

The representative of Iraq emphasized the positive developments that his country had undergone in the past few months, including the establishment of a permanent, democratic constitution, legal institutions and a national unity government comprising all political parties. He reported that his Government continued its efforts to achieve national reconciliation, expanded political participation, respect for human rights and sustainable economic growth, including through implementation of the International Compact with Iraq. While reaffirming the importance of the role of the multinational force, alongside Iraqi national forces, in contributing to the efforts to establish security and the rule of law, he requested that the Security Council should consider extending the mandate of the multinational force in the light of Iraq's achievements over the past few years, namely the strengthened capacity of its army and security forces and significant successes in the security, political and economic spheres. That progress called for a review of the role and authority of the multinational force in order to strike a balance between the need to extend the mandate of the force one last time and the progress made by Iraq in the area of security.

He also said that it was essential for the Government of Iraq to be treated as that of an

independent and fully sovereign State. He stated that his Government welcomed resolution 1790 (2007) on the understanding that the functions of recruiting, training and equipping the Iraqi army and security forces were the responsibility of the Government of Iraq.

He further stated that the Government of Iraq welcomed resolution 1790 (2007) on the understanding that this was the final extension of the mandate of the multinational force, and it expected that, in future, the Council would be able to deal with the situation in Iraq without the need to act under Chapter VII of the Charter of the United Nations.

Stressing the importance of development programmes and reconstruction, the representative of Iraq held that his country should release itself from the legacy of the former regime and be liberated from the financial burdens associated therewith. In that regard, he urged the Council to review its resolutions²⁰⁷ on the Compensation Fund for Kuwait with a view to reducing the current rate of 5 per cent of the Iraqi proceeds from oil to be deposited into the Fund.²⁰⁸

²⁰⁷ See also the letter dated 7 December 2007 from the Prime Minister of Iraq (resolution 1790 (2007), annex I).
²⁰⁸ S/PV.5808, pp. 5-7.

Thematic issues

36. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991¹

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 and 31 December 1994¹

¹ For the technical and procedural decisions taken under the items relating to the International Tribunals for the Former Yugoslavia and Rwanda, including the appointment of the Prosecutors, the election of judges and the extension of the terms of office of permanent and ad litem judges, see chap. V, part I, sect. D.

**Decision of 26 March 2004 (4935th meeting):
resolution 1534 (2004)**

At the 4935th meeting, on 26 March 2004, the President (France) drew the attention of the Security Council to a draft resolution;² it was adopted unanimously as resolution 1534 (2004), by which the Council, *inter alia*:

Reaffirmed the necessity of trial of persons indicted by the International Tribunal for the Former Yugoslavia, reiterated its call upon all States, especially Serbia and Montenegro, Croatia and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina, to intensify cooperation with and render all necessary assistance to the Tribunal, particularly to bring Radovan Karadžić and Ratko Mladić, as well as Ante Gotovina and all other indictees, to the Tribunal and called upon all at-large indictees of the Tribunal to surrender to it;

Requested each Tribunal to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor of the progress made towards implementation of the completion strategy of the Tribunal;

Declared its determination to review the situation, and, in the light of the assessments received, to ensure that the time frames set out in the completion strategies and endorsed in resolution 1503 (2003) can be met.

Deliberations of 29 June 2004 (4999th meeting)

At its 4999th meeting, on 29 June 2004, the Council included in its agenda a letter dated 21 May 2004 from the President of the International Tribunal for the Former Yugoslavia³ and letter dated 30 April 2004 from the President of the International Criminal Tribunal for Rwanda,⁴ which in accordance with resolution 1534 (2004) detailed the Tribunals' progress towards implementation of their completion strategies, including what measures had been taken to implement the strategies and what measures remained.

At the meeting, all Council members made statements, in addition to the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia and Montenegro. The Council also heard statements by the President and Prosecutor of each Tribunal.

In his briefing, the President of the International Tribunal for the Former Yugoslavia noted that in cases involving 59 defendants, the Tribunal had either completed trials, was holding trials or, in the case of

guilty pleas, holding sentencing proceedings. Another 33 accused individuals in 17 cases were awaiting trial. He stated that to help ensure that the completion strategy deadlines were met, the Tribunal had taken additional steps, including amending the Tribunal's Rules of Procedure and Evidence to, *inter alia*, allow referral of intermediate and lower rank accused to "adequately prepared" national jurisdictions. This rule was also no longer limited to States in which the accused was arrested or on whose territory the alleged crime had been committed, but could also be other States having jurisdiction, and which were willing and able to accept such cases. He stressed that those referrals would take place only if the Tribunal was assured that the conduct of trials, detention facilities and treatment of detainees met with applicable international standards. While the Tribunal was committed to supporting the achievement of credible war crimes trials in all States of the former Yugoslavia, neither Croatia nor Serbia and Montenegro currently satisfied such criteria. The Tribunal could try all accused individuals currently in its custody before the end of 2008, and capacity could be increased if some of those entered guilty pleas or were transferred to national jurisdictions. With respect to measures required to maintain and improve the Tribunal's productivity, the President of the Tribunal stressed that staffing, election of judges and cooperation of Member States deserved special attention.

He further explained that the arrears in Member States' contributions had led to a "recruitment freeze" in May 2004, and could lead to the Tribunal being forced to delay, suspend or stop trials. He therefore appealed to those in arrears to make immediate payment of their assessments. He cautioned that if some of the Tribunal's permanent judges were not re-elected to a new mandate beginning 17 November 2005, disruption of the Tribunal's work would be unavoidable. The Secretary-General had accepted his suggestion that judicial elections be held in November 2004 rather than March 2005 as previously scheduled. This would enable the assignment of longer trials to newly elected judges and help avoid disruption of cases. Ad litem judges were another concern that required attention, since their mandate would expire on 11 June 2005 and they could not be re-elected under the present statute. With respect to the need for improved cooperation by Member States, the failure of the States of the former Yugoslavia to arrest and transfer Radovan

² S/2004/232.

³ S/2004/420.

⁴ S/2004/341.

Karadžić, Ratko Mladić and Ante Gotovina was a major impediment to the Tribunal's work.⁵

The President of the International Criminal Tribunal for Rwanda stated that the Tribunal was on schedule, noting that by the end of 2004 the number of persons whose trials had been completed or were in progress would have reached 48, as projected in the completion strategy. The most important development had been the increase in the number of ad litem judges that could sit at any one time from four to nine, and that had significantly increased the Tribunal's efficiency and flexibility. He noted that the main challenge facing the Tribunal was to ensure progress in the five multi-accused cases involving a total of 22 accused. He stressed that the deadline set by resolution 1503 (2003) would be respected, provided the Tribunal had the necessary resources. The fact that some States had not paid their contributions could threaten the completion strategy and the present freeze in recruitment might have serious consequences for all branches of the Tribunal, he cautioned. He invited the Security Council's informal working group on Tribunals to pay a visit to Arusha "in order to get the full picture of what we are achieving there".⁶

