

25. International Residual Mechanism for Criminal Tribunals

During 2022, the Security Council held four meetings related to the work of the International Residual Mechanism for Criminal Tribunals.⁹⁷¹ Of the four meetings, two took the form of a debate, and two were held in the form of adoptions.⁹⁷² The Council adopted one resolution under Chapter VII of the Charter in connection with the item. More information on the meetings, including participants and speakers, is given in the table below.

On 31 March 2022, the Council adopted a presidential statement by which it requested the Mechanism to submit, by 14 April 2022, a report on its work progress since June 2020, including detailed schedules for the ongoing proceedings, as well as factors related to projected completion dates for the remaining cases.⁹⁷³ By the presidential statement, the Council also requested the Informal Working Group on International Tribunals to carry out a thorough examination of the Mechanism's report, as well as the report on the evaluation of the methods and work of the Mechanism by the Office of Internal Oversight Services, which was due by 31 March 2022.⁹⁷⁴ The Council asked the Informal Working Group to present in its review, its views and any findings or recommendations for the Council's consideration by 13 May 2022.⁹⁷⁵ Furthermore, the Council noted with concern that despite reaching an earlier agreement, the Mechanism continued to face problems in the relocation of acquitted persons and convicted persons who had completed their sentences and emphasized the importance of the successful relocation of such persons, stressing its ongoing determination to combat impunity for those responsible for serious violations of international humanitarian law and the necessity that all persons indicted by the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, including the remaining fugitives, were brought to justice.⁹⁷⁶

⁹⁷¹ For further information on the International Residual Mechanism for International Tribunals, see previous Supplements covering the period 2018-2021 and for the issues considered under this item, see also previous Supplements covering the period 1996-2007.

⁹⁷² For more information on the format of meetings, see part II, sect. I.

⁹⁷³ [S/PRST/2022/2](#), fifth paragraph.

⁹⁷⁴ *Ibid.*, sixth paragraph.

⁹⁷⁵ *Ibid.*

⁹⁷⁶ *Ibid.*, ninth and tenth paragraphs.

On 14 June Council members held a meeting in which they heard the semi-annual briefings by the President of the Mechanism and by its Prosecutor.⁹⁷⁷ At the meeting, the President and the Prosecutor presented their latest reports on the work of the Mechanism, submitted pursuant to paragraph 16 of Security Council resolution [1966 \(2010\)](#). Addressing the Council for the last time before he stepped down as President of the Mechanism, Judge Carmel Agius expressed his satisfaction with the significant progress accomplished during the reporting period, affirming that there were only three main cases left, which represented a markedly reduced judicial workload as compared to early 2019, and that appeal cases proceedings were on track for completion by the projected time frames. Additionally, the President highlighted the advances in the tracking of fugitives of the International Criminal Tribunal for Rwanda, which had also had a decisive impact on the Mechanism's operations and outlook. He said that, as a result of the efforts of the Prosecutor, only four fugitives were left, all of whom were expected to be tried in Rwanda. The President also highlighted progress regarding the enforcement of sentences as well as regarding the monitoring of cases referred to national jurisdictions, which had been reduced from seven to two cases. In parallel to the results, the President also mentioned some setbacks experienced during the reporting period. In that connection, he announced that the binding agreement signed between the United Nations and the Niger to relocate the acquitted and released persons to the Niger's territory had not been honoured. He also mentioned the failure of Serbia to fulfil the international obligations under resolution [1966 \(2010\)](#), which was illustrated by the contempt case against Petar Jojić and Vjerica Radeta. In closing, the President stated that, like its predecessor tribunals, the Mechanism was part of a broader system, reflecting a shared vision of justice and a determination that the crucial work of those tribunals would be seen through to the very end. He added that after almost a decade of operations, the Mechanism was far closer to realizing the Council's vision of a small and temporary institution. He emphasized, nonetheless, that many of the Mechanism's activities, including a number of judicial functions, would extend into the foreseeable future and for long after the main cases had concluded, unless the Council decided otherwise. In that connection, he said that it would be for the Council to determine the scope of the Mechanism's mandate and to decide if and when certain duties should

⁹⁷⁷ See [S/PV.9062](#).

