



# Security Council

Seventy-eighth year

*Provisional*

## 9502<sup>nd</sup>

meeting

Tuesday, 12 December 2023, 10 a.m.

New York

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<i>President:</i>	Mr. Montalvo Sosa. . . . .	(Ecuador)
<i>Members:</i>	Albania . . . . .	Mr. Stastoli
	Brazil. . . . .	Mr. Moretti
	China . . . . .	Mr. Geng Shuang
	France . . . . .	Mrs. Dime Labille
	Gabon . . . . .	Mr. Biang
	Ghana . . . . .	Mr. Korbich
	Japan . . . . .	Mr. Nagano
	Malta . . . . .	Ms. Gatt
	Mozambique . . . . .	Mr. Fernandes
	Russian Federation. . . . .	Ms. Zabolotskaya
	Switzerland . . . . .	Mrs. Chanda
	United Arab Emirates . . . . .	Mr. Azzam
	United Kingdom of Great Britain and Northern Ireland . .	Mr. Wickremasinghe
	United States of America. . . . .	Mr. Simonoff

## Agenda

### International Residual Mechanism for Criminal Tribunals

Note by the Secretary-General on the International Residual Mechanism for Criminal Tribunals (S/2023/566)

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*The meeting was called to order at 10 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **International Residual Mechanism for Criminal Tribunals**

#### **Note by the Secretary-General on the International Residual Mechanism for Criminal Tribunals (S/2023/566)**

**The President** (*spoke in Spanish*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in this meeting: Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2023/566, which contains a note by the Secretary-General on the International Residual Mechanism for Criminal Tribunals.

I now give the floor to Judge Gatti Santana.

**Judge Gatti Santana** (*spoke in Spanish*): At the outset, Mr. President, I wish to congratulate your country on assuming the presidency of the Security Council and to convey my appreciation for the support provided to the International Residual Mechanism for Criminal Tribunals.

(*spoke in English*)

On 9 December 1948, the General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide; a day later, it adopted the Universal Declaration of Human Rights. The ripples of hope sent forth by those instruments formed a wave when the Council made them a cornerstone of the former Yugoslavia and Rwanda Tribunals. Those pioneering institutions showed for the first time since Nuremberg that society's opprobrium

for hate and its crimes, and the corresponding desire for fairness in ascertaining responsibility in the aftermath of conflict, were not mere aspirations, but something the international community would guarantee. The ad hoc Tribunals held to account hundreds of high-profile offenders, many of whom at the time were beyond the reach of national justice.

The Mechanism is a living reminder of the promises made by the General Assembly 75 years ago and the action taken by this organ some 30 years ago to put them into effect in response to the havoc wreaked on the former Yugoslavia and Rwanda in the 1990s. We continue to show that justice will be delivered when the international community makes a collective commitment to do so, that such justice will be fair and that we will stay the course until our work is complete. I am here today to affirm those ideals, to pay tribute to the mandate given to the Mechanism and to express my resolve to finish the job. I am proud to say that we are getting there.

When I previously addressed the Security Council in June (see S/PV.9344), the Mechanism was in a very different position. Decisive events have taken place since then, and the Mechanism has finally transitioned to its new, truly residual phase. We have no more active trials or appeals related to core crimes, following the indefinite stay of proceedings in the case against Félicien Kabuga in September. In the meantime, Mr. Kabuga remains in the United Nations Detention Unit at The Hague while the Trial Chamber is seized of the issue of his provisional release. Defence counsel, assisted by the Registrar, are actively engaged in trying to identify an appropriate release destination, and a status conference is scheduled for 13 December, where these matters will be discussed. In addition, it was conditionally determined in October that Mr. Kabuga is non-indigent and would be capable of funding his entire defence, if given access to assets previously frozen by the International Tribunal for the Former Yugoslavia and the Mechanism. Establishing the feasibility of recovering expenses incurred in connection with his defence, and ultimately recovering them, is key for the Mechanism.

Separately, thanks to the Office of the Prosecutor, the Mechanism is one step closer to completing its fugitive tracking responsibilities. On 15 November, it announced the death of fugitive Aloys Ndimbati, who was first indicted by the International Criminal Tribunal for Rwanda (ICTR) in 1995 and whose case

had been referred to Rwanda. While the termination of Mr. Ndimbati's case will be subject to adjudication, I wish to heartily congratulate the Prosecutor and his tracking team for this result, which brings some measure of closure. Only two ICTR fugitives now remain, both of whom are expected to be tried in Rwanda in line with the relevant referral decisions.

