

## Thematic issues

### 30. Items relating to the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

#### Overview

During the period 2008-2009, the Security Council held 14 meetings relating to the work 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 and 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. The Council discussed, in particular, the completion strategies of the Tribunals, which had originally been set by resolution 1503 (2003) at completing trial activities at first instance by the end of 2008 and all work by 2010. The Council heard semi-annual briefings by the presidents and prosecutors of both Tribunals and adopted one presidential statement.

The Council also adopted several resolutions under Chapter VII of the Charter successively extending the terms of office of judges<sup>611</sup> and authorizing the number of ad litem judges of both Tribunals beyond their statutory limits,<sup>612</sup> as part of efforts to implement their completion strategies.<sup>613</sup>

#### **4 June 2008 to 3 December 2009: implementation of the completion strategies and residual mechanism**

In semi-annual briefings to the Council, held in June and December of 2008 and 2009, the Presidents and the Prosecutors of the International Tribunal for the

Former Yugoslavia and the International Criminal Tribunal for Rwanda provided the Council with their respective assessments of the implementation of the completion strategies, including the status of trial and appeal proceedings and the issue of staff retention. Subsequent debates focused on the implementation of the completion strategies, transfer of cases to national jurisdictions, capacity-building, cooperation by States with the Tribunals, particularly efforts to arrest the remaining fugitives, and the residual mechanism to carry out the essential functions of the Tribunals in the post-completion phase. Representatives of the States whose cooperation with Tribunals was under consideration presented their own accounts of cooperation efforts.

On 4 June 2008, most Council members welcomed the progress made by the Tribunals in the implementation of their strategies, and requested that they take all possible measures to stay within their deadlines. The representative of the Russian Federation was, however, concerned about the inability of the Tribunals to implement Council resolutions adopted under Chapter VII of the Charter and emphasized the need for the Council to give the Tribunals clear guidance for further action. He also criticized the activities of the International Tribunal for the Former Yugoslavia as unsatisfactory and raised doubts as to the objectivity of the report from that body.<sup>614</sup>

On 12 December 2008, while expressing regret for the delays in the work of the Tribunals, many Council members acknowledged that the Tribunals' inability to meet the established timelines was a result of circumstances beyond their control, and urged the Tribunals to continue to work on completing their respective mandates as early and expeditiously as possible, without jeopardizing the fairness of the process. In that regard, a number of speakers considered the referrals to national systems as central to achieving the completion strategies. Many speakers commended the improved cooperation of Serbia with the International Tribunal for the Former Yugoslavia, some citing the arrest of Radovan Karadžić in July

<sup>611</sup> Resolutions 1824 (2008), 1837 (2008), 1878 (2009), 1900 (2009) and 1901 (2009).

<sup>612</sup> Resolutions 1800 (2008), 1849 (2008), 1877 (2009) and 1900 (2009) for the International Tribunal for the Former Yugoslavia and resolutions 1855 (2008) and 1901 (2009) for the International Criminal Tribunal for Rwanda.

<sup>613</sup> For more information, see part IX, sect. IV, in regard to the respective Tribunals.

<sup>614</sup> S/PV.5904, pp. 14-15.

2008 as an example. In regard to the residual functions, the Chair of the Informal Working Group on International Tribunals<sup>615</sup> highlighted four areas of early agreement that emerged from the Group's discussion: (a) impunity was unacceptable and the most senior fugitives must face international trial by the residual mechanism; (b) the completion strategies involved the transfer of cases involving mid- or lower-level inductees to national jurisdictions; (c) witness and victim protection would continue; and (d) the archives of the Tribunal were the property of the United Nations and must be kept under its control.<sup>616</sup>

In a statement by the president dated 19 December 2008,<sup>617</sup> the Council noted with concern that the deadlines for the completion of trial activities at first instance had not been met and that the Tribunals had indicated that their work was not likely to end in 2010, and expressed its determination to support their efforts towards the completion of their work at the earliest date. It further acknowledged the need to establish an ad hoc mechanism to carry out a number of essential functions of the Tribunals, including the trial of high-level fugitives, after the closure of the Tribunals. This mechanism should be a small, temporary and efficient structure and would derive its authority from a resolution of the Council.

At the 613th meeting, on 4 June 2009, recognizing that the Tribunals were now expected to

complete their work by 2013 and would not meet the date set forth in the completion strategies, many speakers reiterated that Tribunals should strive for completion with maximum efficiency while minimizing further delays. They also stressed that it was important for the international community to cooperate with the Tribunals to secure the arrests of the remaining fugitives, and called on the Informal Working Group on International Tribunals to resolve the remaining outstanding issues concerning the residual mechanism as soon as possible on the basis of the Secretary-General's report,<sup>618</sup> submitted pursuant to the statement by the President of 19 December 2008,<sup>619</sup> on the administrative and budgetary aspects of options for possible locations for the archives of the Tribunals and the seat of the residual mechanism.

