

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

Overview

From 2012 to 2013, the Security Council held nine meetings and adopted five resolutions⁸⁹⁷ related 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 1994.⁸⁹⁸ Throughout the period under review, the Council received semi-annual briefings by senior officials of the Tribunals and considered their completion strategies, as set out in resolution 1966 (2010), in which the Council requested the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to take all possible measures to expeditiously complete all their remaining work no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the International Residual Mechanism for Criminal Tribunals.

The Council also appointed the President and the Prosecutor of the Mechanism for a term of four years⁸⁹⁹ and, acting under Chapter VII of the Charter, authorized permanent and ad litem judges of both

Tribunals to serve beyond the expiry of their terms of office.⁹⁰⁰

Briefings on the implementation of the completion strategies and establishment of the International Residual Mechanism for Criminal Tribunals, Arusha Branch

In the semi-annual briefings on 7 June and 5 December 2012, the Presidents and Prosecutors of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, respectively, provided the Council with their assessments of the implementation of the completion strategies, including management reforms aimed at accelerating the remaining trial and appeal proceedings and circumventing difficulties related to staff attrition and recruitment owing to the pending closure of the Tribunals.⁹⁰¹ At the December briefing, the President of the International Tribunal for the Former Yugoslavia, speaking also as the President of the International Residual Mechanism for Criminal Tribunals, and the Prosecutor of the International Criminal Tribunal for Rwanda, speaking also as the Prosecutor of the Mechanism, updated the Council on the preparations for the commencement of the work of the Mechanism. The Arusha branch of the Mechanism had begun its operations on 1 July 2012 and, as set out

⁸⁹⁷ All resolutions except resolution 2038 (2012) were adopted under Chapter VII of the Charter.

⁸⁹⁸ The present study covers the following items:
(a) International Tribunal for the Former Yugoslavia;
(b) International Criminal Tribunal for Rwanda; and
(c) International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda. For more information on the mandates of the Tribunals, see part IX, sect. IV.

⁸⁹⁹ See exchange of letters dated 23 and 27 February 2012 (S/2012/112 and S/2012/113, respectively) between the Secretary-General and the President of the Security Council; see also resolution 2038 (2012).

⁹⁰⁰ Resolutions 2054 (2012), 2080 (2012), 2081 (2012) and 2130 (2013). For more information on the action taken by the Council with regard to the terms of office of judges, see part IV, sect. I.D, "Practice in relation to provisions of the Charter involving recommendations by the Security Council to the General Assembly".

⁹⁰¹ S/PV.6782, pp. 3-6 (President of the International Tribunal for the Former Yugoslavia); pp. 6-8 (President of the International Criminal Tribunal for Rwanda); pp. 8-10 (Prosecutor of the International Tribunal for the Former Yugoslavia); and pp. 10-11 (Prosecutor of the International Criminal Tribunal for Rwanda); S/PV.6880, pp. 3-7 (President of the International Tribunal for the Former Yugoslavia and of the Mechanism); pp. 7-10 (President of the International Criminal Tribunal for Rwanda); pp. 10-11 (Prosecutor of the International Tribunal for the Former Yugoslavia); and pp. 11-14 (Prosecutor of the International Criminal Tribunal for Rwanda and of the Mechanism).

in resolution 1966 (2010), the branch of the Mechanism at the Hague was to begin functioning one year later.

Speakers generally welcomed the progress made by the Tribunals in expediting their work despite some setbacks and in taking measures towards preparation for a smooth transition to the International Residual Mechanism for Criminal Tribunals. Speakers urged the Tribunals to continue to strengthen their efforts towards finalizing their caseloads and ensuring compliance with the completion strategy, as provided for in the relevant resolutions. Most speakers called on Member States to cooperate fully with the Tribunals, especially in respect of the arrest of fugitives still remaining at large and of the relocation of acquitted individuals and those who had completed their sentences. Speakers also expressed support for the referral of cases to the respective national judicial systems, with a view to reducing the overall workload of the Tribunals and to reinforcing the rule of law at the national level. Stating that the Mechanism had been established within parameters that would enable it to conduct substantive work, including trials and appeals, the representative of the Russian Federation reaffirmed the intention of his country to seek completion of the work of the International Tribunal for the Former Yugoslavia in accordance with the deadlines established in resolution 1966 (2010), and called upon the President of the Tribunal to provide a detailed timetable for the finalization of its work, upon which the Russian Federation would base its consideration for the extension of the terms of the judges.⁹⁰² Finally, representatives of the Member States whose cooperation with the Tribunals was under discussion presented accounts of their cooperation efforts during the respective reporting periods.⁹⁰³

Extension of tenure of judges of the International Tribunal for the Former Yugoslavia

On 17 December 2012, the Council adopted resolution 2081 (2012) by which, acting under Chapter VII of the Charter, it extended the terms of office of 21 judges of the International Tribunal for the Former Yugoslavia.

