Chapter Eight

The International Criminal Tribunal for the Former Yugoslavia

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A. Introduction

As its full name clearly indicates, 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” (better known as the “International Criminal Tribunal for the Former Yugoslavia”; hereinafter “the Tribunal” or “the ICTY”)

1 is a judicial institution with a very precisely delimited jurisdiction, warranting its categorization as the first of the *ad hoc* international criminal tribunals. Because of the historical context and circumstances of its creation, as well as its progressive case law, the Tribunal has, however, played a major role in the evolution of international law in the past two decades. It has not only catalyzed a renaissance of international criminal justice, which has ultimately led to the creation of the International Criminal Court and to various national initiatives to prosecute international crimes, but has also made a significant contribution to the further development of key concepts of the international legal order.

* The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

1 The official website of the Tribunal, which contains complete and updated information on its structure, activities and case-law, is: http://www.icty.org.
B. Overview

1. Establishment and Structure

In the first judgment it delivered on the merits of a case, the Tribunal qualified itself as the first “truly international tribunal” ever to determine individual responsibility for serious violations of international humanitarian law.²

The Tribunal is a creation of the United Nations. In the early 1990s, having repeatedly expressed its grave alarm at continuing reports of widespread violence occurring within the territory of the former Yugoslavia and affirmed that all parties were bound to comply with their international obligations in this regard,³ the Security Council requested the Secretary-General to establish an impartial Commission of Experts to examine and analyze the available information with a view to providing conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law.⁴ In its interim report, the Commission, having confirmed that such violations had taken place, recommended the creation of an ad hoc international tribunal to address the matter.⁵ On February 22, 1993, the Security Council therefore adopted resolution 808 (1993), in which, determining that the situation constituted a threat to international peace and security, it 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, and requested the Secretary-General to submit for its consideration, within sixty days, a report on all aspects of the matter. By resolution 827 (1993) of May 25, 1993, the Council, acting under Chapter VII of the Charter of the United Nations, approved the Secretary-General’s report⁶ and decided the establishment of the ICTY, attaching the Tribunal’s Statute.

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² Trial Chamber, Prosecutor v. Tadic, Case No. IT-94-1-T, Opinion and Judgment, May 7, 1997, ¶ 1. The Tribunal distinguished itself therein from the international military tribunals at Nürnberg and Tokyo, which were “multinational in nature, representing only a part of the world community.”


⁵ See UN Doc. S/25274, submitted by the Secretary-General to the President of the Security Council by letter dated Feb. 9, 1993.