The Prosecutor of the International Tribunal for the Former Yugoslavia highlighted her Office's commitment to the deadlines. She noted that the Tribunal would continue to streamline its trials and appeals, and that a number of measures had already been taken to improve the efficiency of the prosecution. She stressed that the transfer of mid- and low-level cases to domestic jurisdictions would free court resources for senior accused leaders, but efforts had yet to be invested in establishing domestic jurisdictions capable of trying war criminals. Among key challenges to ensuring that the Tribunal's mandate was properly and successfully achieved, there were many exigencies beyond its control and which required the participation and cooperation of States, including in the arrest of fugitives, the appearance of witnesses, provision of resources to address the Tribunal's critical financial situation, and the emergence of crucial evidence. She stressed, inter alia, that the failure of the Republika Srpska in Bosnia and Herzegovina and Serbia and Montenegro to arrest or obtain the surrender of 20 indicted persons prevented the Tribunal from joining cases that could be tried

together. Highlighting the Tribunals' dire budgetary and financial situation, she stated that her Office had been badly hit by the deferred consideration of the 2005 budget for investigative support for trials and appeals. Regarding cooperation, she said that beyond the arrest of indicted criminals, States had the obligation to grant access to witnesses and documents. While the Croatian authorities had been fully cooperative, Serbia and Montenegro had become a safe haven for fugitives. She also deplored that Karadžić and Mladić had been at large for almost 10 years. In closing, she urged Council members to continue their support for the Tribunal and to ensure that it was given the means necessary to fulfil its full potential.⁷

The Prosecutor of the International Criminal Tribunal for Rwanda stressed that the number of accused who remained to be prosecuted at Arusha by 2008 was greater than the number of those whose cases had been concluded in the period from the Tribunal's inception to date. Meeting that challenge required new strategies, and ways had been sought to streamline the processes, eliminate duplication, and improve coordination, focus and efficiency in prosecutions. Noting that the transfer of cases was an important component of the completion strategy, he stated that a draft agreement on the transfer of cases was being prepared as a basis for negotiations with interested countries, including Rwanda. The Prosecutor stressed that the discharge of the Tribunal's mandate depended to a large extent on the level of international cooperation it received to have in place a full complement of prosecuting staff with adequate budgetary support. He noted that the state and level of cooperation with Rwanda continued to be satisfactory. In closing, he further stressed that the Tribunal continued to require assistance in respect of the tracking and apprehension of suspects and accused persons, in the acceptance by States of cases for prosecution within their national jurisdictions, and in the relocation and protection of witnesses. Above all the Tribunal required support in the provision by States of resources, both human and material, which were necessary for the Tribunal to finish its task properly and on time.⁸

In their reactions to the briefings and assessments of the two Tribunals, speakers were pleased to note that the authorities of the two Tribunals were making every effort to complete their work within the time frames set

⁵ S/PV.4999, pp. 4-10.

⁶ *Ibid.*, pp. 10-13.

⁷ *Ibid.*, pp. 13-16.

⁸ *Ibid.*, pp. 16-21.

out under resolutions 1503 (2003) and 1534 (2004). Delegations stressed that the exit strategy of resolution 1503 (2003) could be successful only if the international community was fully mobilized and worked to take specific steps to achieve that goal. Speakers expressed concern about factors that could jeopardize the Council's time frames for completion of the proceedings by 2010. Among the different obstacles before the Tribunals, speakers highlighted, *inter alia*, the lack of resources resulting from Member States' non-payment of their contributions and the need for Member States' full cooperation with the Tribunals in bringing accused individuals to account.

The representative of France, supported by several speakers, opined that to avoid impeding the completion strategies the Tribunals would need the full cooperation of all States, particularly Rwanda and the States of the former Yugoslavia.⁹ He further stated that the arrest and transfer of accused individuals to The Hague or Arusha, access to witnesses and the provision of documents was obligatory under the statutes of the Tribunals. The statutes, in turn, had been adopted by the Council in resolutions adopted under Chapter VII of the Charter of the United Nations.¹⁰ While welcoming Croatia's increased cooperation with the International Tribunal for the Former Yugoslavia, the representatives of France, the United Kingdom and Germany called on the authorities in Bosnia and Herzegovina and Serbia and Montenegro to cooperate fully with the Tribunal.¹¹ In this regard, the representative of the United Kingdom stressed that his country would maintain appropriate pressure on all concerned States to meet their obligations, and that continued non-compliance with Security Council resolutions by Bosnia and Serbia and Montenegro would "frustrate any aspirations" of integration with Euro-Atlantic structures.¹²

With respect to the shortfall in Member States' contributions to the Tribunals, most speakers urged those concerned to make good on their commitments. The representative of France held that the Tribunals

should not be expected to implement their completion strategies without proper funding.¹³ The representative of Brazil assured the Council that his country was making every effort to fulfil his country's outstanding commitments.¹⁴

Turning to the election of permanent judges of the International Tribunal for the Former Yugoslavia whose terms would expire in November 2005, several speakers voiced concern at the likely disruption to the Tribunal's work should some of these not be re-elected and expressed their willingness to resolve the issue. The representative of Benin called for the reconciliation of the judges' mandates with the length of trials.¹⁵ The representative of the United Kingdom opined that the Council should consider allowing judges who were not re-elected to complete their cases when such cases were over six months old.¹⁶ In the view of the representative of the Russian Federation, in resolving the issue it was essential to maintain "universally accepted norms".¹⁷ Any "legitimate solution" to the problem, added the representative of Brazil, should be approved by the General Assembly in the light of its "prerogatives" on the subject.¹⁸

Council members generally stressed the importance of the transfer of intermediate and lower rank accused to suitable national jurisdictions, which was an important element in meeting the timelines of the completion strategies. They underlined that prior to such transfers the national jurisdictions concerned must meet the relevant international standards of justice, and noted that the establishment of the special war crimes court in Bosnia and Herzegovina was a positive step in this direction.

The representative of the United Kingdom welcomed the plans of the International Tribunal for the Former Yugoslavia to conduct a further review of cases for possible referrals in 2005, but, together with the representatives of Chile and the United States, emphasized that key accused individuals, including Karadžić, Mladić and Gotovina, had to be tried directly by the Tribunal.¹⁹ As to the International Criminal

⁹ *Ibid.*, pp. 21-22 (France); pp. 22-23 (Chile); pp. 24-25 (Brazil); pp. 25-26 (Romania); pp. 26-27 (Germany); p. 27 (United States); S/PV. 4999 (Resumption I), pp. 3-4 (Benin); and pp. 6-7 (Spain).

¹⁰ S/PV. 4999, pp. 21-22.

¹¹ *Ibid.*, pp. 21-22 (France); pp. 23-24 (United Kingdom); pp. 26-27 (Germany); and p. 27 (United States).

¹² *Ibid.*, pp. 23-24.

¹³ *Ibid.*, pp. 21-22.

¹⁴ *Ibid.*, pp. 24-25.

¹⁵ S/PV.4999 (Resumption I), pp. 3-4.

¹⁶ S/PV.4999, pp. 23-24.

¹⁷ *Ibid.*, pp. 27-28.

¹⁸ *Ibid.*, pp. 24-25.

¹⁹ *Ibid.*, pp. 23-24 (United Kingdom); pp. 22-23 (Chile) and p. 27 (United States).