The representative of the Russian Federation criticized the interminable trial delays and the inability of the Tribunal to execute its mandate. He explained that his delegation had abstained in the voting because his country's suggestion to conduct an independent analysis of the legal and administrative activities of the International Tribunal for the Former Yugoslavia in order for the Council to develop practical steps to help the Tribunal to fulfil resolution 1966 (2010) was not included in the draft resolution.⁹⁰⁴ The representatives of the United Kingdom and the United States, however, supported the steps that the Tribunal had taken under the leadership of its President to improve its efficiency and to complete its work as expeditiously as possible, and emphasized that only two trials resulting from the arrests in 2011 after the adoption of resolution 1966 (2010) would not be completed before the original target date of 31 December 2014.⁹⁰⁵

On 18 December 2013, acting under Chapter VII of the Charter, the Council adopted resolution 2130 (2013), by which it extended the term of office of 17 judges of the International Tribunal for the Former Yugoslavia. The representative of the Russian Federation noted that the practice of trial delays, in contravention of the exit strategy called for in resolution 1966 (2010), had continued and that no comprehensive steps had been taken to fulfil its provisions. He added that the deadline for achieving that goal had been continuously pushed back beyond 2014, as reflected in the resolution just adopted. As the text of resolution 2130 (2013) had taken on no positive changes since resolution 2081 (2012), the position of his country had also not changed, and his delegation abstained in the voting.⁹⁰⁶

Implementation of completion strategies

On 12 June and 5 December 2013, the Presidents and Prosecutors of the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Residual Mechanism for Criminal Tribunals updated the Council on the status of trial and appeal proceedings, the main challenges preventing the completion of the mandates

⁹⁰² S/PV.6782, pp. 22-23 and S/PV.6880, pp. 16-17.

⁹⁰³ S/PV.6782, pp. 24-25 (Croatia); pp. 25-26 (Rwanda); and pp. 26-27 (Serbia); S/PV.6880, pp. 29-33 (Serbia); pp. 33-34 (Croatia); pp. 34-35 (Bosnia and Herzegovina); and pp. 35-37 (Rwanda).

⁹⁰⁴ S/PV.6889, pp. 2-3.

⁹⁰⁵ Ibid., p. 3 (United Kingdom); and p. 3 (United States).

⁹⁰⁶ S/PV.7088, p. 2.

of the Tribunals and on the transitional process to the Mechanism.⁹⁰⁷

At the meetings, speakers generally praised the progress made by both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda on the implementation of their completion strategies, and welcomed the smooth transition from the International Criminal Tribunal for Rwanda to the Mechanism, as well as the upcoming commencement of the Hague branch, which was to open on 1 July 2013. Speakers again urged the relevant Member States to cooperate with the International Criminal Tribunal for Rwanda and the Arusha branch

⁹⁰⁷ S/PV.6977, pp. 3-7 (President of the International Tribunal for the Former Yugoslavia and of the Mechanism); pp. 7-10 (President of the International Criminal Tribunal for Rwanda); pp. 10-11 (Prosecutor of the International Tribunal for the Former Yugoslavia); and pp. 11-13 (Prosecutor of the International Criminal Tribunal for Rwanda and of the Mechanism); and S/PV.7073, pp. 3-7 (President of the International Tribunal for the Former Yugoslavia and of the Mechanism); pp. 7-10 (President of the International Criminal Tribunal for Rwanda); pp. 10-11 (Prosecutor of the International Tribunal for the Former Yugoslavia); and pp. 11-13 (Prosecutor of the International Criminal Tribunal for Rwanda and of the Mechanism).

of the Mechanism in bringing the remaining nine fugitives to justice and assisting with the resettlement of those who had been acquitted or had already served their sentences, which remained one of the most serious challenges to the successful completion of the mandate of the Tribunal. Two decades after the establishment of the International Tribunal for the Former Yugoslavia, speakers also reflected on the legacy of both ad hoc Tribunals to the advancement of international criminal justice and international humanitarian law, which was consolidated with the establishment of the International Criminal Court. The representative of the Russian Federation expressed disappointment at the latest delays in the final appeal judgment of the International Criminal Tribunal for Rwanda and stated that with the opening of the Hague branch of the Mechanism, it would soon be seen whether the work of the Tribunals was a heritage acceptable to the whole of the international community. He expressed support for the compromise scheme for the completion of the work of the Tribunals and the model of the Mechanism as an organ with a limited jurisdiction and life cycle, as set forth in resolution 1966 (2010).⁹⁰⁸

⁹⁰⁸ S/PV.6977, p. 22.

