Rechtbank zullen identiek zijn en zullen door dit Handvest worden beheerscht.

II. *Rechtsmacht en algemeene beginselen.*

Artikel 6.

De Rechtbank, die door de Overeenkomst bedoeld in art. 1 wordt ingesteld voor de berechting en bestraffing van de groote oorlogsmisdadigers van de landen van de Europeesche As, zal de bevoegdheid hebben personen te berechten en te bestraffen, die, handelende in het belang van de landen van de Europese As, hetzij individueel, hetzij als leden van organisaties, een van de volgende misdrijven hebben begaan.

De volgende handelingen, of een van deze, zijn misdrijven, die vallen binnen de rechtsmacht van de Rechtbank en waarvoor individuele aansprakelijkheid zal bestaan:

(a) *Misdrijven tegen den vrede*: namelijk het maken van plannen voor, het voorbereiden van, het nemen van initiatief tot of het voeren van een aanvalsoorlog of een oorlog in strijd met internationale verdragen, overeenkomsten of verzekeringen, of deelneming aan een gemeenschappelijk plan of samenwerking voor het verrichten van een van de bovengenoemde handelingen;

(b) *Oorlogsmisdrijven*: namelijk schendingen van de wetten of gebruiken van den oorlog. Zodanige schendingen zullen omvatten, doch niet beperkt zijn tot moord, mishandeling, of deportatie, met het oog op slavenarbeid of voor eenig ander doel, van de burgerbevolking van of in bezet grondgebied, moord of mishandeling van krijgsgevangenen of van personen op zee, het doden van gijzelaars, plundering van openbaren of particulieren eigendom, willekeurige vernietiging van steden, plaatsen of dorpen, of verwoesting, welke niet door militaire noodzaak gerechtvaardigd was;

(c) *Misdrijven tegen de menscheit*: namelijk moord, uitroeiing, het in slavernij voeren, deportatie en andere onmenselijke handelingen, die vóór of gedurende den oorlog bedreven zijn tegen burgerbevolking; of vervolgingen op grond van politiek, ras of godsdienst ter uitvoering van of in verband met eenig misdrijf behoorende tot de rechtsmacht van de Rechtbank, onverschillig of deze geschieden al dan niet in strijd met het nationale recht van het land, waar deze daden worden bedreven.

Leiders, organisatoren, zij die hebben uitgelokt en medeplichtigen, die hebben deelgenomen aan het opstellen of het uitvoeren van een gemeenschappelijk plan of samenwerking om een van de bovengenoemde misdrijven te begaan, zijn aansprakelijk voor alle daden, die door personen ter uitvoering van dit plan zijn verricht.

Artikel 7.

De officiële positie van de verdachten, hetzij als Staats-hoofden, hetzij als verantwoordelijke ambtenaren in Regeerings-departementen, zal niet geacht worden deze personen te bevrijden van hun aansprakelijkheid of als een reden tot verlichting van hun straf gelden.

Artikel 8.

Het feit, dat de verdachte heeft gehandeld krachtens een bevel van zijn Regeering of van een boven hem gestelden, zal hem niet bevrijden van zijn aansprakelijkheid, doch zal kunnen worden beschouwd als reden tot verzachting van zijn straf, indien de Rechtbank beslist, dat de rechtvaardigheid zulks vereischt.

Artikel 9.

Bij het proces van een individueel lid van een groep of organisatie kan de Rechtbank verklaren (in verband met eenige handeling, waarvan de persoon kan worden schuldig bevonden), dat de groep of organisatie, waarvan de persoon lid was, een misdadige organisatie was.

Na ontvinst van de telastelegging zal de Rechtbank op de wijze als zij gewenscht oordeelt bekend maken, dat het Openbaar Ministerie het voornemen heeft aan de Rechtbank te verzoeken, een zoodanige verklaring te geven en ieder lid van de organisatie zal aldaar bevoegd zijn aan de Rechtbank toestemming te vragen om door haar gehoord te worden omtrent de vraag van het misdadige karakter van de organisatie. De Rechtbank zal de bevoegdheid hebben deze aanvraag toe te staan of af te wijzen. Indien de aanvraag wordt toegestaan, kan de Rechtbank bepalen, op welke wijze de aanvragers zullen worden vertegenwoordigd en gehoord.

Artikel 10.

In gevallen, waarin een groep of organisatie door de Rechtbank wordt verklaard misdadig te zijn, zal de bevoegde nationale autoriteit van ieder der Ondertekenaars het recht hebben, personen voor nationale of militaire rechtbanken of rechtbanken van een bezetter te doen berechten op grond van hun lidmaatschap van zoodanige groep of organisatie. In ieder zoodanig geval wordt het misdadige karakter van de groep of organisatie geacht te zijn bewezen en zal niet meer betwist kunnen worden.

Artikel 11.

Een persoon, die door de Rechtbank is schuldig bevonden, kan voor een nationale of militaire rechtbank of een rechtbank van een bezetter als bedoeld in art. 10 van dit Handvest worden beschuldigd van een ander misdrijf dan dat van lidmaatschap van een misdadige groep of organisatie, en deze laatste rechtbank kan hem, na hem schuldig te hebben bevonden, een straf opleggen, die onafhankelijk is van en wordt toegevoegd aan de straf, waartoe de Rechtbank hem heeft veroordeeld wegens deelneming aan de misdadige handelingen van een zoodanige groep of organisatie.

Artikel 12.

De Rechtbank zal het recht hebben de strafzaak tegen een persoon, beschuldigd van misdrijven als aangegeven in art. 6 van dit Handvest, in zijn afwezigheid te behandelen, indien hij niet gevonden is of indien de Rechtbank om een of andere reden het in het belang van het recht noodzakelijk oordeelt om het verhoor in zijn afwezigheid te doen plaats hebben.