With the main judicial workload inherited from the ad hoc Tribunals substantively concluded and strong progress made in other areas, the Mechanism is focused on planning for the future and ultimately winding down its operations. We are working hard to meet the Council's expectations and fully respond to the related elements of resolution 2637 (2022), as well as recommendations previously made by the Office of Internal Oversight Services (OIOS).

I have adapted the priorities of my presidency to better reflect this new chapter in the Mechanism's life. Just yesterday, I presented to the Informal Working Group on International Tribunals a draft framework of operations to complete functions, in line with my first priority. My second priority is effective leadership and good governance. I intend to demonstrate the value of transparency and responsibility and show that a resource-constrained institution can still maintain the highest standards of performance. My third priority, especially as the Mechanism's core crimes cases are concluded, is to ensure that our shared legacy in the context of accountability is preserved and sends a strong message of deterrence.

While each of those priorities reveals a more future-oriented approach, evidence of the Mechanism's meticulous planning is found in the draft framework. Taking into account the report prepared by the Panel on Judicial Functions and other inputs, this comprehensive document sets out the Mechanism's remaining functions, their expected completion dates and scenarios for what might be expected in the future, including options and recommendations on the potential transfer of those activities. It further indicates that the Mechanism is working to identify areas where efficiencies can be increased by merging, restructuring and streamlining our internal framework and processes.

We have already begun discussions on that paper with the Informal Working Group and eagerly await the opportunity to collaborate closely throughout the upcoming fifth review of our progress of work. Because the issues involved are complex, the Mechanism did

its utmost to present the framework to the Informal Working Group in a timely manner. We trust that the information and proposals presented will form a useful basis for the Council's decision-making on the future of our various operations. The Mechanism has also been proactively cooperating with OIOS on its evaluation of the Mechanism's methods and work, which, this time, focuses on the Mechanism's engagement with stakeholders. Just last week, OIOS presented some of the preliminary findings on a working level, and we look forward to receiving its full report in due course.

Alongside our dedicated future-planning activities, we are responding to national requests for assistance, monitoring referred cases, managing the archives, ensuring ongoing protection for victims and witnesses and performing other continuous judicial functions — in other words, ensuring that the weighty tasks the Council has entrusted to us are completed to the best of our ability. Although we are winding down, much work remains, and even if the strides in our progress become shorter, we are conscious of the need to keep moving forward.

Last week's anniversaries of the Genocide Convention and the Universal Declaration of Human Rights remind us of what the international community can achieve when it responds collectively to threats to our very humanity. At the same time, the decades since 1948 have shown that international law can be slow to take hold, that principles are not always supported in practice and that the arc of justice is long. A measure of time must therefore be allowed to ensure that the process can run its course.

At the ad hoc Tribunals and the Mechanism, we have experienced those dynamics first-hand. We have seen that securing international criminal justice is a lengthy and painstaking journey, a long-term investment that necessitates support well beyond the delivery of a judgment. In the rush to commence investigations and prosecutions, it appears the international community underestimated the importance of the end-of-justice cycle for the integrity of the entire project. And that was understandable, given there were no existing international criminal tribunals to guide the way.

That brings me to some of the post-judgment difficulties that can arise, and which the Mechanism currently faces. In relation to the enforcement of sentences, for example, complexities that were unforeseen 30 years ago have led to acute challenges

in recent times. Several convicted persons have been returned to the United Nations Detention Unit in The Hague by States that are unable to keep enforcing the relevant sentences, thereby burdening both the Mechanism and the host State and essentially rendering the Unit a prison. Unfortunately, we expect to encounter this problem repeatedly in the coming years. The solution is a political one. The Mechanism urgently needs additional States to volunteer to assist with this mandated function, or existing enforcement States to take on more convicted persons. We recognize that the responsibilities of enforcement can be heavy, and we pay tribute to our 12 enforcement States, whose demonstrated commitment to international criminal justice is inspiring.