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

<i>Meeting record and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Rule 37 invitations</i>	<i>Rule 39 and other invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
S/PV.6726 29 February 2012	Letter dated 23 February 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/112) Letter dated 27 February 2012 from the President of the Security Council addressed to the Secretary-General (S/2012/113)	Draft resolution submitted by Guatemala (S/2012/115)				Resolution 2038 (2012) 15-0-0
S/PV.6782 7 June 2012	Letter dated 23 May 2012 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2012/354) Letter dated 22 May 2012 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2012/349)		Croatia, Rwanda, Serbia	Presidents and Prosecutors of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda	All Council members, all invitees	
S/PV.6794 29 June 2012	Letter dated 22 May 2012 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2012/349) Letter dated 1 June 2012 from the Secretary-General addressed to the President of the Security Council (S/2012/392)	Draft resolution submitted by Guatemala (S/2012/491)				Resolution 2054 (2012) 15-0-0 (adopted under Chapter VII)

<i>Meeting record and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Rule 37 invitations</i>	<i>Rule 39 and other invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
S/PV.6880 5 December 2012	<p>Report of the International Tribunal for the Former Yugoslavia (S/2012/592)</p> <p>Report of the International Criminal Tribunal for Rwanda (S/2012/594)</p> <p>Letter dated 14 November 2012 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2012/836)</p> <p>Letter dated 16 November 2012 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2012/847)</p> <p>Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2012/849)</p>		Bosnia and Herzegovina, Croatia, Rwanda, Serbia	Presidents and Prosecutors of the Tribunals and the International Residual Mechanism for Criminal Tribunals	All Council members, all invitees	
S/PV.6885 12 December 2012	<p>Report of the International Criminal Tribunal for Rwanda (S/2012/594)</p> <p>Letter dated 14 November 2012 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2012/836)</p> <p>Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2012/849)</p>	Draft resolution submitted by Guatemala (S/2012/916)				<p>Resolution 2080 (2012) 15-0-0 (adopted under Chapter VII)</p>

<i>Meeting record and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Rule 37 invitations</i>	<i>Rule 39 and other invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
S/PV.6889 17 December 2012	<p>Report of the International Tribunal for the Former Yugoslavia (S/2012/592)</p> <p>Letter dated 16 November 2012 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2012/847)</p> <p>Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2012/849)</p>	<p>Draft resolution submitted by Guatemala (S/2012/927)</p>			Russian Federation, United Kingdom, United States	<p>Resolution 2081 (2012) 14-0-1^a (adopted under Chapter VII)</p>
S/PV.6977 12 June 2013	<p>Letter dated 23 May 2013 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2013/308)</p> <p>Letter dated 23 May 2013 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2013/309)</p> <p>Letter dated 23 May 2013 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2013/310)</p>		Bosnia and Herzegovina, Croatia, Liechtenstein, ^b Netherlands, Serbia	<p>Presidents and Prosecutors of the Tribunals and the Mechanism, Head of the Delegation of the European Union to the United Nations</p>	All Council members, all invitees ^c	

<i>Meeting record and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Rule 37 invitations</i>	<i>Rule 39 and other invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
S/PV.7073 5 December 2013	<p>Report of the International Criminal Tribunal for Rwanda (S/2013/460)</p> <p>Report of the International Tribunal for the Former Yugoslavia (S/2013/463)</p> <p>Letter dated 13 November 2013 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2013/663)</p> <p>Letter dated 18 November 2013 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2013/678)</p> <p>Letter dated 18 November 2013 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2013/679)</p>		Bosnia and Herzegovina, Croatia, Serbia	Presidents and Prosecutors of the Tribunals and the Mechanism	All Council members, all invitees	
S/PV.7088 18 December 2013	<p>Report of the International Tribunal for the Former Yugoslavia (S/2013/463)</p> <p>Letter dated 18 November 2013 from the President of the International Tribunal for the Former Yugoslavia addressed to the President of the Security Council (S/2013/678)</p>	Draft resolution submitted by Guatemala (S/2013/746)			Russian Federation	Resolution 2130 (2013) 14-0-1 ^d (adopted under Chapter VII)

<i>Meeting record and date</i>	<i>Sub-item</i>	<i>Other documents</i>	<i>Rule 37 invitations</i>	<i>Rule 39 and other invitations</i>	<i>Speakers</i>	<i>Decision and vote (for-against-abstaining)</i>
	Letter dated 18 November 2013 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2013/679)					

^a *For:* Azerbaijan, China, Colombia, France, Germany, Guatemala, India, Morocco, Pakistan, Portugal, South Africa, Togo, United Kingdom, United States;
Abstaining: Russian Federation.