Artikel 13.

De Rechtbank zal regelen opstellen voor haar procedure. Deze regelen zullen niet in strijd zijn met de bepalingen van dit Handvest.

III. Comité voor het onderzoek en de vervolging van de groote oorlogsmisdadigers.

Artikel 14.

Iedere Ondertekenaar zal een Hoofdaanklager voor het onderzoek van de beschuldigingen tegen en de vervolging van de groote oorlogsmisdadigers benoemen.

De Hoofdaanklagers zullen als Comité optreden voor de volgende doeleinden:

- (a) om een plan vast te stellen voor het individuele werk van ieder van de Hoofdaanklagers en zijn staf,
- (b) om de definitieve aanwijzing te doen van de groote oorlogsmisdadigers, die door de Rechtbank zullen worden berecht,
- (c) om de telastelegging en de daarbij over te leggen stukken goed te keuren,
- (d) om de telastelegging en de daarbij behorende stukken bij de Rechtbank in te dienen,
- (e) om ontwerp-regelen voor de procedure als bedoeld in art. 13 van dit Handvest te ontwerpen en ter goedkeuring aan de Rechtbank aan te bevelen. De Rechtbank zal de bevoegdheid hebben, de aldus aanbevolen regelen, met of zonder amendementen, aan te nemen of te verwerpen.

Het Comité zal bij alle bovenvermelde aangelegenheden met gewone meerderheid beslissen en een Voorzitter aanwijzen, zooals geschikt zal voorkomen en in overeenstemming met het beginsel van rouleering, met dien verstande, dat, indien de stemmen staken omtrent de aanwijzing van een verdachte, die door de Rechtbank moet worden berecht, of omtrent de misdrijven, waarvan hij zal worden beschuldigd, dat voorstel zal zijn aangenomen, dat gedaan is door de partij, die voorstelde, dat de betrokken verdachte zou worden berecht of de bedoelde beschuldigingen tegen hem zouden worden ingebracht.

Artikel 15.

De Hoofdaanklagers zullen individueel en in samenwerking met elkander voortia de volgende functies op zich nemen:

- (a) het onderzoek, het verzamelen en het produceeren vóór of tijdens de terechtzitting van alle noodzakelijk bewijs,
- (b) het voorbereiden van de telastelegging ter goedkeuring door het Comité overeenkomstig art. 14, sub (c), van dit Handvest,
- (c) het voorloopige verhoor van alle noodige getuigen en van de verdachten,
- (d) als aanklager optreden in de terechtzitting,
- (e) verlegenvoortlagers aanwijzen ter uitvoering van zoodanige functies als hun kunnen worden toegewezen.

(f) zoolnige andere zaken verriichten als hun met het oog op de voorbereiding en het houden van de terechtzitting noodzakelijk zal voorkomen.

Het is wel te verstaan, dat geen getuige of verdachte, die door een der Onderteekeenaars in hechtenis is gehouden, zonder diens toestemming aan de rechtsmacht van dezen Onderteekeenaar zal worden onttrokken.

IV. *Rechtsvaardige berechting van de verdachten.*

Artikel 16.

Ten einde aan de verdachten een rechtvaardige berechting te verzekeren, zal de volgende procedure worden gevolgd:

(a) De telastelegging zal volledige gegevens bevatten, die in bijzonderheden de beschuldigingen tegen de verdachten zullen omgeven. Een afschrift van de telastelegging en van alle stukken, die met de telastelegging worden ingediend, zullen, vertaald in een taal, welke hij verstaat, een behoorlijken tijd vóór de terechtzitting aan den verdachte worden verstrekt.

(b) Gedurende een voorloopig verhoor van een verdachte of in een terechtzitting zal deze het recht hebben, alle gewenschte verklaringen te geven met betrekking tot de tegen hem ingebrachte beschuldigingen.

(c) Een voorloopig verhoor van een verdachte en de terechtzitting zullen in een taal, die de verdachte verstaat, worden gevoerd of daarin worden vertaald.

(d) Een verdachte zal het recht hebben voor de Rechtbank zijn eigen verdediging te voeren of den bijstand te hebben van raadslieden.

(e) Een verdachte zal het recht hebben, hetzij zelf hetzij door tusschenkomst van zijn raadslieden, bij het proces bewijs aan te brengen tot steun van zijn verdediging, en iederen getuige, die door het Openbaar Ministerie is opgeroepen, aan een kruisverhoor te onderwerpen.

V. *Benoegdheden van de Rechtbank en het voeren van het proces.*

Artikel 17.

De Rechtbank zal de bevoegdheid hebben:

(a) getuigen op te roepen voor de terechtzitting en hun aanwezigheid alsmede getuigenverklaringen te verlangen en vragen tot hen te richten,

(b) iederen verdachte te ondervragen,

(c) het overleggen van stukken en ander bewijsmateriaal te verlangen,

(d) getuigen den eed te doen afleggen,

(e) ambtenaren aan te stellen voor de uitvoering van een of andere opdracht, die door de Rechtbank is omschreven, met inbegrip van de bevoegdheid om bij rogatoire commissie bewijs te verkrijgen.

Artikel 18.

De Rechtbank zal:

(a) de terechtzitting strikt beperken tot een snel verhoor omtrent de punten, die door de beschuldigingen zijn opgeworpen,

(b) strenge maatregelen nemen om iedere actie te voorkomen, die onredelijk uitsel zou veroorzaken, en niet ter zake dienende punten en verklaringen van walken aard ook buiten de orde stellen,

(c) stel recht doen met betrekking tot iedere weerspanning, waarbij een passende straf kan worden opgelegd in het begrip van het uitsluiten van een verdachte of zijn raadslieden van eenige of alle verdere zittingen, maar zonder dat inbreuk wordt gemaakt op het beslissen omtrent de beschuldigingen.