Tribunal for Rwanda, he noted the importance of exploring the possibility of transferring cases to African States where certain suspects were being detained, and hoped that Rwanda would soon meet the requisite standards for such referrals.²⁰ The representative of Benin was of the view that the Tribunals should also pay close attention to the “cultural environment” of those States they referred cases to.²¹ The representative of Romania held that the concept of senior perpetrators could be further adjusted, as provided for in resolution 1534 (2004). This would allow an even greater number of cases to be transferred to national jurisdictions.²²

The representative of Bosnia and Herzegovina stated that “in all fairness”, his country had “done a lot” when it came to cooperation with the International Tribunal for the Former Yugoslavia since the last report of the President and the Prosecutor of the Tribunal.²³ The representative of Rwanda, while noting that the number of suspects considered to be “most responsible” had decreased from 300 to less than 50, requested the Council to ensure that there would be no impunity and that suspects no longer pursued by the Tribunal would face justice. He believed that the international community, and the Council in particular, had a responsibility to bring those suspects to justice, whether at the ICTR or elsewhere. He also urged the Council to recognize the difficulties faced by genocide survivors, including women who had contracted HIV as a result of rapes. While those responsible for those crimes received treatment in United Nations detention facilities, their victims — who were often expected to testify in the cases — were not given the necessary attention.²⁴

The representative of Serbia and Montenegro, while stating that his Government’s cooperation with the office of the Prosecutor of the International Tribunal for the Former Yugoslavia had been of somewhat “lower intensity” owing to circumstances stemming from the political situation in the country, stressed that the Council could “rest assured” that his Government in the near future would continue to cooperate with the Tribunal.²⁵

²⁰ Ibid., pp. 23-24.

²¹ S/PV.4999 (Resumption 1), pp. 3-4.

²² S/PV.4999, pp. 24-25.

²³ S/PV.4999 (Resumption 1), pp. 7-8.

²⁴ Ibid., pp. 9-11.

²⁵ Ibid., pp. 11-12.

Decision of 4 August 2004 (5016th meeting): statement by the President

At its 5016th meeting, on 4 August 2004, the Council included in its agenda a letter dated 21 May 2004 from the President of the International Tribunal for the Former Yugoslavia²⁶ and a letter dated 30 April 2004 from the President of the International Criminal Tribunal for Rwanda to the Security Council,²⁷ which in accordance with resolution 1534 (2004) detailed the Tribunals’ progress towards implementation of their respective completion strategies.

The President (Russian Federation) then read out a statement on behalf of the Council,²⁸ by which the Council, *inter alia*:

Reaffirmed its support for the two Tribunals and welcomed their efforts to carry out their completion strategies;

Strongly encouraged the Tribunals to make every effort to ensure that they remained on track to meet the target dates of the completion strategies;

Stressed that the full cooperation of all States with the Tribunals was not only a mandatory obligation of all States but also was an essential element in realizing the completion strategies;

Reiterated its call upon all States to intensify cooperation with and render all necessary assistance to the International Tribunal for the Former Yugoslavia, in particular to bring Radovan Karadžić and Ratko Mladić, as well as Ante Gotovina and all other such indictees to the Tribunal;

Reiterated its call upon all States to intensify cooperation with and render all necessary assistance to the International Criminal Tribunal for Rwanda, including in investigations of the Rwandan Patriotic Army and efforts to bring Félicien Kabuga and all other such indictees to the Tribunal;

Noted with concern that the shortfall in financial contributions from Member States was having a disruptive effect on the work of the Tribunals and urged Member States to fulfil their commitments in a timely manner.

Deliberations of 23 November 2004 (5086th meeting)

At its 5086th meeting, on 23 November 2004, the Council included in its agenda a letter dated 23 November 2004 from the President of the International Tribunal for the Former Yugoslavia,²⁹ and a letter dated

²⁶ S/2004/420.

²⁷ S/2004/341.

²⁸ S/PRST/2004/28.

²⁹ S/2004/897.

19 November 2004 from the President of the International Criminal Tribunal for Rwanda,³⁰ transmitting assessments and reports regarding the implementation of the completion strategies of the two Tribunals, pursuant to resolution 1534 (2004). The Council heard statements by the Presidents and Prosecutors of the two Tribunals. All Council members, as well as the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia and Montenegro took the floor.

The President of the International Tribunal for the Former Yugoslavia reported that the Tribunal's trial chambers continued to work at full capacity. The Tribunal's ability to adhere to its completion strategy, he noted, centred on referring cases to national courts, improved cooperation by the States of the former Yugoslavia and a continued focus of resources on the most senior-level accused. Rule 11 bis of the Rules of Procedure and Evidence gave the Tribunal's trial chambers the power to refer indictments to the authorities of certain States, although the Tribunal would retain jurisdiction over the most high-level defendants and the most serious crimes. The States of the former Yugoslavia were at varied stages of readiness to receive transfers, he added, with a special chamber of the State Court of Bosnia and Herzegovina expected to become operational by January 2005. He reported a wide variation in the willingness of the above-mentioned States to cooperate with the Tribunal, although the cooperation of Bosnia and Herzegovina remained positive. Concerning the status of the completion strategy, he noted that "significant revision" of the assessment estimates of May 2004 would not be required. The current hiring freeze could nevertheless affect the Tribunal's ability to successfully implement the completion strategy.³¹

The President of the International Criminal Tribunal for Rwanda said that the Tribunal intended to complete all its trials by 2008 in line with its completion strategy, but underlined that it could only comply with the strategy time frames if it was provided with sufficient resources. He noted that the shortfall in assessed contributions had required that a hiring freeze be imposed. He noted Rwanda's continued cooperation

with the Tribunal, providing relevant documentation and allowing a "steady flow of witnesses" to Arusha.³²

The Prosecutor of the International Tribunal for the Former Yugoslavia addressed obstacles that could derail the Tribunal's completion strategy and which were "outside" its control, chief among them a lack of cooperation of States, particularly in the arrest and transfer of indictees, including Radovan Karadžić, Ratko Mladić and Ante Gotovina. The Tribunal's objectives, she underlined, would not be fulfilled unless these and other high-level accused were tried at The Hague. Most fugitives, she reported, had found a "safe haven" in Serbia and Montenegro, while some still resided in Bosnia and Herzegovina. Ante Gotovina had recently been "seen repeatedly" in Croatia. As for the latter's "stepped up" efforts to locate Gotovina, who appeared to benefit from a well-organized support network, the Prosecutor noted that those efforts had yet to produce concrete results. Should such high-level indictees not be arrested and transferred to The Hague "in the months to come", she cautioned, the target dates of the completion strategy might have to be revised. Concerning the "financial crisis" in the Tribunal and the hiring freeze imposed by the Secretariat in May 2004, she stressed that this had already impeded the Tribunal's work and could soon affect the efficiency of the trials.³³

The Prosecutor of the International Criminal Tribunal for Rwanda reported that progress had been made on several fronts since his last briefing on 29 June; as projected, all investigations would be completed by the end of 2004. He further reported that discussions were under way with Rwanda and other States concerning the transfer of medium- and lower-level cases. Apart from the former, however, it was proving difficult to find States "ready, able and willing" to take on such cases. The Prosecutor stressed that 14 indictees remained at large, the majority located in the Democratic Republic of the Congo. Efforts at dialogue with the Government of the Democratic Republic of the Congo in that respect were ongoing.³⁴

Delegations noted with appreciation the progress made by the two Tribunals since the last presentations. Such progress, they agreed, kept on course the goal of the completion strategies to conclude trials by 2008

³⁰ S/2004/921.