more appropriately be discharged by others. In his statement, the Prosecutor informed the Council that in the previous two years his Office had accounted for half of the fugitives who had remained at large following the closure of the International Criminal Tribunal for Rwanda, with only four fugitives remaining. In that regard, he reported that after several challenging years, progress was being made with the Republic of South Africa and that an operational task team had recently been established to assist his Office in bringing Fulgence Kayishema's flight from justice to an end. He added that their goal was to account for all four outstanding fugitives by the time the Council next reviewed the work of the Mechanism. In addition, the Prosecutor provided updates on his Office's continuing efforts to complete the *Kabuga* case, as well as the *Fatuma et al.* and the *Stanišić and Simatović* cases. With regard to the Council's mandate for his Office to respond to requests for assistance from domestic investigators and prosecutors around the world, the Prosecutor affirmed that assisting national jurisdictions prosecuting international crimes committed in the former Yugoslavia and Rwanda continued to be a priority. He added that as his Office moved closer to completing their last cases and accounting for the final fugitives, it was important to remind that thousands of cases still needed to be completed in national courts and that his Office's assistance was essential to completing that work. Furthermore, national prosecutors still faced other critical challenges, with regional judicial cooperation being the most significant issue remaining in the former Yugoslavia. In that connection, the Prosecutor urged the countries concerned to significantly increase their cooperation in the search for missing persons, which was a humanitarian imperative. With respect to Rwanda, the Prosecutor said that the challenge was fundamentally about priorities and resources and, sometimes, a lack of political will. More broadly, in relation to both Rwanda and the countries of the former Yugoslavia, he said that genocide denial and the glorification of war criminals persisted and that there could be no tolerance for such behaviour, which insulted the victims and sowed the seeds for future conflict. In closing, the Prosecutor outlined the main findings of the ongoing review process and of the report of the Office of Internal Oversight Services and reported on the steps that had been taken to deliver on the mandate of his Office during the review period, including securing convictions in the trials in *Stanišić and Simatović* and *Nzabonimpa et al.*, as well as the *Mladić* appeal.

Following the briefings, the Council discussed the progress achieved by the Mechanism during the reporting period. At the outset, the representative of Gabon, as Chair of the Informal Working Group stated that, as requested in the statement by the President of the Council of 31 March 2022,⁹⁷⁸ the status update given by the President and the Prosecutor attempted to show that the Council had been right to trust and invest in the Mechanism to bring justice to victims of international crimes in Rwanda and the former Yugoslavia.⁹⁷⁹ He added that the progress made by the Mechanism during the biennium had been considerable, despite the many challenges it had faced from the health crisis caused by the coronavirus disease pandemic, a statement that was echoed by several Council members.⁹⁸⁰ By contrast, the representative of the Russian Federation was of the view that the Mechanism had not made any progress in the planned completion of its activities and that there had been no real downsizing over the previous five years. He said that the results of the following biennial review which was under way would determine the parameters of the further functioning of the Mechanism and that that process would help the leadership of the Mechanism undertake the necessary efforts to draw down its work as soon as possible. Other Council members acknowledged the progress achieved by the Mechanism in judicial matters and its working methods during the reporting period, while encouraging the Mechanism to take the necessary measures to keep the projected timelines on track and to implement the remaining recommendations in keeping with its mandate.⁹⁸¹ In that regard, several members acknowledged the progress in the *Kabuga* case and looked forward to the completion of its trial⁹⁸² as well as to the judgements in the *Stanišić and Simatović* and *Fatuma et al* cases.⁹⁸³ Most Council members also underscored the importance of judicial cooperation of national jurisdictions and between States concerned, as well as of full cooperation with the Mechanism in order to enable it to complete its mandate. In that connection, several members expressed concern with the non-compliance by Serbia with the Mechanism's arrest

⁹⁷⁸ See [S/PRST/2022/2](#), fifth paragraph.

⁹⁷⁹ See [S/PV.9062](#).

⁹⁸⁰ Gabon, India, France, Ghana, United Kingdom, United States, Mexico, Kenya and Ireland.

⁹⁸¹ India, France, United Kingdom, Mexico, United Arab Emirates, China and Albania.

⁹⁸² Gabon, France, United Kingdom, United States, Mexico, United Arab Emirates, China, Kenya, Norway, Ireland and Albania.