Artikel 19.

De Rechtbank zal niet gebonden zijn aan technische regelen inzake bewijs. Zij zal in de grootst mogelijke mate een snelle en niet-technische procedure aanvaarden en toepassen en zal ieder bewijs toelaten, waarvan zij oordeelt, dat het bewijswaarde heeft.

De Rechtbank zal aanvullende vragen omtrent den aard van ieder bewijs, zoodat dit wordt aangeboden, zoodat zij kan beslissen omtrent de vraag of het ter zake dienende is.

Artikel 21.

De Rechtbank zal geen bewijs vragen van feiten, die algemeen bekend zijn, maar zal daarvan van rechtswege kennis nemen. Zij zal eveneens van rechtswege kennis nemen van officiële regeringsstukken en rapporten van de Vereenigde Naties, met inbegrip van de akten en stukken van de comités, die in de verschillende Geallieerde landen zijn ingesteld voor het onderzoek van oorlogsmisdrijven, evenals de processen-verbaal en uitspraken van militaire of andere Rechtbanken van een van de Vereenigde Naties.

Artikel 22.

De permanente zetel van de Rechtbank zal zijn te Berlijn. De eerste bijeenkomsten van de leden van de Rechtbank en van de Hoofdaanklagers zullen gehouden worden te Berlijn op een plaats, die door den Raad van Toezicht voor Duitschland zal

worden aangewezen. Het eerste proces zal gehouden worden te Neurenberg en alle volgende processen zullen worden gehouden in zoodanige plaatsen als de Rechtbank zal beslissen.

Artikel 23.

Een of meer van de Hoofdaanklagers kunnen deelnemen aan de vervolging in iedere terechtzitting. De functie van een Hoofdaanklager kan door hem persoonlijk worden vervuld, of door een persoon of personen, die daartoe door hem gemachtigd zijn.

De functie van raadsman voor een verdachte kan op verzoek van den verdachte worden vervuld door een raadsman, die bevoegd is voor den rechter van zijn eigen land te pleiten, of door eenig ander persoon, die daartoe door de Rechtbank in het bijzonder kan worden gemachtigd.

Artikel 24.

De procedure tijdens de terechtzitting zal zijn als volgt:

- (a) De tenuistelling zal ter terechtzitting worden voorgelezen.
- (b) De Rechtbank zal iederen verdachte vragen, of hij zich „schuldig“ of „niet schuldig“ acht.
- (c) Het Openbaar Ministerie zal een inleidende verklaring afleggen.
- (d) De Rechtbank zal aan het Openbaar Ministerie en aan de verdediging vragen, welk bewijs zij eventueel aan de Rechtbank wenschen aan te bieden, en de Rechtbank zal beslissen omtrent de toelaatbaarheid van zoodanig bewijs.
- (e) De getuigen, die door het Openbaar Ministerie zijn opgeroepen, zullen worden verhoord en daarna de getuigen van de verdediging. Vervolgens zal hetzij door het Openbaar Ministerie, hetzij door de verdediging zoodanig tegenbewijs worden aangebracht als de Rechtbank toelaatbaar acht.
- (f) De Rechtbank kan te allen tijde aan iederen getuige en aan iederen verdachte iedere vraag stellen.
- (g) Het Openbaar Ministerie en de verdediging zullen iederen getuige en iederen verdachte, die getuigenverklaringen aflegt, ondervragen, en hem aan een kruisverhoor kunnen onderwerpen.
- (h) De verdediging zal ter terechtzitting het woord voeren.
- (i) Het Openbaar Ministerie zal ter terechtzitting het woord voeren.
- (j) Iedere verdachte kan een verklaring afleggen tegenover de Rechtbank.
- (k) De Rechtbank zal een oordeel uitspreken en een vonnis vellen.

Artikel 25.

Alle officieele stukken zullen worden overgelegd en de geheele procesvoering zal worden gehouden in het Engelsch, Fransch en Russisch, alsmede in de taal van den verdachte. Het proces-verbaal zal in de taal van het land, waar de Rechtbank zitting heeft, worden vertaald voor zoover als de Rechtbank dit in het belang van het recht en de openbare meening wenschelijk acht.

VI. Oordeel en vonnis.

Artikel 26.

Het oordeel van de Rechtbank betreffende de schuld of de onschuld van een verdachte zal de redenen angeven, waarop het is gegrond; het zal definitief zijn en niet vatbaar voor herziening.

Artikel 27.

De Rechtbank zal het recht hebben een verdachte, wanneer deze schuldig wordt bevonden, de doodstraf of een zoodanige andere straf op te leggen als zij zal beslissen, dat rechtvaardig is.

Artikel 28.

Boven iedere straf, die door de Rechtbank wordt opgelegd, zal de Rechtbank het recht hebben aan den schuldig bevonden persoon geestelijken goederen te ontnemen, en te bevelen, dat deze goederen worden afgeleverd aan den Raad van Toezicht voor Duitschland.

Artikel 29.