³¹ S/PV.5086, pp. 4-8.

³² *Ibid.*, pp. 8-10.

³³ *Ibid.*, pp. 10-14.

³⁴ *Ibid.*, pp. 14-15.

and appeals by 2010. They also appreciated the improvement in the efficiency of the Tribunals. Many delegations expressed their support for the idea of referring medium- and lower-level indictees to national jurisdictions. The representative of the United Kingdom praised the Tribunals for doing an excellent job in preparing national courts to receive such cases, as evidenced by the establishment of a war crimes chamber in Bosnia and Herzegovina.³⁵

Concerns were voiced by some delegations, however. The representative of Brazil, echoed by the representative of Benin, held that the transfer of cases to local courts should reflect the actual conditions of those judicial institutions, and that international principles and standards of due process must be respected by the third-party Tribunals.³⁶ The representative of France was concerned about the “climate of intimidation” and, in general, the climate in which the authority of the International Tribunal for the Former Yugoslavia was challenged, which put in doubt the environment in which some national jurisdictions were to try cases.³⁷

The representatives of Bosnia and Herzegovina and Croatia expressed their readiness to assume part of the Tribunal’s work, the former calling upon Member States to provide technical and financial support to that end.³⁸ The representative of Croatia stated that his country had started a programme with the support of the Netherlands to train legal experts in prosecuting war crimes. The representative of Rwanda considered the transfer of cases to its national jurisdiction to be a key factor in ensuring that all major perpetrators of genocide faced justice, even after the completion of the Tribunal’s mandate.³⁹

Delegations shared the concern that a number of problems, if left unresolved, might hamper the smooth implementation of the completion strategies. Of particular concern was the lack of cooperation from some States in terms of the arrest of indictees as well as access to witnesses and documentary evidence. At the same time, speakers were in agreement that, as long as the indictees remained at large, in particular those at

high levels, the Tribunals would not be able to complete their mandates. The representatives of Brazil and Spain hinted that the Council might eventually need to adjust the completion strategies.⁴⁰

On the International Tribunal for the Former Yugoslavia, the representative of the United States, echoed by the representative of the United Kingdom, reiterated that Serbia and Montenegro, Bosnia and Herzegovina, and Croatia must fulfil their legal obligation to cooperate fully with the Tribunal by apprehending all indictees.⁴¹ It was disturbing, said the representative of France, to learn that effective and well-placed networks still protected those responsible for major crimes.⁴² On the International Criminal Tribunal for Rwanda, the representative of the United States urged the Democratic Republic of the Congo and Kenya to fulfil their obligations to apprehend the indictees. Those fugitives, he said, continued to incite conflict in the Great Lakes region.⁴³

The representative of Croatia contended that his Government was in no way evading its responsibility.⁴⁴ Without directly responding to the charges of non-cooperation, the representative of Serbia and Montenegro reiterated his country’s willingness to cooperate with the International Tribunal for the Former Yugoslavia.⁴⁵ The representative of Bosnia and Herzegovina regretted that the most recent activities of the authorities of his country were not recognized by the Tribunal, including the arrests of eight indictees.⁴⁶

Deliberations of 13 June 2005 (5199th meeting)

At its 5199th meeting, on 13 June 2005, the Council included in its agenda a letter dated 25 May 2005 from the President of the International Tribunal for the Former Yugoslavia⁴⁷ and a letter dated 19 November 2005 from the President of the International Criminal Tribunal for Rwanda,⁴⁸ transmitting assessments of the completion strategies of the Tribunals by their Presidents and Prosecutors. During the meeting, all

³⁵ Ibid., pp. 17-18.

³⁶ Ibid., pp. 18-19 (Brazil); and p. 23 (Benin).

³⁷ Ibid., pp. 23-25.

³⁸ Ibid., pp. 32-34 (Croatia); and pp. 38-39 (Bosnia and Herzegovina).

³⁹ Ibid., pp. 36-38.

⁴⁰ Ibid., pp. 18-19 (Brazil); and pp. 21-23 (Spain).

⁴¹ Ibid., p. 28 (United States); and pp. 17-18 (United Kingdom).

⁴² Ibid., pp. 23-25.

⁴³ Ibid., p. 28.

⁴⁴ Ibid., pp. 32-34.

⁴⁵ Ibid., pp. 34-36.

⁴⁶ Ibid., pp. 38-39.

⁴⁷ S/2005/343.

⁴⁸ S/2005/336.

Council members and the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia and Montenegro made statements. The Council heard statements by the Presidents and Prosecutors of the two Tribunals.

Highlighting the main points in his report, the President of the International Tribunal for the Former Yugoslavia stressed that the Tribunal had been working to meet the goals of the completion strategy at an “unrelenting” pace. On the referral of cases to national jurisdictions, he stated that the War Crimes Chamber of the State Court of Bosnia and Herzegovina was now ready to accept cases. He noted a “dramatic increase” in the number of indictees and fugitives transferred to the Tribunal, thanks mostly to the efforts of the authorities of Serbia and Montenegro, sometimes together with the authorities of the Republika Srpska. However, he reminded Croatia, the Republika Srpska and Serbia and Montenegro of their obligation to locate and arrest Ante Gotovina, Radovan Karadžić and Ratko Mladić. He reiterated that the Tribunal would not have fulfilled its historic mission until those three fugitives were in The Hague.⁴⁹

The President of the International Criminal Tribunal for Rwanda reported on the progress made at the Tribunal, and stated that the number of accused in completed and ongoing cases was 50, including one prime minister, 11 government ministers, and many other high-ranking individuals. This illustrated the importance of the Tribunal in establishing the guilt or innocence of the alleged leaders of the 1994 genocide who would probably otherwise not have been brought before a court. He confirmed that the Tribunal was on schedule to complete its trials by the end of 2008, as called for by the completion strategy.⁵⁰

The Prosecutor of the International Tribunal for the Former Yugoslavia cited as positive developments the fact that no less than 20 accused had been surrendered since November, including 10 who had been fugitives for an extended period. However, those developments were overshadowed by the continuing failure of the relevant authorities to arrest and transfer 10 remaining fugitives. This created uncertainties that were hampering a proper planning of the trials, and might oblige the Tribunal to conduct separate trials where a joined trial would have been possible. She

reiterated that the assets of the North Atlantic Treaty Organization (NATO) and the European Force (EUFOR) would be invaluable in bringing Karadžić and others to justice.⁵¹

The Prosecutor of the International Criminal Tribunal for Rwanda stated that with the completion of all the remaining investigations in 2004, the focus of the prosecution would be the courtroom prosecution of the cases of the 25 accused, and the preparation of cases regarding the 16 remaining detainees and others indicted. The prosecution would carry out as a high priority a “more effective tracking and apprehension strategy” for the 14 fugitives. For this purpose, he had agreed to establish a joint mechanism with each of the five African countries in which the remaining fugitives were thought to be located. He also had useful discussions with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the African Union on modalities of tracking the fugitives. On the referral of cases, he said that Rwanda continued to be the country primarily interested in such referral while three European countries had also expressed an interest in taking on some cases.⁵²

Most Council members reaffirmed the need for the two Tribunals to abide by their completion strategies, noting with satisfaction the progress made in this respect. They welcomed the establishment of the War Crimes Chamber of the State Court in Bosnia and Herzegovina.