⁹⁸³ United Kingdom, United States, Mexico, Norway and Albania.

warrant for the *Jojić and Radeta* case,⁹⁸⁴ and others urged States to help in the arrest and surrender of the four remaining fugitives indicted by the International Criminal Tribunal for Rwanda.⁹⁸⁵ Furthermore, many Council members expressed concern about the relocation issue of the acquitted or released persons and called upon the States concerned and the Mechanism to urgently find an appropriate solution to the current situation.⁹⁸⁶ Speakers, members and non-members, also condemned the denial of atrocity crimes committed in the former Yugoslavia and Rwanda as well as the glorification of their perpetrators.⁹⁸⁷

On 22 June, the Council adopted, with one abstention,⁹⁸⁸ resolution [2637 \(2022\)](#) under Chapter VII of the Charter, by which it appointed the Prosecutor of the Mechanism with effect from 1 July 2022 until 30 June 2024.⁹⁸⁹ In the resolution, the Council continued to urge all States to intensify their cooperation with and render all necessary assistance to the Mechanism, in particular to achieve the arrest and surrender of all remaining fugitives indicted by the International Criminal Tribunal for Rwanda as soon as possible.⁹⁹⁰ The Council noted with concern that despite having reached an earlier agreement, the Mechanism continued to face problems in the relocation of acquitted persons and convicted persons who had completed serving their sentence, and emphasised the importance of finding expeditious and durable solutions to those problems, including as part of a reconciliation process.⁹⁹¹ In that regard, the Council noted that decisions on the relocation of persons who had been acquitted or completed their sentences should take into account inter alia the readiness of the state of origin to accept its nationals, the consent or any objections raised by the individuals to be relocated and the availability of other relocation states.⁹⁹² The Council welcomed the report submitted by the Mechanism to the Council and the report of the Office of Internal Oversight Services on the evaluation of the methods and work of the Mechanism.⁹⁹³ In that regard, the Council requested

⁹⁸⁴ United Kingdom, United States, Norway, Ireland and Albania.

⁹⁸⁵ France, Ghana, United States, Mexico, Kenya, Norway and Ireland.

⁹⁸⁶ India, Ghana, United Kingdom, United States, Mexico, United Arab Emirates, Norway and Ireland.

⁹⁸⁷ Gabon, Russian Federation, United Kingdom, United States, Ireland, Albania and Bosnia and Herzegovina.

⁹⁸⁸ See [S/PV.9072](#).

⁹⁸⁹ Resolution [2637 \(2022\)](#), para. 1.

⁹⁹⁰ *Ibid.*, para. 3.

⁹⁹¹ *Ibid.*, para 4.

⁹⁹² *Ibid.*, para 5.

⁹⁹³ *Ibid.*, para. 8. See also [S/2022/319](#) and [S/2022/148](#).

the Mechanism to implement the recommendations made by the Informal Working Group on International Tribunals and to continue to take steps to further enhance its efficiency and effective and transparent management, including the production of clear and focused projections of completion timelines at the earliest stage possible and disciplined adherence thereto.⁹⁹⁴ The Council reiterated its request to the Mechanism to include in its six-monthly reports to the Council information on progress achieved in implementing resolution [2637 \(2022\)](#).⁹⁹⁵ With a view to strengthening independent oversight of the Mechanism, the Council recalled that, as set out in its presidential statement of 31 March 2022, future reviews carried out pursuant to paragraph 17 of resolution [1966 \(2010\)](#) should include evaluation reports sought from the Office of Internal Oversight Services with respect to the methods and work of the Mechanism.⁹⁹⁶

On 12 December, Council members heard the second of the semi-annual briefings by the President of the Mechanism and its Prosecutor, in which they presented the latest progress report on the work of the Mechanism.⁹⁹⁷ During the meeting, the President of the Mechanism reported that after disposing of the contempt case in *Prosecutor v. Fatuma et al.* on 29 June, in line with the original projection, only two main cases remained in the Mechanism's pending judicial caseload.⁹⁹⁸ In that regard, she reported that the trial against Mr. Félicien Kabuga had commenced at the Hague on 29 September and was proceeding apace, and that the projection for the completion of its trial phase remained by September 2024. She also reported that the appeals procedure in the *Stanišić and Simatović* case continued to be on track and expressed confidence that the appeal judgment would be delivered by June. In addition, she reported that the Mechanism had made important strides with respect to its other continuous judicial activities such as the protection of victims and witnesses, assistance to national jurisdictions and the monitoring of cases referred to national courts, as well as the enforcement of sentences. She added that those matters regularly called for decisions by Mechanism judges or the President and required sustained effort and resources to see the full cycle of justice through to the end.

