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are responsible for human rights debasement. The lack of common initiative, steady movement and progress by the U.N. undermines the authority, legitimacy and progress of the ICTY and future tribunals.⁸

C. International Criminal Tribunal Yugoslavia, Legislation Enacted by Ten Different Nations on Judicial Assistance to the International Criminal Tribunal

by André Klip

In order to fulfil the obligations resulting from United Nations Security Council Resolution 827 (1993) and the Statute of the International Tribunal for War Crimes in the Former Yugoslavia, at least ten different nations enacted legislation. To the knowledge of the author, legislation is under preparation in Switzerland, Denmark, Australia, New Zealand, Sri Lanka, Turkey, the United Kingdom, the United States, and Belgium.¹ The Belgian draft draws the attention on to a problem not envisaged in the legislation of the ten nations mentioned below. These ten nations limit the legislation to assistance to the International Criminal Tribunal for Yugoslavia. The Belgian draft incorporates assistance to the Rwanda Tribunal on the same level as to the Yugoslavia Tribunal.² The establishment of a Rwanda tribunal causes a problem for those countries which at present are unable to assist international tribunals. By passing legislation limited to the assistance to the Yugoslavia tribunal, they prevent themselves from using this legislation as a legal basis for assistance to the Rwanda tribunal and any other present or future international tribunal.

General characteristics of the legislation now enacted by these ten countries are that three new elements in international cooperation are introduced. First, cooperation with the international tribunal is an obligation for the state requested by the tribunal. This breaks away with one traditional principle of international cooperation in criminal matters that states are only obliged to cooperate when they have bound themselves to do so on the basis of a treaty. Second, most countries did not have any provision in their legislation on the cooperation with international tribunals. Traditionally international cooperation took place between authorities of one state and another. In this respect the legislation closes a gap. Third, countries have to provide for a legal basis to transfer proceedings to the tribunal. However, not all of the ten countries made provisions relevant to this transfer. In most countries, once the prosecution has started, a trial can only be terminated by a final decision of a court. Traditionally the transfer of proceedings to another state was requested on a moment at which the transferring state had not yet initiated proceedings against the suspect. Countries handed over the dossier to another state before they had started criminal proceedings in their own country.

The following countries have enacted legislation (or concluded a host-country agreement):

Italy, Decree-Law No. 544 of December 28, 1993, provisions on co-operation with the International Tribunal for the prosecution of serious violations of international humanitarian law committed in the territory of the former Yugoslavia. *Disposizioni in materia di cooperazione con il Tribunale internazionale competente per gravi*

⁸ For background on the financial problems of the Tribunal, see *Prosecutor for Former Yugoslavian War Crimes Sets Agenda*, 11 INT'L ENFORCEMENT L. REP. 27 (Jan. 1995).

¹ Those readers who know of other nations having enacted legislation (or having legislation in preparation), other than the ten documents described below, are kindly requested to send a copy of the respective acts (drafts) to the author: University of Utrecht, Janskerkhof 16, 3512 BM Utrecht, The Netherlands.

² *Projet de loi relative à la coopération judiciaire avec le Tribunal international pour l'ex-Yugoslavie et le Tribunal International pour le Rwanda*. The draft was adopted by the Belgian Council of Ministers on April 7, 1995 and subsequently sent to the Council of State for advice. At this stage the text is not public.



violazioni del diritto umanitario commesse nei territori della ex Jugoslavia, Gazzetta Ufficiale della Repubblica Italiana, 22-2-1994, Serie generale n.43. Entered into force on February 23, 1994. This act regulates the cooperation with the tribunal. It contains provisions to bring a deferral request of the tribunal in accordance with Italian law. Article 5 recognizes the principle of *ne bis in idem*. Article 8 regulates the enforcement of a sentence in Italy. Article 10 obliges Italian authorities to give judicial assistance according to the provisions of the Code of Criminal Procedure. Article 11 states the brief procedure on the surrender of the accused;

Finland, act on the jurisdiction of the international tribunal for the prosecution of persons responsible for crimes committed in the territory of the former Yugoslavia and on legal assistance to the international tribunal of January 5, 1994.³⁴ This act went into force on January 15, 1994;