The representative of Japan voiced concern, however, at the indication that the trial activities of the International Tribunal for the Former Yugoslavia might run into 2009.⁵³ This concern was shared by the representative of Denmark, who maintained that it was crucial that the Tribunals finalized their work on time.⁵⁴ On the other hand, the representative of Brazil was of the view that insisting on rigid deadlines as set out in the completion strategy could frustrate the pursuit of justice and the goal of ending impunity.⁵⁵ The representative of France insisted that the timetable given to the Tribunals should not result in impunity by default.⁵⁶

⁴⁹ S/PV.5199, pp. 4-9.

⁵⁰ *Ibid.*, pp. 9-11.

⁵¹ *Ibid.*, pp. 11-14.

⁵² *Ibid.*, pp. 14-16.

⁵³ *Ibid.*, pp. 23-24.

⁵⁴ *Ibid.*, p. 20.

⁵⁵ *Ibid.*, pp. 18-19.

⁵⁶ *Ibid.*, p. 28.

The representative of the United Kingdom welcomed the commitment of the Organization for Security and Cooperation in Europe (OSCE) to monitor the conduct of cases referred to national jurisdictions. On the International Criminal Tribunal for Rwanda, he raised concern about questions concerning the death penalty and local capacity.⁵⁷

The representative of Denmark made clear that for the countries of the former Yugoslavia full cooperation with the International Tribunal for the Former Yugoslavia was a precondition for their integration into European and trans-Atlantic structures.⁵⁸ The representatives of Croatia and Serbia and Montenegro reaffirmed their countries' willingness to cooperate with the Tribunal. As a sign "illustrating the scope of cooperation" with the Tribunal, the representative of Serbia and Montenegro cited the fact that as many as 13 indicted persons from Serbia and two from the Republika Srpska had voluntarily turned themselves in to the Tribunal since November 2004.⁵⁹ The representative of Croatia stated that to close the "last remaining issue" in cooperation with the Tribunal, it had begun implementing its action plan, which had been presented to the European Union task force in April.⁶⁰ The representative of Bosnia and Herzegovina maintained anew that lasting peace and stability could not be achieved in the region as long as major indictees, in particular Karadžić and Mladić, remained at large.⁶¹ The representative of Rwanda voiced concern about the completion strategy, stating that it should not be seen as an exit strategy for the obligations of the international community to bring all the suspects to justice. On the referral of cases, he reaffirmed Rwanda's willingness to enter into agreement with the International Criminal Tribunal for Rwanda not to seek the death penalty in any of the transferred cases.⁶²

Deliberations of 15 December 2005 (5328th meeting)

At its 5328th meeting, on 15 December 2005, the Council included in its agenda a letter dated 30 November 2005 from the President of the International

Tribunal for the Former Yugoslavia,⁶³ and a letter dated 5 December 2005 from the President of the International Criminal Tribunal for Rwanda,⁶⁴ transmitting the annual reports on the implementation of the completion strategies of the Tribunals. The Council heard statements by the Presidents and Prosecutors of the Tribunals. All Council members, as well as the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia and Montenegro, made statements.

The President of the International Tribunal for the Former Yugoslavia stated that Ante Gotovina, one of the Tribunal's highest ranking accused, had been arrested in Spain and had been transferred to the Tribunal on 10 December. He also informed the Council that one case had been referred to Croatia, two had been referred to the War Crimes Chamber of the State Court of Bosnia and Herzegovina, and more referral motions were pending final decision. He further stated that the failure to arrest the remaining six indictees at large remained a "major concern", citing insufficient cooperation by the Republika Srpska in providing information leading to the arrest of the two "most wanted fugitives", Radovan Karadžić and Ratko Mladić.⁶⁵ The Prosecutor of the Tribunal stressed that the failure to bring Karadžić and Mladić into the Tribunal's custody was the "major impediment" to the success of its work.⁶⁶

The President of the International Criminal Tribunal for Rwanda reported that considerable work remained to be done, and stressed the need for cooperation by States in relation to the transfer of cases and arrest of fugitives, stressing that impunity for perpetrators of mass atrocities was not a viable option.⁶⁷ The Prosecutor of the Tribunal elaborated on a number of significant developments that had occurred in the implementation of the Tribunal's completion strategy. He noted that 30 case files had been handed over to the Rwandan Prosecutor General to consider prosecution before the Rwandan courts, while two cases had been referred to a European jurisdiction which had agreed to consider the targets for prosecution, and one prosecution had already commenced in a European jurisdiction. He further noted that 19 indictees remained at large, many of whom, according to his sources, continued to hide in inaccessible areas of the Democratic Republic of the

⁵⁷ *Ibid.*, pp. 20-21.

⁵⁸ *Ibid.*, p. 20.

⁵⁹ *Ibid.*, pp. 29-30.

⁶⁰ *Ibid.*, pp. 34-35.

⁶¹ *Ibid.*, pp. 32-34.

⁶² *Ibid.*, pp. 30-32.

⁶³ S/2005/781.

⁶⁴ S/2005/782.

⁶⁵ S/PV.5328., pp. 4-7.

⁶⁶ *Ibid.*, pp. 9-14.

⁶⁷ *Ibid.*, pp. 7-9.

Congo. Félicien Kabuga had been located in Kenya by the Tribunal's tracking team and other sources. He therefore stressed that the Government of Kenya should be "encouraged to make more intensive efforts" to arrest and hand him over.⁶⁸

The Council members welcomed the arrest and transfer of Ante Gotovina to the International Tribunal for the Former Yugoslavia, and the cooperation of the Croatian and Spanish authorities in that regard. At the same time, a number of delegations called on the Serbian authorities to intensify their efforts to apprehend the remaining high-ranking indictees. The representative of the United States reiterated that full cooperation with the Tribunal remained a condition for further integration into Euro-Atlantic institutions for the States of the former Yugoslavia, and called on Kenya to transfer Kabuga to the Tribunal for Rwanda, stressing that those fugitives continued to foment conflict in the Great Lakes region.⁶⁹

The representative of Rwanda stated that his country had the capacity to handle all cases transferred from the International Criminal Tribunal for Rwanda.⁷⁰ The representative of Bosnia and Herzegovina reiterated his country's strong commitment that all those indicted for war crimes must be brought to justice.⁷¹ The representative of Serbia and Montenegro reiterated the readiness and full political will of his country's highest authorities to do all in their power to transfer the remaining indictees to the custody of the International Tribunal for the Former Yugoslavia.⁷²

Deliberations of 7 June 2006 (5453rd meeting)

At its 5453rd meeting on 7 June 2006, the Council included in its agenda a letter dated 29 May 2006 from the President of the International Tribunal for the Former Yugoslavia⁷³ and a letter dated 29 May 2006 from the President of the International Criminal Tribunal for Rwanda,⁷⁴ transmitting reports on the progress made with respect to the completion strategies of the Tribunals. The Council heard statements by the Presidents and Prosecutors of the Tribunals. All

Council members and the representatives of Rwanda and Serbia⁷⁵ made statements.