I also wish to recall the seven relocated persons in the Niger — another challenge that could not have been predicted when the ad hoc Tribunals were created and which requires robust State intervention. Indeed, 27 December will mark two years since the relocated persons were placed under de facto house arrest, an unacceptable situation that could easily have been avoided had the Niger respected the agreement it made with the United Nations to host them. Despite the Mechanism's efforts, there is still no solution in sight. We continue to work to find one, and we require the Council's support. I again urge States to assist in any way possible towards resolving the matter once and for all.

Then there are the disturbing attempts to undermine our work and judgments. I refer to the ever-growing trends of genocide denial and revisionism, as well as the glorification of war criminals. That takes many forms, including the use of social media to deny, trivialize or justify what happened in Rwanda and the former Yugoslavia. Genocide denial concerns us all, and protecting the truth is the best way to prevent atrocities from occurring again. States play a pivotal role in countering such narratives, and access to information forms a crucial component of the process. The Mechanism is doing what it can, including by facilitating information centres, in line with resolution 1966 (2010), and through its valuable outreach activities funded by the European Union.

Of course, these challenges occur alongside others, such as the outright refusal of States to cooperate with orders of the Mechanism issued at earlier stages of proceedings. In that regard, I mention Serbia's ongoing failure to execute the arrest warrants and orders for transfer of the accused in the *Jojić and Radeta* contempt

case. Such behaviour, especially in the context of contempt of court, seeks to weaken the judicial process before the Mechanism. It also directly challenges the authority of the Security Council. In this respect, too, we call for the Council's help.

*(spoke in Spanish)*

In conclusion, the Mechanism stands ready to cooperate during next year's review. We are committed to doing everything within our power to ensure the optimal conclusion of our remaining activities. Whether these long-term residual functions are completed by the Mechanism itself or following a proper handover to another suitable body, they must be diligently seen through to the end. Our valuable legacy — the Council's valuable legacy — requires that the ground-breaking work started by the ad hoc Tribunals be completed in a way that honours the promises made by the United Nations 75 years ago.

I thank members for their attention and welcome their comments on the way forward.

**The President** *(spoke in Spanish)*: I thank Judge Gatti Santana for her briefing.

I now give the floor to Mr. Brammertz.

**Mr. Brammertz**: I thank members for the opportunity to again brief the Security Council on my Office's activities and results. My written progress report (see S/2023/566) provides details. Today I will provide a few highlights on a few key issues.

My Office has completed its important mandate to prosecute the final cases of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY). In May this year, the Appeals Chamber issued its judgment in the *Stanišić and Simatović* case. The Appeals Chamber accepted my Office's arguments that Stanišić and Simatović are criminally liable as participants in a joint criminal enterprise to ethnically cleanse large areas of Croatia and Bosnia and Herzegovina. As we have repeatedly proven, the crimes were committed by senior officials at the apex of power who incited hatred and fear and unleashed unspeakable violence to achieve their political goals. That is the lesson we must ensure is remembered. It is not Serbs, Croats or Bosniaks who are guilty; rather, the crimes were the work of individuals. It is those individuals, from all ethnic groups, whom we have prosecuted and convicted.

As President Gatti Santana has reported, trial proceedings in the *Kabuga* case have come to an end. My Office, and all those who believe in justice, can feel only immense dissatisfaction, not with the judges, of course, whose decision followed past precedent and must be respected. Rather, our dissatisfaction is recognition that the victims and survivors of Kabuga's crimes have not received the justice they deserve. Kabuga will not face judgment for his role in the suffering of the Rwandan people. But it is within our power to ensure other criminals do, particularly those who continue hiding within diaspora communities around the world.

Fulgence Kayishema was arrested in May this year and remains in detention in South Africa pending his initial transfer to Arusha. We trust that South African authorities will ensure Kayishema is transferred to our custody without any further delay. Having further announced the death of Aloys Ndimbati on 14 November, my Office anticipates that we will account for our final two fugitives in the next year.

With the completion of our trials and appeals, my Office is now firmly focused on our remaining residual functions. The most important of them is the assistance we provide to national authorities, continuing the accountability process for crimes committed in Rwanda and the former Yugoslavia. That is how we realize the Security Council's vision that national courts fully take over responsibility from the ICTR and the ICTY. Consistent with the completion strategy, the Council instructed my Office to respond to requests for assistance from national partners. The Rwandan authorities are still seeking to bring to justice more than 1,200 priority fugitive genocidaires. Likewise, prosecutors in the former Yugoslavia still have more than 1,000 suspected war criminals to investigate and, where necessary, prosecute.