The Netherlands, provisions relating to the establishment of the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, Act of April 21, 1994. *Wet van 21 april 1994, houdende bepalingen verband houdende met de instelling van het Internationaal Tribunaal voor de vervolging van personen aansprakelijk voor ernstige schendingen van het internationale humanitaire recht, begaan op het grondgebied van het voormalige Joegoslavië sedert 1991, Netherlands Official Journal 1994, 308, Staatsblad van het Koninkrijk der Nederlanden 1994, 308.* Entered into force on May 4, 1994. The Dutch act contains provisions on the cooperation with the Tribunal which can be compared with the way cooperation with other countries take place. In most cases those provisions have to be applied analogically. However, the Dutch act does not provide for a deferral of a case to the Tribunal. Due to the specific situation as host country of the Tribunal article 10 gives some persons a safe conduct in the Netherlands. Witnesses or experts, regardless their nationality, who come to the Netherlands in response to a summons or subpoena issued by the Tribunal, shall not be prosecuted, arrested or subjected to any measures to restrict their liberty on account of offenses or convictions which preceded their arrival in the Netherlands;

United States of America, agreement on the Surrender of Persons between the Government of the United States and the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia of May 5, 1994. The Agreement with the United States is limited to the procedure of the surrender of persons to the Tribunal. It does not provide for any other assistance. It provides for a legal basis in United States law for the provisional arrest of the person sought pending presentation of the request for surrender and the transit of such persons;

Spain, Organization Act 15/1994 of June 1, 1994 on Cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia. *Ley Organica 15/1994, de 1 de junio, para la cooperación con el Tribunal Internacional para el enjuiciamiento de los presuntos responsables de violaciones graves del Derecho Internacional, BOE núm.131 Jueves 2 junio 1994, p. 17399.* This Act shall remain in force until the International Tribunal is dissolved, without prejudice to the effects deriving from the implementation of articles 7.3 and 8 of the act. The Spanish act is published together with a statement of reasons. It states that much of the Statute of the Tribunal is self-executing. The act makes provision for its implementation only in respect to those matters which the Constitution stipulates must be the subject of Organization Acts. Article 4 deals with concurrent jurisdiction. As long as the International Tribunal does not "prohibit" them to do so, Spanish courts shall initiate or continue the judicial proceedings that fall within the scope of the Statute. Article 5 recognizes the principle of *ne bis in idem*. Article 7 obliges persons summoned to appear before the Tribunal as witnesses or experts to appear. Article 8 deals with the enforcement of sentences;

³⁴ See for a description of this legislation Irma Lehtonen, *Finland Enacts Law on Cooperation with the Yugoslavia Tribunal*, 11 INT'L ENFORCEMENT L. REP. 114 (March 1995).



Sweden, act of June 2, 1994 relating to the Establishment of an International Tribunal for Trial of Crimes Committed in Former Yugoslavia. *Lag med anledning av inrättandet av Internationella tribunalen för brott i f.d. Jugoslavien, Svensk författningssamling 1994, 569, den 13 juni 1994*. Entered into force on July 1, 1994. The Swedish act makes the general provisions on international cooperation applicable to the assistance provided to the Tribunal. Section 12 deals with the transfer of persons deprived of their liberty for testimony to the Tribunal, which may only take place if the person concerned has consented to the measure. Section 13 refers to the deferral of proceedings and *ne bis in idem*. The Swedish act does not explicitly provide for the enforcement of sentences rendered by the Tribunal;

Norway, bill of June 24, 1994 relating to the incorporation into Norwegian law of the United Nations Security Council Resolution on the establishment of an international tribunal for crimes committed in the former Yugoslavia. *Lov om gjennomføring i norsk rett av De Forente Nasjoners Sikkerhetsråds vedtak om å opprette en internasjonal domstol for forbrytelser i det tidligere Jugoslavia*. Entered into force on July 1, 1994. The Norwegian act makes the general provisions on international cooperation applicable to the assistance provided to the Tribunal. Section 4 provides for counsel for the defense. Section 5 recognizes the principle of *ne bis in idem*. Section 6 deals with the execution of custodial sentences in Norway imposed by the Tribunal. Section 7 applies the Norwegian provisions on false testimony before the Tribunal correspondingly;

Netherlands-United Nations, agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, New York, July 29, 1994, Netherlands Treaties Series 1994, 189, *Tractatenblad van het Koninkrijk der Nederlanden 1994, 189*. Provisional application of the agreement from date of signature. The Agreement reflects the general characteristics of a host-country agreement of any other international (or United Nations) organization. It gives the Tribunal juridical responsibility in the Netherlands (article III). Article V declares the premises of the Tribunal inviolable. The Tribunal is exempted from taxes and duties and its officials receive privileges and immunity accorded to diplomatic agents in accordance with international law (article X, XIV and XV). Article XVIII contains a safe conduct for witnesses and experts appearing before the Tribunal in the host country. Article XIX provides for a safe conduct under Dutch law for the suspect or accused;