With respect to the completion strategy, the President of the International Tribunal for the Former Yugoslavia confirmed that trials would run into 2009 and reiterated that the estimate of all trials finishing by that date might hold, provided that the multi-accused trials ran smoothly; the cases referred to the former Yugoslavia were not deferred back to the Tribunal; the new amendment to rule 73 bis was effectively implemented so that indictments were more focused; and the six remaining high-level fugitives would shortly be transferred to the jurisdiction of the Tribunal. He also updated the Council about the latest developments following the deaths of Milan Babić and Slobodan Milošević.⁷⁶

The Prosecutor of the International Tribunal for the Former Yugoslavia informed the Council that she had filed 13 motions requesting the transfer of cases to the domestic jurisdictions of the former Yugoslavia, after assessing that the local judiciaries would be capable of trying such cases. She called on Serbia to do much more to arrest and transfer Mladić, while she stated that the arrest of Karadžić was the shared responsibility of Serbia, the Republika Srpska, NATO and EUFOR. She also expressed disappointment that the investigation by Russian authorities had failed to produce results on the whereabouts of Vlastimir Djordjević, accused of being responsible for serious crimes committed in Kosovo by Serbian forces, and the "long and unexplained delay" in the transfer by Russian authorities of a fugitive detained in the Russian Federation, Dragan Zelenović. This did "not allow for optimism regarding the future of the Tribunal's cooperation with the Russian Federation", she said.⁷⁷

The President of the International Criminal Tribunal for Rwanda stressed that, to ensure the successful implementation of the Tribunal's completion strategy, continuity and maximum efficiency were essential, and it was preferable in that regard to extend

⁶⁸ Ibid., pp. 14-16.

⁶⁹ Ibid., pp. 28-29.

⁷⁰ Ibid., pp. 31-33.

⁷¹ Ibid., pp. 33-34.

⁷² Ibid., pp. 35-36.

⁷³ S/2006/353.

⁷⁴ S/2006/358.

⁷⁵ On 3 June 2006, following the declaration of independence adopted by the National Assembly of Montenegro, the State Union of Serbia and Montenegro ceased to exist. As from that date, the membership of Serbia and Montenegro in the United Nations was continued by the Republic of Serbia.

⁷⁶ S/PV.5453, pp. 4-7.

⁷⁷ Ibid., pp. 10-12.

the judges' mandate for about 19 months instead of electing new judges in 2007.⁷⁸ The Prosecutor of the Tribunal for Rwanda drew attention to the referral of cases to national jurisdictions, which continued to be a slow and challenging process, and the large number of remaining fugitives. He reiterated that the Government of Kenya needed to be encouraged to make more intensive efforts to arrest Félicien Kabuga, who according to intelligence continued to reside in Kenya.⁷⁹

The Council members encouraged the two Tribunals to meet their completion strategies by exploring all necessary and appropriate measures. Many delegations welcomed the recommendations made by the working group on speeding up of trials of the International Tribunal for the Former Yugoslavia, as well as the specific measures taken by the International Criminal Tribunal for Rwanda to ensure that work progressed in a timely fashion. The representative of the United States stressed that the international community could ensure the success of the completion strategy of the International Tribunal for the Former Yugoslavia by supporting the Tribunal's efforts towards creating the capacity for domestic trials of low- and medium-level cases.⁸⁰ Members generally supported the extension of the terms of office of the 11 permanent judges of the International Criminal Tribunal for Rwanda from the point of view of fulfilling its completion strategy. The President (Denmark) recalled that she had circulated a draft resolution to that effect for the Council's consideration, and expressed the hope that the Council would be able to adopt the text shortly.⁸¹

With regard to the inquiries into the deaths of Milan Babić and Slobodan Milošević, the representative of the United States believed that the inquiries initiated by the International Tribunal for the Former Yugoslavia were "thorough and appropriate responses," and commended the Tribunal's commitment to implementing the recommendations of the inquiries.⁸² The representative of the Russian Federation questioned why Slobodan Milošević, in spite of his deteriorating health, had not been admitted to a clinic in the Netherlands, claiming that his health problems had not been properly monitored. Further, he stated that his

delegation "did not accept the negative assessment" by the Prosecutor of the cooperation between the Russian Federation and the Tribunal, and stressed that his country had made "necessary efforts" to meet the Tribunal's request for assistance. Finally, pointing to the Tribunal's increased budget, he said that the Tribunal must strictly comply with its completion strategy.⁸³

The representative of the United Kingdom hoped that the Russian authorities would continue to make every effort to resolve difficulties so that Zelenovic could quickly be transferred to The Hague. He also looked forward to the Russian authorities continuing to do all they could to trace Djordjevic, and, if found, immediately transfer him to The Hague.⁸⁴

The representative of Serbia reiterated the readiness and full political will of his country's authorities to do all in their power to transfer the remaining indictees to the custody of the International Tribunal for the Former Yugoslavia.⁸⁵ The representative of Rwanda said that his Government would welcome appropriate measures that would ensure that all accused were brought to justice, even after that Tribunal's mandate had expired.⁸⁶

Deliberations of 15 December 2006 (5594th meeting)

At its 5594th meeting, on 15 December 2006, the Council included in its agenda a letter dated 15 November 2006 from the President of the International Tribunal for the Former Yugoslavia⁸⁷ and a letter dated 30 November 2006 from the President of the International Criminal Tribunal for Rwanda,⁸⁸ transmitting reports on the progress made with respect to the completion strategies of the Tribunals. The Council heard statements by the Presidents and Prosecutors of the two Tribunals. In addition to all the Council members, statements were made by the representatives of Bosnia and Herzegovina, Rwanda and Serbia.

In his briefing, the President of the International Tribunal for the Former Yugoslavia elaborated on the most recent steps taken to enhance the efficiency of the

⁷⁸ Ibid., pp. 7-9.

⁷⁹ Ibid., pp. 12-14.

⁸⁰ Ibid., pp. 20-21.

⁸¹ Ibid., p. 28.

⁸² Ibid., pp. 20-21.

⁸³ Ibid., pp. 23-24.

⁸⁴ Ibid., pp. 24-25.

⁸⁵ Ibid., pp. 28-30.

⁸⁶ Ibid., pp. 30-32.

⁸⁷ S/2006/898.

⁸⁸ S/2006/951.

Tribunal, and gave an updated prognosis for the implementation of the completion strategy. He noted that, barring any unforeseen difficulties, all trials of accused in custody of the Tribunal were scheduled to be completed by 2009.⁸⁹ The Prosecutor of the Tribunal stated that the recent decision of NATO to allow Bosnia and Herzegovina and Serbia into the Partnership for Peace, was “a powerful signal that the international support for the Tribunal was decreasing”. She therefore wished to request the Council to consider whether the Tribunal should stay open until Karadžić and Mladić were tried in The Hague. She stressed the importance of this for the tens of thousands of victims who had placed their hope in the justice provided by the United Nations.⁹⁰

The President of the International Criminal Tribunal for Rwanda drew attention to the situation of some of the persons acquitted by the Tribunal, some of whom were at this time under the protection of the Tribunal in Arusha, and were in need of a new country of residence.⁹¹ The Prosecutor of the Tribunal noted that, increasingly, many States had become willing to share the burden of prosecuting alleged *génocidaires* who had taken up residence within their country. Those countries included Canada, the United States and several States in Europe.⁹²