At the 6228th meeting, on 3 December 2009, speakers urged the Tribunals to avoid further slippage in the timelines for final completion and to take all necessary steps to keep the trial and appeal schedule on track. Several speakers expressed the view that it was necessary to accept the reality of the delays and suggested that the Council act accordingly, including extending the terms of office of the judges beyond 2010. Speakers looked forward to reaching an agreement on the establishment of a residual mechanism for the Tribunals, with some expecting it to happen in 2010.

<sup>615</sup> For more information, see part IX, sect. II, in regard to the Informal Working Group on International Tribunals.

<sup>616</sup> S/PV.6041, p. 14.

<sup>617</sup> S/PRST/2008/47.

<sup>618</sup> S/2009/258.

<sup>619</sup> S/PRST/2008/47.

### Meetings: items relating to the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
5841st 20 February 2008		Draft resolution (S/2008/107)			Resolution 1800 (2008) 15-0-0
		Letter from the President of the International Tribunal for the Former Yugoslavia concerning the appointment of two ad litem judges (S/2007/788, annex)			

**Part I. Consideration of questions under the responsibility of  
the Security Council for the maintenance of  
international peace and security**

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
		2 letters from the President of the International Tribunal for the Former Yugoslavia requesting authorization to appoint additional ad litem judges ( <a href="#">S/2008/44</a> , annex, <a href="#">S/2008/99</a> , annex)			
5904th 4 June 2008	Letter dated 13 May 2008 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council ( <a href="#">S/2008/326</a> )  Letter dated 12 May 2008 from the President of the International Criminal Tribunal for Rwanda to the President of the Security Council ( <a href="#">S/2008/322</a> )	Letter from the Prosecutor of the International Criminal Tribunal for Rwanda concerning outstanding fugitives in Kenya and Democratic Republic of the Congo ( <a href="#">S/2008/356</a> , annex)	<b>Rule 37</b> Rwanda, Serbia, Slovenia  <b>Rule 39</b> President of the International Tribunal for the Former Yugoslavia, President of the International Criminal Tribunal for Rwanda, Prosecutor of the International Tribunal for the Former Yugoslavia, Prosecutor of the International Criminal Tribunal for Rwanda	All Council members and all invitees <sup>a</sup>	
5937th 18 July 2008	Identical letters dated 13 June 2008 from the Secretary-General to the President of the General Assembly and the President of the Security Council ( <a href="#">A/62/896-S/2008/436</a> )	Draft resolution ( <a href="#">S/2008/467</a> )	<b>Rule 37</b> Rwanda		Resolution <a href="#">1824 (2008)</a> 15-0-0

Repertoire of the Practice of the Security Council, 2008-2009

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
5986th 29 September 2008	Letter dated 24 September 2008 from the Secretary- General addressed to the President of the Security Council (S/2008/621)	Draft resolution (S/2008/618)			Resolution 1837 (2008) 15-0-0
6040th 12 December 2008	Letter dated 5 December 2008 from the Secretary- General addressed to the President of the Security Council (S/2008/767)	Draft resolution (S/2008/780)			Resolution 1849 (2008) 15-0-0
6041st 12 December 2008	Letter dated 21 November 2008 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2008/729)  Letter dated 21 November 2008 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2008/726)	15th annual report of the International Tribunal for the Former Yugoslavia (S/2008/515)  13th annual report of the International Tribunal Criminal for Rwanda (S/2008/514)	<b>Rule 37</b> Bosnia and Herzegovina, Kenya, Rwanda (Minister of Justice and Attorney General), Serbia  <b>Rule 39</b> Presidents and Prosecutors of the Tribunals	All Council members <sup>b</sup> and all invitees	
6052nd 19 December 2008	Letter dated 18 December 2008 from the Secretary- General addressed to the President of the Security Council (S/2008/799)	Draft resolution (S/2008/798)			Resolution 1855 (2008) 15-0-0
6053rd 19 December 2008					S/PRST/2008/47

**Part I. Consideration of questions under the responsibility of  
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international peace and security**