Ingaval van schuld zullen de vonnissen worden ten uitvoer gelegd overeenkomstig de bevelen van den Raad van Toezicht voor Duitschland, die te allen tijde de vonnissen kan verzoeken of anderszins wijzigen, maar die niet de gestrengheid daarvan kan vermeerderen. Indien de Raad van Toezicht voor Duitschland, nadat een verdachte schuldig is bevonden en een vonnis over hem is uitgesproken, nieuw bewijs ontdekt, waarop naar zijn oordeel een nieuwe beschuldiging tegen hem zou kunnen worden gegrond, zal de Raad dienovereenkomstig rapporteeren aan het Comité, dat ingesteld is krachtens art. 14 van dit Handvest, opdat dit Comité zoo zal optreden als het, in aanmerking genomen de belangen van het recht, gewenscht zal oordeelen.

VII. Kosten.

Artikel 30.

De kosten van de Rechtbank en van de processen zullen door de Onderleekkenars worden geboekt op rekening van de fondsen, bestemd voor het in stand houden van den Raad van Toezicht voor Duitschland.

OVERZICHT VAN DE TOETREDINGEN.

Australië	13 October 1945
België	5 October 1945
Denemarken	10 September 1945
Ethiopië	9 October 1945
Griekenland	10 September 1945
Haiti	3 November 1945
Honduras	17 October 1945
Luxemburg	1 November 1945
Noorwegen	20 October 1945
Panama	17 October 1945
Polen	1 October 1945
Tsjechoslowakije	12 September 1945
Zuidslavië	29 September 1945

STAATSBAD

VAN HET

KONINKRIJK DER NEDERLANDEN.

(No. G 6)

Niet verschenen.

Amsterdam, 1 Maart 1947

De Minister van Justitie
J. H. VAN MAARSEVEEN.

Staatsblad 1946.

onderwerp: United Nations (http://www.ius.bg.ac.yu/apel/united_nations_resolution.htm)

CC:

Datum:

United

Nations

Selected Documents of the United Nations Security Council
concerning
Kosovo (Federal Republic of Yugoslavia)

S/RES/1244 (1999)

10 June 1999

RESOLUTION 1244 (1999)

Adopted by the Security Council at its 4011th meeting,
on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;

2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;

3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;

(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include:

(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);

(b) Performing basic civilian administrative functions where and as long as required;

(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;

(e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);

(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;

(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;

(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related materiel for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the

region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

Annex 1

Statement by the Chairman on the conclusion of the meeting

of the G-8 Foreign Ministers held at the Petersberg Centre

on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;

- Withdrawal from Kosovo of military, police and paramilitary forces;

- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;

- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;

- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;

- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;

- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.

2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.

3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.

4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.

6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:

- Liaison with the international civil mission and the international security presence;
- Marking/clearing minefields;
- Maintaining a presence at Serb patrimonial sites;
- Maintaining a presence at key border crossings.

7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.

8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.¹ A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;

- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

1 Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

NATO AIR STRIKES AGAINST YUGOSLAVIA AND INTERNATIONAL LAW AND MORALITY

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NATO AIR STRIKES AGAINST YUGOSLAVIA AND INTERNATIONAL LAW AND MORALITY

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I

INTRODUCTION

I have divided my paper into three parts. In the first part I consider the arguments advanced by NATO States and academics in support of the eleven weeks of air strikes against the Federal Republic of Yugoslavia (FRY). These consist of a mix of legal, moral and practical arguments which allegedly justify the use of force by NATO. It is my contention that *none of these arguments are persuasive*. In the second part of my paper I argue that the NATO powers were clearly in violation of international law and the Charter of the United Nations and therefore incur responsibility for acts of omission and commission for which the FRY has the right to compensation. The final part contains some remarks by way of conclusion. It is perhaps worth clarifying at the very outset that the burden of my paper is *not* that there were no violations of human rights in Kosovo, but merely that the NATO response was inappropriate and that it has seriously undermined the authority and stability of the international legal system.

II

NATO STRIKES VIOLATED INTERNATIONAL LAW AND MORALITY

The NATO aggression against the Federal Republic of Yugoslavia has been justified in the following ways: First, it is contended that the bombings did not violate international law (SC 1999). Second, that while the NATO action was not in accordance with international law, it was morally justified (Cassese 1999; Franck 1999). Third, that 'the anti-interventionist regime has fallen out of sync with modern notions of justice' and therefore the NATO action should not be judged by obsolete, albeit extant, rules of international law (Glennon 1999: 2). Fourth, that in the absence of NATO air strikes there would have been large outflows of refugees threatening the peace and security of the region. Fifth, that the NATO powers had exhausted all peaceful means of resolving the Kosovo problem (Blair 1999; see also Havel 1999). Sixth, that the selectivity of NATO action was justified for it may be argued that 'prudence is not a bad guide to action, some degree of selectivity is inevitable, and it is better to uphold basic principles selectively

than not at all' (Roberts 1996: 20). Seventh, the NATO action 'was largely popular' (Glennon 1999: 2). Eighth, that the NATO air strikes did not violate the rules of international humanitarian law. Ninth, that the NATO strikes achieved their set objectives. Let us look, albeit briefly, at these arguments.

The NATO strikes violated international law and UN Charter

There is no greater evidence of the unlawful nature of the NATO air strikes than the fact that a large number of scholars who supported it concede that it was not in accord with international law. Glennon, for example, accepts that the air strikes were 'not....technically legal under the old regime' (Glennon 1999: 2). That is to say, the NATO acted 'international law notwithstanding' (Id). Likewise, Cassese, Franck and Hiatt concede that the action was unlawful even if it was moral (Cassese 1999; Franck 1999; Hiatt 1999). It may be added that 'throughout the campaign, NATO offered no legal justification for it' (Charney 1999).