The representative of the United Kingdom stated that the question of the NATO invitation to Bosnia and Herzegovina and Serbia into the Partnership for Peace should not be construed as a weakening of support for the Tribunal. She noted that their further integration with European Union and NATO would depend on the extent of progress with respect to the Tribunal.⁹³

The representative of Serbia emphasized his country’s determination to cooperate with the Tribunal, pointing out that 16 indictees had been transferred to The Hague since January 2005 thanks to its “outstanding efforts”.⁹⁴

The representatives of the United Republic of Tanzania and China called for international support for national jurisdictions to improve their capacities to

prosecute cases transferred to them.⁹⁵ The representative of Rwanda reiterated his country’s desire to receive more referrals, saying that it was time for it to assume “full national responsibility”.⁹⁶

Speakers stressed the need to implement the completion strategy on time. The representative of France stressed that it constituted goals but not cut-off dates and that, for his delegation, it was clear that the mission of the Tribunals could not be considered complete as long as the principal fugitive accused had not been judged.⁹⁷ Similarly, the representative of the United Republic of Tanzania said that the arrests and trials of high-ranking fugitives needed to be factored into the completion strategy.⁹⁸ The representative of the United States agreed, suggesting that the Council should begin discussions as to how best to guarantee that those fugitives faced justice “no matter when they were apprehended”. Supported by the representative of the United Kingdom, she said that the Tribunal’s doors would “remain open for Mladić and Karadžić”.⁹⁹

On the other hand, the representative of Japan noted that if the Tribunals should choose to await their arrests, “it would be very difficult to justify and sustain our support” to them through the regular budget. He reiterated that possible funding beyond the deadline should be met through voluntary contributions by States concerned.¹⁰⁰ The representative of the Russian Federation insisted that the Tribunals should strictly implement the completion strategy, which had been approved by the Council. The fact that Mladić and others had not been brought to the Tribunal could not justify the indefinite duration of its work, in his opinion.¹⁰¹

Deliberations of 18 June 2007 (5697th meeting)

At its 5697th meeting, on 18 June 2007, the Council included in its agenda a letter dated 15 May 2007 from the President of the International Tribunal for the Former Yugoslavia¹⁰² and a letter dated 23 May

⁸⁹ S/PV.5594, pp. 4-8.

⁹⁰ Ibid., pp. 10-12.

⁹¹ Ibid., pp. 8-10.

⁹² Ibid., pp. 12-15.

⁹³ Ibid., pp. 20-21.

⁹⁴ Ibid., pp. 28-30.

⁹⁵ Ibid., pp. 15-16 (United Republic of Tanzania); and p. 18 (China).

⁹⁶ Ibid., pp. 30-32.

⁹⁷ Ibid., pp. 23-24.

⁹⁸ Ibid., pp. 15-16.

⁹⁹ Ibid., pp. 16-17 (United States); and pp. 20-21 (United Kingdom).

¹⁰⁰ Ibid., pp. 17-18.

¹⁰¹ Ibid., pp. 22-23.

¹⁰² S/2007/283.

2007 from the President of the International Criminal Tribunal for Rwanda,¹⁰³ transmitting assessments of progress made towards the implementation of the completion strategies of the Tribunals. In addition to all Council members, statements were made by the representatives of Bosnia and Herzegovina, Montenegro,¹⁰⁴ Rwanda and Serbia. The Council heard statements by the Presidents and the Prosecutors of the two Tribunals.

The President of the International Tribunal for the Former Yugoslavia elaborated on recent progress made in making trials more efficient. This included the effective use of rule 73 bis, according to which the Prosecutor could be requested or ordered to reduce the indictment in some of the cases.¹⁰⁵ The Prosecutor of the Tribunal highlighted some positive developments in Serbia's cooperation with the Tribunal, while stressing that the continued impunity enjoyed by Mladić and Karadžić undermined all efforts to bring justice to the victims, while affecting the credibility of the Tribunal.¹⁰⁶

The President of the International Criminal Tribunal for Rwanda reiterated the obstacles to the completion strategy, including the 18 accused persons that remained at large.¹⁰⁷ The Prosecutor of the Tribunal noted that 6 of the 18 fugitives had been earmarked for trial because of their respective leadership roles in the genocide of 1994. He stressed that in the event that those fugitives were arrested too late for their trials to conclude by the end of 2008, or if they remained at large by that date, the Council's guidance would be needed regarding how to deal with their cases. In that context, he noted that Félicien Kabuga had been seen by independent sources in Nairobi as late as April 2007, and that most of the remaining fugitives were reported to be in the Democratic Republic of the Congo. He further noted that Rwanda had enacted legislation, which had come into force, and which excluded the application of the death penalty in cases referred from the Tribunal. He considered that that, in addition to other measures

taken, had made Rwanda eligible for referral of cases under rule 11 bis of the Tribunal's rules.¹⁰⁸

Most speakers commended the recent arrests of General Zdravko Tolimir and General Vlastimir Djordjevic that had been facilitated by the Serbian, Montenegrin and Republika Srpska authorities. They highlighted the need to bring all indictees to justice, particularly Radovan Karadžić, Ratko Mladić and Félicien Kabuga.

The representative of the Russian Federation highlighted the fact that General Djordjevic had been arrested in Montenegro, not in his country.¹⁰⁹ The Prosecutor of the International Tribunal for the Former Yugoslavia responded that that did not mean that General Djordjevic had never been in the Russian Federation, adding that, following General Tolimir's arrest, it had been confirmed that General Djordjevic had also been in the Russian Federation in 2005.¹¹⁰

On the obligation of States to cooperate with the Tribunals, the representative of the United Kingdom stressed that the ongoing process aimed at integrating Serbia into the European Union did not mean that the European Union had put less emphasis on Serbia's cooperation with the International Tribunal for the Former Yugoslavia.¹¹¹ In response, the representative of Serbia stated that his Government had responded to the Tribunal's 1,600 requests in a timely and speedy manner, leaving only 2 to 3 per cent of those requests still pending.¹¹²

With respect to the residual issues remaining after the expiration of the mandates of the Tribunals, the representative of Panama believed that the Council needed to consider a possible transfer of the Tribunals' work to the International Criminal Court.¹¹³ Specifically, the representative of Rwanda requested that after the mandate of the Tribunal for Rwanda had expired, all its pending cases be transferred to the national jurisdiction of his country, and called on the Council to adopt a resolution which would obligate States to fully cooperate with Rwanda in prosecuting the pending cases. He also stressed that convicted persons needed to serve their sentences in Rwanda, and

¹⁰³ S/2007/232.

¹⁰⁴ The Republic of Montenegro was admitted to membership in the United Nations on 29 June 2006.

¹⁰⁵ S/PV.5697, pp. 4-7.

¹⁰⁶ *Ibid.*, pp. 10-13.

¹⁰⁷ *Ibid.*, pp. 7-10.

¹⁰⁸ *Ibid.*, pp. 13-15.

¹⁰⁹ *Ibid.*, p. 22.

¹¹⁰ *Ibid.*, pp. 22-23.

¹¹¹ *Ibid.*, pp. 24-25.

¹¹² *Ibid.*, pp. 33-35.