^b The representative of Liechtenstein spoke on behalf of Albania, Austria, Belgium, Bosnia and Herzegovina, Chile, Costa Rica, Croatia, Estonia, Finland, Hungary, Ireland, Jordan, Montenegro, Netherlands, Norway, Papua New Guinea, Peru, Slovenia, Sweden, Switzerland, Timor-Leste and Uruguay.

^c Serbia was represented by its Minister of Justice and Public Administration.

^d *For:* Argentina, Australia, Azerbaijan, China, France, Guatemala, Luxembourg, Morocco, Pakistan, Republic of Korea, Rwanda, Togo, United Kingdom, United States;
Abstaining: Russian Federation.

28. Children and armed conflict

Overview

During the period under review, the Security Council held two meetings, issued a presidential statement and adopted a resolution in connection with the item entitled “Children and armed conflict”. In its deliberations, the Council focused primarily on increasing accountability for violations committed against children in armed conflict, with a particular emphasis on the issue of persistent perpetrators. While stressing the primary responsibility of Member States in protecting children affected by armed conflict, the Council reiterated its intention to take a proactive stance with regard to a number of measures, such as targeted and graduated sanctions, child protection advisers and the use of time-bound action plans.

In 2012 and 2013, the Council continued to include provisions relating to children and armed conflict in its country-specific decisions and in decisions relating to other thematic issues.⁹⁰⁹ In the present section, table 1 lists the meetings at which the item was considered and gives information on, inter alia, invitees, speakers and decisions adopted. Table 2 lists, by item, provisions relating to children and armed conflict in decisions adopted under country-specific items. For provisions relating to children and armed conflict in decisions adopted under other thematic issues, see table 3.

Decision and debate on increasing accountability for violations against children

On 19 September 2012, the Council considered the report of the Secretary-General on children and armed conflict⁹¹⁰. The Council also discussed, at the initiative of Germany,⁹¹¹ the growing number of persistent perpetrators listed in the annex of the report of the Secretary-General and the ways to increase accountability for violations against children. At the onset of the debate, the Council adopted resolution 2068 (2012), welcoming the appointment of the new Special Representative of the Secretary-General for Children and Armed Conflict and highlighting the

importance of her work in carrying out her mandate for the protection of children. Expressing deep concern that certain perpetrators persisted in committing violations and abuses against children in armed conflict, the Council called upon concerned Member States to bring to justice those responsible for such violations through national and, where applicable, international justice mechanisms, and reiterated its readiness to adopt targeted and graduated measures against persistent perpetrators. The Council also invited the Special Representative to brief its members on the delisting process, and reiterated its call on the Working Group on Children and Armed Conflict to consider, within one year, a broad range of options for increasing pressure on persistent perpetrators of violations and abuses against children in situations of armed conflict.

Resolution 2068 (2012) was adopted by 11 votes to none, with four abstentions (Azerbaijan, China, Pakistan and Russian Federation).⁹¹² Following the vote, the representatives of China, Azerbaijan and Colombia made short statements to explain their respective positions with regard to the resolution. The representative of China expressed his reluctance to support a resolution that continued to give rise to serious differences among the members of the Council. He stressed that the Council should focus on the protection of children in situations of armed conflict and that the resolution must not be interpreted to equate terrorist incidents in Pakistan to armed conflict, as that would exceed the mandate of the Council.⁹¹³ The representative of Azerbaijan, in turn, expressed the view that the resolution did not explicitly accommodate a comprehensive protection approach addressing all situations of armed conflict, including those of a protracted nature and prolonged impact on children.⁹¹² While voting in favour of the resolution, the representative of Colombia expressed support for the work of the Special Representative, but also noted that the resolution lacked a reference to the need to restrict the content of reports of the Secretary-General to the mandate entrusted by the Council.⁹¹²

⁹⁰⁹ For information on other cross-cutting issues before the Council, see part I, sect. 29, “Protection of civilians in armed conflict” and sect. 31, “Women and peace and security”.

⁹¹⁰ S/2012/261.

⁹¹¹ See concept note (S/2012/685, annex).

⁹¹² Resolution 2068 (2012) was the first resolution on children and armed conflict adopted without a unanimous vote since the inclusion of the item in the agenda of the Council in 1998.

⁹¹³ S/PV.6838, p. 3.