On the other hand, several observers and scholars unhesitatingly condemned the air strikes as being in violation of international law and the UN Charter. For example, even as the air strikes were on, Carlson and Ramphal wrote that the NATO bombings 'strike at the heart of the rule of international law and the authority of the United Nations' (Carlson and Ramphal 1999; Mandelbaum 1999). Likewise, Hayden observed that 'the "humanitarian intervention" in Kosovo has produced flagrant violations of international law and the UN Charter by NATO countries' (Hayden 1999; Chomsky 1999a). Others have joined them since in contending that 'assertions of legality require a leap of faith' (Chinkin 1999). Thus, according to Charney, 'indisputably, the NATO intervention through its bombing campaign violated the United Nations Charter and international law' (Charney 1999). That the NATO action violated the principles of non-use of force and non-intervention can hardly be denied, ingenuous interpretations notwithstanding. It may be recalled here that in the *Nicaragua case* the International Court of Justice (ICJ) had directly considered the relationship between human rights and the violation of the principle of the use of force by the United States and had concluded that, '....while the United States might form its own appraisal of the situation as to the respect of human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect' (I.C.J Reports 1986: para 268)

In the debate in the Security Council the NATO countries advanced three arguments to justify their action, all three unpersuasive (SC 1999; SC 1999a). First, that such action was permitted by previous Security Council resolutions such as Res. 1199 of 23 September 1998 (SC 1999). This assertion was patently false as the concerned resolution specifically stated that the Security Council would meet once again 'to consider further action and additional measures to maintain or restore peace and stability in the region'. Second, that the relevant Security Council resolutions referred to Chapter VII and therefore the humanitarian intervention by NATO was legal. This argument overlooks the fact (a point made by India in the course of the debate) that short of enforcement action the Security Council has to abide by the Article 2 paragraph 7 injunction that it cannot intervene in matters essentially within the domestic jurisdiction of states (SC 1999a). In other words, the article only excepts 'the application of enforcement measures under Chapter VII' which was not the case here. Third, that the violation of human rights in Kosovo threatened the peace and security of the region justifying the NATO action (SC 1999). But in this case the obligations under Article 53 and 54 of the UN Charter were not met. There was no UN authorisation for the NATO air strikes and the UN Security Council was not kept informed in any way. In the words of Charney, "because the Council neither authorized NATO's actions before they commenced nor approved them subsequently in its resolution of June 10, 1999, their legality remains questionable, at best" (Charney 1999). Likewise, Mandelbaum points out that the 'NATO acted without UN authorisation, implying either that the Atlantic alliance can disregard international law when it chooses--a precept unacceptable to nonmembers of the alliance--or that any regional grouping may do so (giving, for example, the Russian-dominated Commonwealth of Independent States the right to intervene in Ukraine if it believes ethnic Russians there are being mistreated)--which is unacceptable to NATO' (Mandelbaum 1999: 6). It may be added that the NATO action was also in violation of its own charter. Article 5 of the Treaty of Washington provided that NATO could resort to force only in the case of an armed attack against one or more of its members. No such thing took place. The air strikes also condemned NATO's own post Cold War doctrine, captured in the Rome Declaration (1991), that 'the Alliance is purely

defensive in purpose: none of its weapons will ever be used except in self-defence, and it does not consider itself to be anyone's adversary'.

The strikes were morally unjustified

But were the air strikes morally justified? In my view, the air strikes were not morally justified for seven reasons. First, it caused more harm than it set out to prevent. Hayden has pointed out that "the casualties among Serb civilians in the first three weeks of the war [were] higher than all of the casualties on both sides in Kosovo in the three months that led up to th(e) war, and yet those three months were supposed to be a humanitarian catastrophe." (See also Mandelbaum 1999; Chomsky 1999a). All available evidence also suggests that the air war precipitated a sharp escalation of atrocities (Id). To put it differently, there was no relationship of means to ends. In the words of Kaldor, 'the Nato intervention did not save one Kosovo Albanian (Kaldor 1999). Likewise, the United Nations High Commissioner for Refugees, whose office has over the past few years criticized Northern donor states for substituting humanitarian for political action, including in the case of Kosovo (Ogata SC 1999), had the following to say in the middle of the NATO bombing.

... it is not up to a humanitarian organization like my Office to suggest which means to adopt to achieve such a solution. But I cannot avoid asking some questions: can bombs dropped from 15,000 feet resolve a house-to-house conflict between communities that have lived together, separate but intertwined, for hundreds of years? And even if they could soon contribute to end the appalling violence waged against civilians – and I hope they do – will the task of helping people rebuild their shattered lives, and of helping communities live together again, be any easier?.... Wouldn't it be better to adopt a more timely, and at the same time more gradual, almost "stratified" approach, before reaching the point when under public pressure, and usually facing a humanitarian catastrophe, governments are obliged to resort to dangerous, costly, politically risky military missions?' (Ogata 1999)

Second, the air strikes against Yugoslavia violated the norm of non-selectivity. Commentators have noted that there were several situations around the world where much more serious violations of human rights had taken place but the NATO had not intervened. The case of Kurds in Turkey has been repeatedly cited, as also the violations in Sudan, Sierra Leone etc (Chomsky 1999a; Mandelbaum 1999). The former US President Carter had pointedly observed that 'formal commitments are being made in

the Balkans, where white Europeans are involved, but no such concerted efforts are being made by leaders outside of Africa to resolve the disputes under way there. This failure gives the strong impression of racism' (Carter 1999; see also Mandelbaum 1999: 6)¹.