France, Act no. 95-1 of January 2, 1995 relating to the implementation into French law of the provisions of Resolution 827 of the United National Security Council establishing an 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. *Loi no. 95-1 du 2 janvier 1995 portant adaptation de la législation française aux dispositions de la résolution 827 du Conseil de sécurité des Nations Unies instituant un tribunal international en vue de juger les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yugoslavie depuis 1991, Journal Officiel de la République Française, 3 janvier 1995, p. 71*. Articles 3-6 of the French act deal with the deferral of proceedings ("*dessaisissement des juridictions françaises*") to the Tribunal. The act further provides for judicial assistance (articles 7-8) and extradition (articles 9-16). The act does not deal with the enforcement of sentences in France;

Bosnia and Herzegovina, decree of April 6, 1995 with force of law on deferral upon request by the International Tribunal, Official Gazette of the Republic of Bosnia and Herzegovina of April 10, 1995 no. 12 page 317. *Deklaraciju o kršenju ljudskih prava i sloboda bošnjaka-muslimana u sandžaku i drugim dijelovima Srbije crne gore*. Entered into force on April 10, 1995. The act of Bosnia-Herzegovina is almost entirely dedicated to the deferral (or extradition) of the accused. The procedure shows a great resemblance to the extradition proceedings. Article 3 states that Bosnia-Herzegovina is also willing to extradite its own nationals to the Tribunal; and

Germany, law regulating the cooperation with the International Tribunal for the Former Yugoslavia (Yugoslavia Tribunal Law) of April 10, 1995. *Gesetz über die Zusammenarbeit mit dem Internationalen*



Strafgerichtshof für das ehemalige Jugoslawien (Jugoslawien-Strafgerichtshof-Gesetz) vom 10. April 1995, Bundesgesetzblatt 1995 Teil I vom 13. April 1995, p. 485.⁴⁵

X. CORRUPTION

A. OECD and International Organizations Make Progress on Foreign and International Corruption

International organizations are making continued progress in combatting foreign and international corrupt practices. On June 22 and 23, 1995, an Organization of Economic Cooperation and Development (OECD) Working Group Meeting on Corrupt Practices reached agreement on reviewing alternative means to criminalize foreign corrupt practices.⁴⁶

Several positive results came out of the OECD meeting. At a three day meeting of the OECD Working Group in February 1996 alternative ways to deal with criminalizing foreign corrupt payments will be reviewed. In preparation for the meeting a group of criminal law experts will discuss how countries deal with criminalization of corrupt payments, both domestically and internationally. Their reports will in part provide a menu for dealing with corrupt payments.

An important parallel development is that the OECD Committee on Fiscal Affairs has proposed a resolution to eliminate deductions for bribes. In October 1995, the OECD Working Group on Corruption will meet with the Committee on Fiscal Affairs to discuss potential cooperation.

The multilateral financial banks, such as the World Bank Group, are likely to be the focus of efforts to develop improved guidelines to prevent and combat bribery with respect to procurement relating to the multilateral financial banks.

In Europe the series of bribery and corruption incidents in France, Italy, and the European Union have sensitized politicians and the general public about the need to take criminal action against corrupt payments. In addition, the third pillar has given the European Union the competence to deal with corruption, especially as it relates to the EU budget.

XI. BIBLIOGRAPHY OF BOOKS, ARTICLES AND DOCUMENTS

By Bruce Zagaris

A. Books

1. *Bribes and Corrupt Practices*

D.R. Cruver, *COMPLYING WITH THE FOREIGN CORRUPT PRACTICES ACT; A GUIDE FOR U.S. FIRMS DOING*

⁴⁵ See for a description of this act André Klip, *Draft Act on the Co-operation with the International Tribunal for War Crimes in Former Yugoslavia (ITWCFY)*, 11 INT'L ENFORCEMENT L. REP. 70 and 193 (February and May 1995).

⁴⁶ For background on the establishment of the Task Force to Enforce the Anti-Bribery Initiative, see *OECD Agrees to Establish Task Force of International Organization to Enforce Anti-Bribery Initiative*, 11 INT'L ENFORCEMENT L. REP. 156 (April 1995).