
STATUTORY INSTRUMENTS

2006 No. 1923

UNITED NATIONS

The United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Amendment) Order 2006

<i>Made</i>	- - - -	<i>19th July 2006</i>
<i>Laid before Parliament</i>		<i>31st July 2006</i>
<i>Coming into force</i>	- -	<i>22nd August 2006</i>

At the Court at Buckingham Palace, the 19th day of July 2006

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 1 of the United Nations Act 1946⁽¹⁾, is pleased, by and with the advice of Her Privy Council, to order, as follows:-

Citation, commencement and extent

1.—(1) This Order may be cited as the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Amendment) Order 2006 and shall come into force on 22nd August 2006.

(2) This Order extends to the United Kingdom.

2. The Schedule to the United Nations (International Tribunal) (Former Yugoslavia) Order 1996⁽²⁾ is amended by deleting Articles 12, 13 *bis*, 13 *ter*, 13 *quater* and 14 of the Statute of the International Tribunal and substituting for them the provisions set out in Schedule 1 to this Order.

3. The Schedule to the United Nations (International Tribunal) (Rwanda) Order 1996⁽³⁾ is amended by deleting Articles 11, 12, 12 *bis*, 12 *ter*, 12 *quater*, 13 and 15 of the Statute of the International Tribunal and substituting for them the provisions set out in Schedule 2 to this Order.

⁽¹⁾ 1946 c. 45.

⁽²⁾ S.I.1996/716, amended by S.I. 1997/1752, 1998/1755, 2000/1342, 2000/3243 and 2001/412.

⁽³⁾ S.I. 1996/1296, amended by S.I. 1997/1751, 1998/1755, 2000/1342, 2000/3243 and 2001/412.

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A K Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 2

Article 12

Composition of the Chambers

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of twelve *ad litem* independent judges appointed in accordance with article 13 *ter*, paragraph 2, of the Statute, no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any one time of nine *ad litem* judges shall be members of each Trial Chamber. Each Trial Chamber to which *ad litem* judges are assigned may be divided into sections of three judges each, composed of both permanent and *ad litem* judges, except in the circumstances specified in paragraph 5 below. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules.

3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

4. A person who for the purposes of membership of the Chambers of the International Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

5. The Secretary-General may, at the request of the President of the International Tribunal appoint, from among the *ad litem* judges elected in accordance with Article 13 *ter*, reserve judges to be present at each stage of a trial to which they have been appointed and to replace a judge if that judge is unable to continue sitting.

6. Without prejudice to paragraph 2 above, in the event that exceptional circumstances require for a permanent judge in a section of a Trial Chamber to be replaced resulting in a section solely comprised of *ad litem* judges, that section may continue to hear the case, notwithstanding that its composition no longer includes a permanent judge.

Article 13 *bis*

Election of permanent judges

1. Fourteen of the permanent judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter

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referred to as “The International Tribunal for Rwanda”) in accordance with article 12 *bis* of the Statute of that Tribunal;

- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-eight and not more than forty-two candidates, taking due account of the adequate representation of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect fourteen permanent judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 13 *ter*

Election and appointment of *ad litem* judges

1. The *ad litem* judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council in the following manner:

- (a) The Secretary-General shall invite nominations for *ad litem* judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 13 of the Statute, taking into account the importance of a fair representation of female and male candidates;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than fifty-four candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable distribution;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the twenty-seven *ad litem* judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected;
- (e) The *ad litem* judges shall be declared elected for a term of four years. They shall be eligible for re-election.

2. During any term, *ad litem* judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including three years. When requesting the appointment of any

particular *ad litem* judge, the President of the International Tribunal shall bear in mind the criteria set out in article 13 of the Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraph 1 (b) and (c) above and the number of votes the *ad litem* judge received in the General Assembly.

Article 13 *quater*

Status of *ad litem* judges

1. During the period in which they are appointed to serve in the International Tribunal, *ad litem* judges shall:

- (a) Benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal;
- (b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal;
- (c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal;
- (d) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.

2. During the period in which they are appointed to serve in the International Tribunal, *ad litem* judges shall not:

- (a) Be eligible for election as, or to vote in the election of, the President of the Tribunal or the Presiding Judge of a Trial Chamber pursuant to article 14 of the Statute;
- (b) Have power:
 - (i) To adopt rules of procedure and evidence pursuant to article 15 of the Statute. They shall, however, be consulted before the adoption of those rules;
 - (ii) To review an indictment pursuant to article 19 of the Statute;
 - (iii) To consult with the President in relation to the assignment of judges pursuant to article 14 of the Statute or in relation to a pardon or commutation of sentence pursuant to article 28 of the Statute.

3. Notwithstanding, paragraphs 1 and 2 above, an *ad litem* judge who is serving as a reserve judge shall, during such time as he or she so serves:

- (a) Benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal;
- (b) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal;
- (c) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to and for that purpose to enjoy subject to paragraph 2 above, the same powers as permanent judges.

4. In the event that a reserve judge replaces a judge who is unable to continue sitting, he or she will, as of that time, benefit from the provisions of paragraph 1 above.