⁹⁹⁴ Resolution [2637 \(2022\)](#), para. 10.

⁹⁹⁵ *Ibid.*, para. 12.

⁹⁹⁶ *Ibid.*, para. 16.

⁹⁹⁷ See [S/2022/583](#).

⁹⁹⁸ See [S/PV.9217](#).

Regarding the eight relocated persons who had been acquitted or completed their sentences, the President affirmed that the best way to resolve the situation would be for the existing agreement between the United Nations and Niger to be observed and that the collective inability to find a durable solution reflected negatively not only on the Organization but on the credibility of international justice as a whole. She further stated that State assistance in identifying and implementing an acceptable solution to that crisis would help the Mechanism to move ahead with its transition plans. In connection with the request by the Council that the Mechanism provide options regarding the transfer of its remaining activities in due course, the President stated that developing a strategy for the future had become one of the priorities of her presidency and that she had presented the Informal Working Group with a road map for developing a Mechanism-wide scenario-based workforce plan. She affirmed that with the road map as a first point of reference, the Mechanism would provide updates on the development of a comprehensive strategy to guide its continued transition to a truly residual court. The President underscored that any delay on addressing current challenges such as the enforcement of sentences would have an impact on the transition plans. In that connection, she urgently appealed to States to share the burden of enforcing the sentences of people convicted by the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda or the Mechanism and added that unless additional States came forward, the Mechanism would struggle to continue to fulfil its duties in that important area. Finally, the President stated that despite the Council's continued emphasis on ensuring that the Mechanism remained guided by the premise of operating as a small, temporary and efficient structure, the scope of its responsibilities and the volume of its activities extended far beyond what had been envisaged when the ad hoc tribunals had been established. In that sense, she said that its mandated residual functions, including judicial functions, remained essential and that even after the completion of its pending caseload, the Mechanism would be left with a number of long-term responsibilities, including the enforcement of sentences, the protection of witnesses and assistance to national jurisdictions. In closing, the President also underscored the need to redouble efforts to counter genocide denial, revisionism and the glorification of war criminals. Following the President of the Mechanism, the Prosecutor reported on the progress of the two core crime cases remaining — the *Kabuga* trial and the *Stanišić and Simatović* appeal. He also highlighted his Office's work

under its mandate to investigate and prosecute contempt-of-court crimes. With regard to the search for the remaining fugitives, he reported that only four remained at large and, in that connection, thanked the President of South Africa for establishing a dedicated national investigative team to work directly with the Prosecutor's tracking team in the search for Fulgence Kayishema. He added that important results had been achieved and that their investigation in South Africa was progressing quickly. Furthermore, the Prosecutor highlighted that there were still other over a thousand fugitives wanted by Rwandan prosecutors for crimes committed during the genocide and said that while tracking the fugitives, his Office had discovered some fugitives who were enjoying impunity in third countries. In that context, he stated that his Office would work with those countries' national authorities who were responsible for extraditing or prosecuting those individuals and that Rwanda would continue to need assistance from the international community to account for the many other fugitives suspected of genocide. Recalling that the Council had mandated his Office to respond to requests for assistance from domestic investigators and prosecutors around the world, the Prosecutor affirmed that meeting that mandate continued to be his priority. He reminded that while his Office moved closer to completing the last cases and accounting for the final fugitives, thousands of cases remained to be completed in national courts and that his Office's assistance remained essential for investigating and prosecuting the thousands of perpetrators of war crimes and crimes against humanity and genocide who had yet to be investigated and prosecuted in the former Yugoslavia. In that regard, he anticipated that requests for assistance would increase in number as well as in complexity and significance. Concerning regional cooperation in the Balkans, the Prosecutor stated that despite important signs of positive progress, local prosecutors reported that they did not receive the cooperation they needed from Croatia in cases involving Croatian suspects. In that context, he said that his Office would continue to engage with Croatian authorities to find mutually acceptable solutions. The Prosecutor also referred to issues related to the continuation of the denial of war crimes and the glorification of convicted war criminals in the countries of the former Yugoslavia.