Third, the record of NATO States over the last three centuries which have seen colonial exploitation succeeded by neo-colonial rule hardly equip them to mouth slogans of justice, in particular to the peoples of the Third World. Incidentally, among the first acts of reconstruction recommended by the donor states in Kosovo has been to put in place 'a healthy and predictable environment for private investment and, more broadly, an accelerated process of transition to transform Kosovo into a market economy'. They have called for the privatisation of state owned industry and invited its business communities to look for investment opportunities (UN 1999b; World Bank 1999). NATO countries, finally, continue to impose economic sanctions against several countries with disastrous effect. Economic sanctions, as Mueller and Mueller remind us in a recent article in the prestigious *Foreign Affairs*, 'may have contributed to more deaths during the post-Cold War era than all weapons of mass destruction throughout history (Mueller and Mueller 1999: 43)

Peaceful means of resolving the dispute were not exhausted

Fourth, the NATO states did not exhaust the international law principle of peaceful settlement of disputes. Indeed, alternative political paths to the bombings were available but were deliberately excluded (Barutciski 1999: 8; Chomsky 1999a). Thus, speaking of Rambouillet, Kissinger has observed that it 'was not a negotiation—as is often claimed—but an ultimatum' (Kissinger 1999: 22). Other critics have pointed out that, 'the Rambouillet documents ... could not be acceptable to any state' (Hayden 1999; Tariq Ali 1999: 65) for it 'called for complete military occupation and political control of Kosovo by Nato, and effective Nato military occupation of the rest of Yugoslavia at Nato's will' and 'it is hard to imagine that any country would consider such terms, except in the form of unconditional surrender' (Chomsky 1999b: 11-12). Falk who calls for a more nuanced analysis of the Kosovo "incident" in the pages of *American Journal of International Law* is compelled to observe:

...a recourse to force should be clearly presented as the consequence of an energetic, good faith attempt via flexible diplomacy to find a peaceful solution. The failure to make this attempt severely compromises the normative status of the NATO initiative,

and does so regardless of the legal rationale selected to justify the action. NATO's way of proceeding also weakens the argument for bypassing the United Nations and the restrictive constraints of international law. The United Nations was justifiably criticized along the same lines for its apparent unwillingness to pursue flexible diplomacy in the Persian Gulf crisis (Falk 1999).

The NATO forces violated international humanitarian laws

Fifth, since this was a war which was waged in the name of "humanitarianism" it was incumbent upon NATO to ensure that it did not violate the rules of international humanitarian laws. To quote Falk once again:

the NATO initiative was not a war in the conventional sense, but one based on a claim of "humanitarian intervention." As such, it would seem subject to stricter standards of constraint relative to the use of force, especially with regard to civilian harm, and particularly in reference to the population that was being protected. NATO's style of bombing after the first few days was to inflict heavy, deliberate damage on civilian targets of a wide variety, relying on mastery of the air, smart weaponry, and a proclaimed intention to continue the bombing on an intensifying scale until Belgrade "submitted" without conditions. The magnitude and effects of such bombing are difficult to reconcile with the humanitarian claims made by NATO spokespersons (Falk 1999)

Indeed, the NATO bombing of civilian targets, the wanton destruction of civilian infrastructure and the environmental disasters resulted in clear violations of international humanitarian laws. In a contribution to the *International Herald Tribune* entitled "Beware, the Geneva Conventions Are Under Fire", Yves Sandoz, the Director for international law and communications of the ICRC raised the issue whether if one were to concede that the cause for which NATO action was undertaken was legitimate, it freed them from any obligation under international humanitarian law and went on to observe:

Let it be said at once that such an approach is dangerous, and would annihilate all the efforts made to build up international humanitarian law....The body of law endeavors precisely to ensure that certain elementary humanitarian rules are respected during conflicts, which obviously implies that each side incurs the same obligations. Trying to release oneself from such an obligation would inevitably mean a return to barbarity (Sandoz 1999)

Writing in the course of the NATO air strikes, former US President Carter noted that 'the destruction of civilian life has now become senseless and excessively brutal' (Carter 1999): 'Instead of focusing on Serbian military forces missiles and bombs [were] concentrating on

the destruction of bridges, railways, roads, electric power, and fuel and fresh water supplies. Serbian citizens report(ed) that they [were] living like cavemen, and their torment increase(d) daily' (Id). Regis Debray confirmed this scenario after his visit to the country (Debray 1999). Even scholars who are not critical of NATO action admit the violation of humanitarian laws (Roberts 1999: 115). Roberts also admits that 'a further difficulty arose from the possible environmental effects of certain NATO actions, including the release of chemicals resulting from certain air attacks, and the use of toxic materials (especially depleted uranium) in weapons and quantities of unexploded ordnance which was a serious hazard after the war' (Id).

Others have been harsher in their criticism. According to Hayden, 'the war supposedly in defense of human rights has produced war crimes by NATO, and a civilian casualty rate that is at least three time higher than the casualty rate of the "intolerable" violations of human rights that NATO was supposedly acting to correct' (Hayden 1999). Another observer wrote that 'in the more than two-month long Balkan war currently underway, the illegality and criminality of NATO's behavior is so obvious and so clear that there is certainly something the ICTY can and should do in that respect' (Shen 1999). The culpability of NATO military and political leaders in the ICTY would seem particularly clear since the Prosecutor of the Tribunal had in fact warned NATO that it too was bound by the Geneva Conventions, and NGOs such as Human Rights Watch and the Lawyers Committee for Human Rights had sent letters to NATO's secretary general expressing concern about specific violations by NATO of international humanitarian law (Hiatt 1999).

Few initiatives in recent years that have held greater attraction to the Northern States, academics and NGOs than the setting up of tribunals to put on trial individuals accused of war crimes. Therefore, it is surprising that the selective nature of these moves to enforce international human rights and humanitarian laws have gone uncommented, in particular the fact that selectivity has assumed a North-South dimension in the post-colonial world. In instances where violence has been directed against less powerful countries, the violation of the laws of war has generally been ignored, as is evidenced by the Vietnam and the Gulf Wars, and now Kosovo.