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Article 14

Officers and Members of the Chambers

1. The permanent judges of the International Tribunal shall elect a President from amongst their number.
2. The President of the International Tribunal shall be a member of the Appeals Chamber and shall preside over its proceedings.
3. After consultation with the permanent judges of the International Tribunal, the President shall assign four of the permanent judges elected or appointed in accordance with Article 13 *bis* of the Statute to the Appeals Chamber and nine to the Trial Chambers.
4. Two of the permanent judges of the International Tribunal for Rwanda elected or appointed in accordance with article 12 *bis* of the Statute of that Tribunal shall be assigned by the President of that Tribunal, in consultation with the President of the International Tribunal, to be members of the Appeals Chamber and permanent judges of the International Tribunal.
5. After consultation with the permanent judges of the International Tribunal, the President shall assign such *ad litem* judges as may from time to time be appointed to serve in the International Tribunal to the Trial Chambers.
6. A judge shall serve only in the Chamber to which he or she was assigned.
7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of the Trial Chamber as a whole.

SCHEDULE 2

Article 3

Article 11

Composition of the Chambers

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of nine *ad litem* independent judges appointed in accordance with article 12 *ter*, paragraph 2, of the present Statute, no two of whom may be nationals of the same State.
2. Three permanent judges and a maximum at any one time of six *ad litem* judges shall be members of each Trial Chamber. Each Trial Chamber to which *ad litem* judges are assigned may be divided into sections of three judges each, composed of both permanent and *ad litem* judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the present Statute and shall render judgement in accordance with the same rules.
3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.
4. A person who for the purposes of membership of the Chambers of the International Tribunal for Rwanda could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

Article 12

Qualifications of judges

The permanent and *ad litem* judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 12 *bis*

Election of permanent judges

1. Eleven of the permanent judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for permanent judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 12 of the present Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge 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 (hereinafter referred to as “the International Tribunal for the Former Yugoslavia”) in accordance with article 13 *bis* of the Statute of that Tribunal;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect eleven permanent judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 12 of the present Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the permanent judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

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Article 12 *ter*

Election and appointment of *ad litem* judges

1. The *ad litem* judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

- (a) The Secretary-General shall invite nominations for *ad litem* judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 12 of the present Statute, taking into account the importance of a fair representation of female and male candidates;
- (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than thirty-six candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution;
- (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eighteen *ad litem* judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected;
- (e) The *ad litem* judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, *ad litem* judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular *ad litem* judge, the President of the International Tribunal for Rwanda shall bear in mind the criteria set out in article 12 of the present Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the *ad litem* judge received in the General Assembly.

Article 12 *quater*

Status of *ad litem* judges

1. During the period in which they are appointed to serve in the International Tribunal for Rwanda, *ad litem* judges shall:

- (a) Benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal for Rwanda;
- (b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal for Rwanda;
- (c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal for Rwanda;
- (d) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.

2. During the period in which they are appointed to serve in the International Tribunal for Rwanda, *ad litem* judges shall not:

- (a) Be eligible for election as, or to vote in the election of, the President of the International Tribunal for Rwanda or the Presiding Judge of a Trial Chamber pursuant to article 13 of the present Statute;
- (b) Have power:
 - (i) To adopt rules of procedure and evidence pursuant to article 14 of the present Statute. They shall, however, be consulted before the adoption of those rules;
 - (ii) To review an indictment pursuant to article 18 of the present Statute;
 - (iii) To consult with the President of the International Tribunal for Rwanda in relation to the assignment of judges pursuant to article 13 of the present Statute or in relation to a pardon or commutation of sentence pursuant to article 27 of the present Statute.

Article 13

Officers and members of the Chambers

1. The permanent judges of the International Tribunal for Rwanda shall elect a President from amongst their number.

2. The President of the International Tribunal for Rwanda shall be a member of one of its Trial Chambers.

3. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign two of the permanent judges elected or appointed in accordance with Article 12 *bis* of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the Trial Chambers of the International Tribunal for Rwanda.

4. The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

5. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign such *ad litem* judges as may from time to time be appointed to serve in the International Tribunal for Rwanda to the Trial Chambers.

6. A judge shall serve only in the Chamber to which he or she was assigned.

7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of that Trial Chamber as a whole.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source.

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3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the United Nations Act 1946.

It further amends the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 to reflect the decisions of the Security Council of the United Nations in Resolution 1411 (2002), Resolution 1431 (2002), Resolution 1481 (2003), Resolution 1597 (2005) and Resolution 1660 (2006) amending the Statute 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 established by Resolution 827 (1993) of the Security Council of the United Nations.

The Order also further amends the United Nations (International Tribunal) (Rwanda) (Order) 1996 to reflect the decisions of the Security Council of the United Nations in Resolution 1411 (2002), Resolution 1503 (2003) and Resolution 1512 (2003) amending the Statute of the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1st January 1994 and 31st December 1994, established by Resolution 955 (1994) of the Security Council of the United Nations.

The Order also makes provision to implement the decision of the Security Council of the United Nations in Resolution 1431 (2002) which established a pool of *ad litem* judges in the International Tribunal for Rwanda.