¹¹³ *Ibid.*, pp. 16-17.

said he was surprised by the information provided by the President and Prosecutor that the Tribunal was considering transferring cases and sending convicted persons to France.¹¹⁴

Speakers remained divided about the implementation of the timetable for the Tribunals to complete their work by 2008. The representatives of France and the United States opined that all indictees must be prosecuted even after the envisaged deadline, with the latter, echoed by the representative of the United Kingdom, declaring that the fugitives could not be allowed to escape justice by “outlasting the Tribunals”.¹¹⁵ On the other hand, the representative of the Russian Federation made clear that his country opposed unlimited extensions of the Tribunals’ work.¹¹⁶ The representative of China noted that, as the Tribunals were wrapping up their work, any follow-up actions by the Council must be in line with the principles contained in the completion strategies.¹¹⁷

Regarding the legacy of the two Tribunals, many speakers maintained that, in addition to the prosecutions and judgements they had made, as well as the residual functions they were still performing, the Tribunals had set an international legal precedent which could guide future courts in similar situations.

Deliberations of 10 December 2007 (5796th meeting)

At its 5796th meeting, on 10 December 2007, the Council included in its agenda a letter dated 12 November 2007 from the President of the International Tribunal for the Former Yugoslavia¹¹⁸ and a letter dated 16 November 2007 from the President of the International Criminal Tribunal for Rwanda,¹¹⁹ transmitting reports on the progress of the completion strategies of the Tribunals. The Council heard statements by the Presidents and Prosecutors of the two Tribunals. In addition to Council members, statements were made by the representatives of Croatia, Rwanda and Serbia.

The President of the International Tribunal for the Former Yugoslavia highlighted the significant progress made in achieving the objectives of the completion strategy.¹²⁰ The President of the International Criminal Tribunal for Rwanda reported steady progress in the judicial output, and stated that the Tribunal had continued to help strengthen the capacity of the judicial system in Rwanda.¹²¹

Referring to Mladić and Karadžić, the Prosecutor of the International Tribunal for the Former Yugoslavia reiterated that it was a “stain” on the Tribunal’s work that the two individuals were still at large. She reiterated her criticism of Serbia for not fully cooperating with her office, pointing to “serious deficiencies” in its approach as well as “wilful obstruction”. She called on the European Union to maintain its principled position by insisting on Serbia’s full cooperation with the Tribunal as a condition in the European Union pre-accession and accession processes.¹²² The Prosecutor of the International Criminal Tribunal for Rwanda reported that, thanks to the recent arrests in France and Germany, the number of fugitives had dropped from 18 to 14. Of the remaining 14, four were considered sufficiently high level for trial in Arusha, including Félicien Kabuga. He cautioned that, if new arrests were to be made in 2008, it would add to the Tribunal’s workload and the Council would have to decide whether to enable the Tribunal to continue.¹²³

Speakers called on Serbia to make all efforts to arrest and hand over all the remaining fugitives without any delay, and many urged Kenya to cooperate with the Tribunal for Rwanda in apprehending Kabuga. The representative of the United Kingdom called on the Democratic Republic of the Congo to arrest, with the full the support of MONUC, a number of the fugitives believed to be in the eastern part of that country.¹²⁴

The representative of the Russian Federation maintained that both Tribunals must be guided by the deadlines established by the Council so that their work would be completed by the end of 2010. The fact that

¹¹⁴ *Ibid.*, pp. 31-33.

¹¹⁵ *Ibid.*, pp. 17-19 (United States); pp. 19-20 (France); and pp. 24-25 (United Kingdom).

¹¹⁶ *Ibid.*, pp. 22-23.

¹¹⁷ *Ibid.*, pp. 28-29.

¹¹⁸ S/2007/663.

¹¹⁹ S/2007/676.

¹²⁰ S/PV.5796, pp. 4-7.

¹²¹ *Ibid.*, pp. 7-9.

¹²² *Ibid.*, pp. 9-11.

¹²³ *Ibid.*, pp. 11-13.

¹²⁴ *Ibid.*, pp. 14-16.

some indictees were not present could not be a reason for a possible mandate extension. National jurisdiction should take over, he said. He also expressed concern over information that one of the indictees of the International Tribunal for the Former Yugoslavia seemed to enjoy protection by the United Nations Interim Administration Mission in Kosovo, and that the Mission did not sufficiently cooperate with the Tribunal.¹²⁵

Many speakers addressed the issue of a residual mechanism to take over after the two Tribunals had closed down. Important aspects of such a mechanism highlighted were future prosecutions of indictees still at large, the involvement of national jurisdictions in such prosecutions, and the issue of the invaluable judicial legacy of the jurisprudence of the Tribunals. Members expressed appreciation for the proposals made by the Tribunals so far, and called for prompt and serious consideration and development of such mechanisms. The representative of Croatia called on the Council to give greater attention to the role that

¹²⁵ Ibid., p. 23.

national legal systems in the region could play in carrying out the residual functions of the International Tribunal for the Former Yugoslavia.¹²⁶

The representative of Rwanda opined that court archives, documents and material of the International Criminal Tribunal for Rwanda should be transferred to his country, since they constituted an important part of the country's history and were of critical importance to reconciliation and civic policies.¹²⁷

In response to the comments of the Prosecutor of the International Tribunal for the Former Yugoslavia, the representative of Serbia asserted that his Government cooperated consistently with the Tribunal to the best of its ability, and reiterated its full commitment to bring the cooperation to a successful end. While stating that all those who committed war crimes should be indicted by the Tribunal, he expressed his belief that the four remaining fugitives "will be located and apprehended in the nearest future".¹²⁸

¹²⁶ Ibid., pp. 29-31.

¹²⁷ Ibid., pp. 26-28.

¹²⁸ Ibid., pp. 28-29.

37. Children and armed conflict

Deliberations of 20 January 2004 (4898th meeting)

On 10 November 2003, the Secretary-General submitted a report on children and armed conflict,¹ in which he reported on advances made towards the protection of children affected by armed conflict and the follow-up to resolution 1460 (2003) and issued a set of recommendations. The recommendations related to systematically incorporating children's issues into peace negotiations, peace accords, post-conflict programmes and also including them in the mandate of all United Nations peace operations. He further recommended giving serious consideration to deploying child protection advisers in every operation, developing a systematic and concerted monitoring and reporting mechanism, and ending impunity. Annexed to the Secretary-General's report for the first time was a list of parties that recruit or use children in situations of armed conflict not on the agenda of the Security Council.

¹ S/2003/1053 and Corr.1 and 2, submitted pursuant to paragraph 16 of resolution 1460 (2003).

At its 4898th meeting, on 20 January 2004, the Security Council included the above-mentioned report in its agenda. The Council was briefed by the Special Representative of the Secretary-General for Children and Armed Conflict and the Executive Director of the United Nations Children's Fund (UNICEF). Statements were made by all Council members as well as by the representatives of Armenia, Azerbaijan, Bangladesh, Canada, Colombia, Costa Rica, Ecuador, Egypt, Fiji, India, Indonesia, Ireland (on behalf of the European Union),² Israel, Japan, Kenya, Liechtenstein, Mali (on behalf of the Human Security Network), Mexico, Monaco, Myanmar, Norway, Sierra Leone, the Syrian Arab Republic, Uganda and Ukraine.

The Special Representative of the Secretary-General stated that significant and concrete progress had

² Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia and Turkey aligned themselves with the statement.