We also receive requests from domestic authorities in third-party Member States, particularly in Europe and North America. In the past several years, we have received more than 300 requests for assistance annually. That tangibly demonstrates the great need for our support. National prosecutors have consistently reinforced those missions. In recent months, I again visited Rwanda and the former Yugoslavia for consultations about domestic justice processes and the support that is needed from my Office. In Rwanda, interlocutors — including in particular the Minister of Justice and the Prosecutor General — have emphasized their focus on bringing to justice those who committed

crimes during the 1994 genocide against the Tutsi. To achieve their objective, they have requested intensified support from my Office. Similarly, in the former Yugoslavia, all war crimes prosecutors from the region and my Office recently held our annual conference to discuss the implementation of their national working strategies and to discuss solutions on how to overcome the many remaining challenges. They once again emphasized that they depend on continued assistance from my Office.

Broadly, we are providing, upon request, three forms of assistance to our national partners.

First, we provide access to evidence and information contained within our evidence collection, which totals more than 11 million pages, thousands of hours of audio-visual material and physical artifacts. Our evidence collection is a unique resource representing the most thorough and comprehensive repository of evidence concerning crimes committed in Rwanda and the former Yugoslavia.

Secondly, utilizing our developed expertise, we provide assistance across a broad range of legal, evidentiary, prosecutorial and strategic matters. One important aspect of that work is the preparation of investigative dossiers for national prosecutors concerning priority accountability gaps that are related to ICTR, the ICTY and Mechanism cases.

Thirdly, we offer expert support upon request to national prosecutors concerning fugitives from justice in Rwanda and the countries of the former Yugoslavia. That involves direct operational and diplomatic support to our national partners on those fugitive files. We trust that we will enjoy the full support of the Security Council, Member States and the United Nations in that endeavour.

My Office looks forward to the Council's upcoming review of the Mechanism's work, which will commence in the coming months. We again welcome the opportunity for in-depth engagement with the Council on the residual functions and other important matters, including at yesterday's meeting of the Informal Working Group on International Tribunals. At the Council's request, the Office of Internal Oversight Services (OIOS) is in the process of finalizing its evaluation of the Mechanism's methods and work, which will form part of the review process. This year, the OIOS evaluation will focus on the Mechanism's cooperation with Member States, including in particular



how we respond to Member States' needs and how we contribute to domestic justice processes. With the Mechanism's transition to a purely residual institution, that focus of the evaluation is particularly appropriate. As always, my Office has transparently provided OIOS with access to our records and staff, while also providing all other support and assistance requested. We welcome the OIOS constructive feedback and await its report and recommendations.

By way of conclusion, this month marks the seventy-fifth anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention's adoption was a landmark development. The ad hoc Tribunals successfully prosecuted genocide crimes committed in Rwanda and the former Yugoslavia, significantly advancing the punishment of that crime. We proved, beyond reasonable doubt, the facts of what occurred, including that the perpetrators acted with intent to destroy protected groups in whole or in part. We also greatly developed the jurisprudence of that crime, notably by recognizing that crimes against women and girls, including rape and forcible transfer, can be integral to genocidal plans.

There is no expiration date on the international community's obligation to prosecute genocide crimes. While international trials for the crimes in Rwanda and the former Yugoslavia have now concluded, with our support, national prosecutors are continuing the work in their own courts. With thousands of perpetrators from Rwanda and the former Yugoslavia still to be prosecuted, every Member State has the responsibility and opportunity to play its part by providing full cooperation and effective support.

We must also recognize that denial is the last resort of genocide ideology. Denial seeks to erase both the victims and the crimes. Therefore, as much as we must continue to seek out and punish the perpetrators, it also falls to us to ensure that the truth is defended and promoted. That is the ultimate responsibility placed upon us by the Genocide Convention, if we are to truly prevent and repress the crime of crimes. My Office remains grateful for the continued support of the Council in all our efforts.

**The President** (*spoke in Spanish*): I thank Mr. Brammertz for his briefing.

I shall now give the floor to those members of the Council who wish to make statements.