Council members acknowledged the progress achieved by the Mechanism towards the completion of its work during the reporting period and welcomed the initiative of the President

to devise a drawdown strategy for the Mechanism. The representative of the Russian Federation thanked the President of the Mechanism for her intention to transform the Mechanism from a judicial body into a genuine residual structure. In that context, he said that the Russian Federation had taken note of the plans to close the pretrial detention facility in Arusha and the Sarajevo office as of 1 April 2023, a decision they considered a step in the right direction. He added that, given the residual nature of the Mechanism, its leadership should regularly review its functions, departments and offices to check for redundancies and diminishing relevance, and that the relevant practical recommendations of the Office of Internal Oversight Services were much needed. The Russian representative was of the view that the Mechanism should follow the best practices of other similar structures, in particular the Special Tribunal for Lebanon.

Council members continued to call on all States to cooperate fully with the Mechanism in tracking all the remaining fugitives to enable the judicial process to be completed. The representative of Gabon, as Chair of the of the Informal Working Group, stated that the credibility and effectiveness of the Mechanism would continue to depend largely on the assistance that States provided, especially their support to the Prosecutor to facilitate the arrest of the fugitives at large, and the purpose and effectiveness of the Mechanism would be called into question if the fugitives were not arrested and then tried according to the required legal procedures. Still with regard to cooperation, several Council members regretted that the situation of the eight acquitted or released individuals remained unresolved.⁹⁹⁹ In that context, some members called on Niger and the states concerned to abide by the terms of the relocation agreement.¹⁰⁰⁰ In that connection, the representative of Ghana recalled the implementation of resolution [2529 \(2020\)](#) which emphasized the importance of expeditiously and durably relocating those persons. He stressed that the international justice community had to pay attention to and resolve that situation and called on the Council to critically discuss the matter with an outcome that would assist the Mechanism in line with paragraph 5 of resolution [2637 \(2022\)](#). Also emphasizing the importance of cooperation between the Mechanism and Member States concerned, a number of Council members urged Serbia to promptly execute the

⁹⁹⁹ United Arab Emirates, Ireland, Norway and India.

¹⁰⁰⁰ Ireland, Norway and India.

outstanding arrest warrants of Petar Jojić and Vjerica Radeta,¹⁰⁰¹ while others expressed regret about the need to continue to confront the denial of crimes and glorification of war criminals.¹⁰⁰²

During the period under review, the Council also took note of the intention of the Secretary-General to renew the mandate of the President of the Mechanism for a new term of office, as well as to reappoint 25 nominated judges, all with effect from 1 July 2022 to 30 June 2024.¹⁰⁰³

Meetings: International Residual Mechanism for Criminal Tribunals

<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.9010 31 March 2022						S/PRST/2022/2
S/PV.9062 14 June 2022			Bosnia and Herzegovina, Croatia, Rwanda and Serbia	President of the International Residual Mechanism for Criminal Tribunals, Prosecutor of the Mechanism	All Council members, all invitees ^a	
S/PV.9072 22 June 2022		Draft resolution submitted by Gabon (S/2022/501)				Resolution 2637 (2022) (adopted under Chapter VII) 14-0-1 ^b
S/PV.9217 12 December 2022	Note by the Secretary-General on the International Residual Mechanism for Criminal Tribunals (S/2022/583)		Bosnia and Herzegovina, Croatia, Rwanda and Serbia	President of the Mechanism, Prosecutor of the Mechanism	All Council members, all invitees	

^a Serbia was represented by its Minister of Justice.

^b *For*: Albania, Brazil, China, France, Gabon, Ghana, India, Ireland, Kenya, Mexico, Norway, United Arab Emirates, United Kingdom, United States; *against*: none; *abstaining*: Russian Federation.

¹⁰⁰¹ United States, Ireland, Norway, Albania, United Kingdom.

¹⁰⁰² United States, Ireland, Albania, France, Mexico and United Kingdom.

¹⁰⁰³ See [S/2022/486](#) and [S/2022/487](#). See also [S/2022/511](#). For more information on actions of the Council concerning the judges of the Mechanism, see part IV, sect. I.D, and part IX, sect. IV.