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
6134th 4 June 2009	Letter dated 14 May 2009 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council ( <a href="#">S/2009/252</a> )		<b>Rule 37</b> Bosnia and Herzegovina, Kenya, Rwanda, Serbia  <b>Rule 39</b> Presidents and Prosecutors of the Tribunals	All Council members <sup>c</sup> and all invitees	
	Letter dated 14 May 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council ( <a href="#">S/2009/247</a> )				
6155th 7 July 2009	Letter dated 19 June 2009 from the Secretary-General addressed to the President of the Security Council ( <a href="#">S/2009/333</a> )	Draft resolution submitted by Austria ( <a href="#">S/2009/339</a> )			Resolution <a href="#">1877 (2009)</a> 15-0-0
6156th 7 July 2009	Letter dated 19 June 2009 from the Secretary-General addressed to the President of the Security Council ( <a href="#">S/2009/333</a> )	Draft resolution submitted by Austria ( <a href="#">S/2009/340</a> )			Resolution <a href="#">1878 (2009)</a> 15-0-0
	Letter dated 26 June 2009 from the Secretary-General addressed to the President of the Security Council ( <a href="#">S/2009/334</a> )				

Repertoire of the Practice of the Security Council, 2008-2009

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
	Letter dated 7 July 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/336)				
6228th 3 December 2009	Letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2009/587)	16th annual report of the International Tribunal for the Former Yugoslavia (S/2009/394)  14th annual report of the International Criminal Tribunal for Rwanda (S/2009/396)	<b>Rule 37</b> Bosnia and Herzegovina, Kenya, Rwanda, Serbia, Sweden  <b>Rule 39</b> Presidents and Prosecutors of the Tribunals	All Council members <sup>d</sup> and all invitees <sup>e</sup>	
	Letter dated 12 November 2009 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2009/589)				
6242nd 16 December 2009	Letter dated 28 October 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/570)	Draft resolution submitted by Austria (S/2009/644)			Resolution 1900 (2009) 15-0-0
6243rd 16 December 2009	Letter dated 2 November 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/571)	Draft resolution submitted by Austria (S/2009/645)			Resolution 1901 (2009) 15-0-0

<i>Meeting and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
	Letter dated 23 November 2009 from the Secretary- General addressed to the President of the Security Council (S/2009/601)				

<sup>a</sup> Slovenia made a statement on behalf of the European Union.

<sup>b</sup> The representative of Belgium made a statement, in part, as Chair of the Informal Working Group on the International Tribunals.

<sup>c</sup> Croatia was represented by its Prime Minister and Turkey by its Minister for Foreign Affairs. The representative of Austria made a statement, in part, as Chair of the Informal Working Group on International Tribunals.

<sup>d</sup> The representative of Austria made a statement, in part, in his capacity as Chair of the Informal Working Group on International Tribunals.

<sup>e</sup> Sweden made a statement on behalf of the European Union.

## 31. Children and armed conflict

### Overview

During the period under review, the Security Council held four meetings and adopted one resolution and three presidential statements concerning children and armed conflict. Discussions in the Council focused primarily on the question of including, in the annexes to the reports of the Secretary-General on children and armed conflict, the names of parties to the killing and maiming of children and/or rape and other sexual violence against children, thereby expanding the monitoring and reporting mechanism established under resolution 1612 (2005).<sup>620</sup> On 4 August 2009, the Council adopted resolution 1882 (2009), in which it so decided, and called upon such parties to prepare concrete time-bound action plans to halt violations and abuses.

### 12 February 2008 to 29 April 2009: expansion of the monitoring and reporting mechanism

On 12 February 2008, the Special Representative of the Secretary-General for Children and Armed Conflict introduced the Secretary-General's most recent report<sup>621</sup> and the lists of parties that recruited or used children in situations of armed conflict annexed

thereto. She identified five other grave violations and stated that the gateway to the annexed list of parties should include all of them. She suggested, however, that the Council could take an incremental approach and initially consider systematic sexual violence against children as an additional gateway to the annexes. She noted that there were 16 persistent violators who had been on the annexed lists in the Secretary-General's reports for five consecutive years, and urged the Council to take concrete and targeted measures against them.<sup>622</sup> The Executive Director of the United Nations Children's Fund (UNICEF) briefed the Council and highlighted, inter alia, the vulnerability to sexual violence of girls and women in conflict situations.<sup>623</sup> The representative of the Watchlist on Children and Armed Conflict stressed the need to expand and strengthen the monitoring and reporting mechanism.<sup>624</sup>

Most speakers expressed support for the recommendations contained in the report of the Secretary-General, such as giving equal weight to all categories of grave violations, including recruitment and use of children in armed conflict; killing and maiming of children; rape and other grave sexual

<sup>620</sup> S/PV.5834, S/PV.5936 and S/PV.6114.

<sup>621</sup> S/2007/757.

<sup>622</sup> S/PV.5834, pp. 3-5.

<sup>623</sup> Ibid., pp. 6-7.

<sup>624</sup> Ibid., pp. 7-8.