In the case of Vietnam, the 'mainstream [Western] media attacked the legitimacy of the Russell initiative, ignored its presentation of evidence (fully vindicated by

120y
subsequent inquiries from many sources), and scorned its 'conclusions' (Falk 1985: 496). So much so that the Russell War Crimes Tribunal 'had difficulty finding a government that would tolerate its presence' (Id: 500). In the case of the Gulf War the Ramsay Clark report received little attention which had *inter alia* noted that 'the bombing that has occurred through out Iraq is the clearest violation of international law and norms for armed conflict including the Hague and Geneva Conventions and the Nuremberg Charter. It is uncivilized, brutal, racist by any moral standard' (Clarke 1991). But it explains why the US is opposed to the permanent international criminal court despite the fact that its statute goes some way to meet its concerns. It compelled *The Economist* to write and I quote:

In the 1990s, the United States played the key role in setting up tribunals to put on trial individuals accused of war crimes and genocide in Rwanda and ex-Yugoslavia. Yet, alone among its allies, it now opposes the permanent international criminal court primarily because it could not win an absolute exemption for its own soldiers. And that attitude is nothing new: American governments have seen the corpus of international law as a useful device to restrain or vilify other nations, while refusing to let it apply to their own.

There was no real interest in protecting the rights of Kosovars

Sixth, the welfare of refugees leaving Kosovo, was of little concern to NATO states. This is evidenced by the attitude toward Kosovar Albanian refugees in the months prior to the bombing campaign. According to Human Rights Watch, in the first half of 1998, 'despite calls from UNHCR to halt deportations, Germany and Switzerland expelled more than a thousand rejected asylum seekers to Kosovo ... under the terms of readmission agreements with the Federal Republic of Yugoslavia' (Human Rights Watch 1999). Little attention was also paid to the fact that the NATO bombing affected 'the second largest refugee caseload in Europe'. These were the approximately 500,000 Serb refugees from Croatia and Bosnia. As was noted in a briefing to the Security Council:

The approximately 500,000 Serb refugees from Croatia and Bosnia, many of whom fled Croatia during "Operation Storm" in 1995, constitute the second largest refugee caseload in Europe, and their plight should not be overshadowed by the Kosovo crisis. These refugees have the same rights and needs as refugees from Kosovo in Albania and Macedonia, and deserve similar levels of assistance and commitment from the international community to identify urgent solutions to their plight. The mission, on its own initiative, visited a collective centre in Vojvodina. It is important for the international community, as it attempts to

provide assistance to the new refugees in Albania and Macedonia, not to neglect people who have been refugees for over four years and whose sub-human living conditions will inevitably be aggravated by the ongoing conflict (Sergio 1999).

The High Commissioner for Refugees reminded the NATO powers that they should not 'neglect the victims of the earlier Balkan wars ... who were still hosted by Serbia and Montenegro' (Ogata 1999b; Ogata 1999 June 10). She also pleaded that there should be no repetition of what happened in early 1996 in Sarajevo when after the conflict ended tens and thousands of Serbs fled (Ogata 1999b). We know what transpired, emphasizing did not have the support of world public opinion despite the fact that the Western the harsh reality that refugees are pawns and not concerns and that human rights are merely used to legitimize the use of force.

The Air Strikes were condemned by preponderant world public opinion

Seventh, there was little support for the NATO bombings in much of the Third World. This despite the fact that Western media showed utter cowardice, prejudice and oversimplification on their reporting of the NATO air strikes (Said 1999a). The Chinese people actively condemned the NATO action. In democratic India there was a consensus across the political divide that the NATO air strikes against Yugoslavia had little to do with humanitarianism. One reason of course was the selective nature of the intervention. But I believe that the principal reason for the disbelief was the record of the US and its allies vis-à-vis Third World countries. States which have supported a series of dictators in the Third World were now expecting them to believe that its heart was bleeding for the peoples of Kosovo. States at whose bidding sanctions have been imposed with deleterious effects on the health of the children and the aged in Iraq were attempting to tell the world that they were moved by the plight of the citizens of Kosovo. States which compel poor countries in the South to follow economic policies which spell their ruin were talking about the fate of Kosovars. Frankly, the awesome hypocrisy of the NATO powers left the Third World peoples breathless.

NATO did not achieve its objectives

The NATO bombings also failed to achieve the spelt out political and humanitarian objectives. The NATO action was, to use Mandelbaum's words, 'a perfect failure' (Mandelbaum 1999: 5). Indeed, according to Mandelbaum, the final agreement

'embraced the position of the party it had defeated' and 'over which the war had been fought' viz., that Kosovo was an integral part of Yugoslavia (Id). Likewise, Roberts points out that one of the substantial concessions NATO had to make in the June settlement was that 'there was no longer any mention of the status-of-forces provisions in Appendix B of the Rambouillet Accord which would have accorded NATO personnel unimpeded access, including for training and for operations, throughout FRY territory' (Roberts 1999: 117). Incidentally, the agreement confirms suspicions that the Rambouillet Accord was drafted in a manner to induce rejection. On the humanitarian front, in the aftermath of the agreement a majority of Serbs residents of Kosovo had to leave their homes in order to escape violence; the UN administration has been hard put to stop attack on Serbs who have fled the province to add to the refugee population in Belgrade.

