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Creation of an International Tribunal for Violations
Of International Humanitarian Law in the Former Yugoslavia

Pursuant to Security Council Resolution 808, the United States offers the following views and proposals for the creation of an international tribunal for the prosecution of persons responsible for violations of international humanitarian law in the former Yugoslavia.

In our view, the Tribunal should be established by the international community to enforce international standards. The Security Council has the authority under Chapter VII of the United Nations Charter to create such a tribunal, and is the appropriate body to do so. The process should not be limited to a single regional group. The Tribunal should apply substantive and procedural law that is internationally accepted.

The Tribunal must be fair and be seen as fair. It must therefore respect basic norms of due process, including: an impartial and independent trial court; a prosecutorial authority independent from the trial court; the participation of defendants in their own defense; the right to appeal to an independent appellate panel; and the observance of fundamental rights of defendants, including the right to counsel, to public proceedings, to cross-examine witnesses, and to present evidence.

Finally, the process for establishing the Tribunal should be designed to bring it into existence at an early date. The Security Council is in a position to do so in accordance with the procedure set forth in Resolution 808. The alternative of establishing a tribunal by treaty would, in our view, be much less effective and take much more time. This alternative would require a lengthy process of negotiation, conclusion and ratification; and it might lead to the absence of important states at the time the Tribunal begins its work.

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Accordingly, we propose that the following specific steps be taken in establishing the Tribunal:

1. The Security Council should consider the recommendations to be made by the Secretary-General pursuant to Resolution 808. It should adopt a resolution under Chapter VII that would formally establish the Tribunal and approve its Charter.

2. The Charter should contain the essential elements of the organization and operation of the Tribunal, such as: its composition; the scope of its jurisdiction; the basic procedure for indictment, trial and appeal; the rights of defendants; and the enforcement of its decisions. (A proposed draft Charter is attached.) Procedural details would be left to a set of Rules to be adopted at a later date. It would be important to develop Rules that are fair and that provide appropriate protection for victims who are providing evidence to the Tribunal.

3. The Security Council Resolution establishing the Tribunal should require that states endeavor to take any necessary measures, including the adoption of domestic legislation or the conclusion of subsidiary treaty arrangements, to permit them to comply fully with orders of the Tribunal, including those for the surrender of accused persons, the production of evidence, and the taking of testimony. The Resolution should also require states to provide reasonable assistance to other states in complying with orders of the Tribunal.

4. The Security Council should create a subordinate body, comprised of the members of the Security Council, to be known as the "Administrative Council". This body would, among other things, exercise general administrative control over the staffing and operations of the Chief Prosecutor and the Tribunal, and approve recommendations for financing the Tribunal's operations. Such financing should be provided through regular UN assessments.