**Mr. Biang** (Gabon) (*spoke in French*): I thank you, Mr. President, for convening this meeting on the progress report (see S/20223/566) of the International Residual Mechanism for Criminal Tribunals. I would also like to thank the President of the Mechanism, Judge Graciela Gatti Santana, and Prosecutor Serge Brammertz for their respective briefings in the context of the twenty-third progress report on the work of the International Mechanism, in accordance with resolution 1966 (2010) and paragraph 12 of resolution 2637 (2022).

It is my honour to take the floor as Chair of the Informal Working Group on International Tribunals. This will undoubtedly be my final intervention in that capacity, and therefore I would like to take this opportunity to express my deep gratitude to all Member States for the invaluable support they have given me and the spirit of cooperation that they have demonstrated throughout my tenure. I would also like to thank the Secretariat for the quality of its technical assistance, which facilitated the conduct not only of our chairpersonship, but also of our work. I would also like to renew my warmest congratulations to everyone on the spirit of compromise and high sense of responsibility that prevailed throughout our deliberations, which enabled the adoption by consensus of resolution 2637 (2022). I am convinced that the implementation of that resolution will contribute significantly to the achievement of our common objective to fight impunity in the name of peace and security and justice.

Before continuing my remarks, I would like to express my best wishes to my successor, to whom I offer my full availability, as well as that of my delegation, in order to support their efforts whenever they deem it necessary.

Today's meeting is taking place exactly 30 years after the creation by the Security Council, in May 1993, of the International Tribunals for the Former Yugoslavia and for Rwanda in order to render effective the fight against impunity in those two countries following the grave events that affected them. I would like to underscore that the fight against impunity is essential for international peace and security. Gabon fully supports the efforts made by the Mechanism during the period under review, despite the numerous challenges it faced in carrying out its residual functions in accordance with resolution 1966 (2010). We appreciate the efficiency and speed of the judicial proceedings, the respect for the fundamental rights of defendants and the protection of witness' identities.

Gabon welcomes the fact that the Office of the President has maintained its focus on the implementation of the road map, the strategy behind which has led to a completely residual institution. We welcome the priority afforded to recruiting highly competent staff through a fair process, as well as to strengthening cooperation among the relevant governance bodies in order to accomplish remaining tasks within the expected time frame. We see that approach, which prioritizes the strengthening of existing working methods and tools, as a suitable way to enable an effective transition towards the completion of the Mechanism's residual functions, which will be an essential step in ensuring the legacy of the ad hoc tribunals and the Mechanism. To that end, Gabon supports all the measures taken to achieve that goal, in particular the creation of the draft framework of operations to complete the residual functions. That document, which summarizes the Mechanism's residual functions, also provides a forecast of the workload, including in terms of tracking down fugitives, monitoring cases referred to national jurisdictions, monitoring the execution of sentences, managing archives and protecting witnesses. In that particularly sensitive context, which the President of the Mechanism highlighted, we encourage the President to maintain close and continuous collaboration with the Security Council and stakeholders.

In the context of judicial proceedings, the conclusion of the case *Prosecutor v. Jovica Stanišić and Franko Simatović* represents a crucial step in connection with the violations of law and customs of war and the deportations, inhumane acts and crimes against humanity that were committed in the Balkans in 1992. It brings significant hope to the victims and gives them confidence that justice will be done, however long it takes. We commend the judges of the Mechanism for their tireless efforts to bring that high-profile case to a conclusion. I would also like to take this opportunity to welcome the Secretary-General's appointment of Judge Lydia Mugambe of Uganda to replace Judge Elizabeth Ibanda-Nahamya.

The Mechanism has now reached a crucial phase in the arrest of fugitives. We applaud the tireless efforts of Prosecutor Serge Brammertz and his Office to carry out the arrests of Charles Ryandikayo and Charles Sikubwabo, who are now considered the remaining two fugitives since the arrest of Fulgence Kayishema and the confirmation that Aloys Ndimbati died in 1997. Combating impunity must remain an imperative for the

international community. Gabon encourages the States concerned to cooperate closely with the two branches of the Mechanism in order to maximize the collection of evidence essential for the opening of future judicial investigations that is extensive enough to establish the facts of serious crimes that have been committed. We take this opportunity to denounce the glorification of perpetrators.