III

RESPONSIBILITY FOR NATO ACTIONS: COMPENSATION OWED

If the NATO air strikes against Yugoslavia were in clear violation of international law and the Charter of the United Nations then surely the NATO powers are accountable to FRY for their acts of omission and commission. For 'today one can regard responsibility as a general principle of international law' (Brownlie 1990: 433). It is concerned with 'the incidence and consequences of illegal acts, and particularly the payment of compensation for loss caused' (Id). In its Order of June 2, 1999 in the *Case Concerning Legality of the Use of Force* (Yugoslavia v. United States of America), the ICJ observed:

...whether or not States accept the jurisdiction of the Court, they remain in any event responsible for acts attributable to them that violate international law, including humanitarian law;....(Paragraph 31)

Thus, for example, the NATO air strikes clearly violated the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Norms of International Armed Conflicts (Protocol I). All NATO States other than France, Turkey and the United States have ratified it. Article 91 of Protocol I provides:

A party to the conflict which violates the provisions of the Conventions of this Protocol shall, if the case demands, be liable to compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

There is little doubt that in this case there is legitimate demand for compensation for all the harm caused to civilians and damage to civilian infrastructure, as well as long-term and serious damage to the environment.

There are several precedents in recent years of countries which have committed aggression being required to compensate the victims of aggression. Allow me to give four examples from the resolutions adopted by the UN Security Council. On 31 March, 1976 the United Nations Security Council adopted Resolution S/387 in which it *inter alia* called upon 'the Government of South Africa to meet the just claims of the People's Republic of Angola for a full compensation of the damage and destruction inflicted on its State and for the restoration of the equipment and materials which its invading forces seized;...'. On 23 November 1979, the UN Security Council adopted Resolution S/455 which called upon South Africa to make 'payment of full and adequate compensation to the Republic of Zambia by the responsible authorities for the damage to life and property resulting from the acts of aggression,....'. On 19 June 1981, the UN Security Council adopted Resolution S/487 which stated that 'Iraq is entitled to appropriate redress for the destruction it has suffered, responsibility for which has been acknowledged by Israel. Finally, on 29 October, 1990 the Security Council Resolution S/Res/674, 29 which *inter alia* read as follows:

8. Reminds Iraq that *under international law it is liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq;*

9. Invites States to collect relevant information regarding their claims, and those of their nationals and corporations, for restitution or financial compensation by Iraq with a view to such arrangements as may be established in accordance with international law;....(Emphasis added)

In a later resolution S/Res/687/ of April 8 1991 it stated:

16. *Reaffirms* that Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, *is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury*

to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait;

17. *Decides* that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. *Decides* also to create a fund to pay compensation for claims that fall within paragraph 16 above and to establish a Commission that will administer the fund;

19. *Directs* the Secretary-General to develop and present to the Security Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the fund to meet the requirement for the payment of claims established in accordance with paragraph 18 above and for a programme to implement the decisions in paragraphs 16, 17 and 18 above, including administration of the fund;....

By Res 692 of 20 May 1991 the Security Council decided to establish the Fund and Commission referred to in paragraph 18 of resolution 687 (1991). These resolutions of the Security Council appear to establish the rule that a State is liable under international law to pay compensation for direct loss, damage, including environmental damage, as a result of unlawful acts of omission and commission. The NATO air strikes were clearly in violation of international law and the Charter of the United Nations. Therefore, the NATO member countries are under an international obligation to compensate FRY for loss and damages to it.

IV

CONCLUSION

In lieu of the blatant violation of international law and the Charter of the United Nations in launching weeks of air strikes against Yugoslavia, it is time that the humanitarian community pondered over the essence of new humanitarianism and the role of military interventions to protect human rights. I have argued elsewhere that *humanitarianism is the ideology of hegemonic states in the era of globalization marked by the end of the Cold War and a growing North-South divide* (Chimni 2000: 2). It manipulates the language of human rights to legitimize a range of dubious practices, including its selective defense. In the case of Kosovo 'the extent of the human rights violations in Kosovo prior to the withdrawal of the OSCE's observer force was not massive and widespread' (Charney 1999). In the circumstances, the NATO states should

have pursued a peaceful solution to the problem of human rights violations. Among other things, international law has established a range of mechanisms to deal with human rights concerns. And as the ICJ pointed out in the *Nicaragua* case, '...where human rights are protected by international conventions that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves' (I.C.J. Reports 1986 para 267). What however motivated the NATO powers was not the human rights of the citizens of Yugoslavia but the need to renew and reposition NATO and to affirm the hegemony of NATO powers.

Roberts has therefore rightly called the NATO action 'a questionable model of humanitarian intervention' (Roberts 1999: 120). It is a questionable model *not* because there were no violations of human rights in Kosovo. There surely were. It is a dubious model because it encourages and endorses action contrary to established rules of international law and the Charter of the United Nations. In the case of NATO air strikes, the principle of peaceful means of settlement of disputes was clearly not exhausted. On the other hand, the NATO action contravened in the most fundamental way the principles of non-use of force, sovereignty and non-intervention. It also did not have appropriate UN authorization. Neither were the air strikes morally justified. Indeed, they ended up doing greater harm than they prevented. 'In sum', in the words of Falk, 'the NATO initiative on behalf of Kosovo offers us a badly flawed precedent for evaluating future claims to undertake humanitarian intervention without proper UN authorization' (Falk, 1999). For, among other things, 'it leaves the door open for hegemonic states to use force for purposes clearly incompatible with international law' (Charney 1999).

To conclude, there is little doubt that the unlawful NATO air strikes have seriously undermined the authority and integrity of the international legal system. For the NATO air strikes showed that while the West expects others to play by the rules of international law it does not itself expect to be constrained by them. As Chinkin points out, 'the Kosovo intervention shows that the West continues to script international law, even while it ignores the constitutional safeguards of the international legal order' (Chinkin 1999). This does not bode well for sustaining the rule of law in the international system.

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