I would like to conclude by expressing the hope that the work of the Mechanism will continue unhindered, with the full and effective cooperation of the international community. In addition to fulfilling its vital mandate, the Mechanism's work embodies the search for truth and justice and is a moral bulwark against arbitrariness and mass atrocities. To that end, further enshrining the legacy of the Tribunals and the Mechanism is a noble duty and constitutes a major advantage in combating impunity and strengthening and promoting international criminal law.

**Mr. Fernandes** (Mozambique): I would like to begin by thanking Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals (IRMCT), and Prosecutor Serge Brammertz for their insightful briefings and update on the Mechanism. Mozambique considers this debate timely and of critical importance for the Security Council, given the need to take informed decisions regarding the functioning of the Mechanism.

Mozambique strongly supports the work of the Mechanism in the pursuit of international justice through the assumption of the functions of the ad hoc Tribunals for Rwanda and the former Yugoslavia. We recognize the historic contribution of those international judicial institutions in the fight against perpetrators of genocide. Ethnic cleansing, genocide and crimes against humanity are abhorrent. There should be no impunity for egregious violations of international law. The people of Rwanda and the former Yugoslavia suffered enormously for decades. It is our collective responsibility to honour the victims and survivors by holding accountable all those who committed atrocities against them.

Mozambique welcomes the conclusion of the IRMCT proceedings on core crimes. We encourage efforts to transition the IRMCT into a truly residual small, temporary and effective Mechanism, as originally envisioned and established in resolutions 1966 (2010) and 2637 (2022). We recognize the challenges that

the IRMCT faces in fulfilling its mandate, including with regard to sentence enforcement. We underscore the crucial role of enforcement States and their commitment, which deserves our deep appreciation.

Another area that requires the Council's attention is the situation of the acquitted and released persons who were relocated to the Niger, pursuant to the agreement between the United Nations and the Government of the Niger. Their unresolved situation is of concern, particularly after the 26 July coup d'état in that country. Those people, having already served their respective sentences, deserve their freedom and the enjoyment of other rights. We must stand up against any form of injustice under our watch. We encourage the continuation of the efforts towards finding a viable and durable solution to this urgent matter, given the political instability in the Niger.

Justice is best served locally. We believe that the national authorities can — and should — advance accountability, with international assistance, while respecting victims' and accused persons' rights. The combined efforts of national and international judicial institutions towards ensuring accountability not only provide justice for the victims and survivors but also aim to guarantee sustainable peace, healing and reconciliation.

In conclusion, Mozambique stands ready to support the IRMCT in accomplishing its noble mission.

**Mr. Wickremasinghe** (United Kingdom): I would like to start by thanking President Gatti Santana and Prosecutor Brammertz for their briefings and for presenting the latest report of the International Residual Mechanism for Criminal Tribunals (see S/2023/566). I also take this opportunity to pay tribute to the Ambassador of Gabon and his team for their leadership of the Security Council's Informal Working Group on International Tribunals. I would like to make three points today.

First, the Mechanism's work continued effectively and efficiently over the past six months. Most recently, that included the confirmation of the death of the fugitive Mr. Aloys Ndimbati. We commend the Office of the Prosecutor for its work and echo the report's call for continued cooperation among all States to secure the arrest of the remaining two Rwandan fugitives as soon as possible.

Secondly, the Mechanism's work remains critical. In the Western Balkans, we have seen heightened ethno-national tensions and the concerning use of hate speech by some political figures. Such language entrenches divisions and holds back countries from providing safe, inclusive and prosperous environments for their citizens. The Court has played an essential role in delivering justice for all, which has in turn promoted peace and reconciliation. We therefore welcome the progress in the Mechanism's discussions with the Government of Croatia on the establishment in Zagreb of an information centre on the International Tribunal for the Former Yugoslavia. Such centres can promote knowledge and understanding of history, which is important in challenging the denial of atrocity crimes.

Furthermore, the Mechanism's ongoing work with the Government of Rwanda remains essential as Rwanda looks to commemorate 30 years since the genocide against the Tutsi in April 2024. Given the Mechanism's critical role, the United Kingdom is proud to demonstrate its support through enforcing sentences, and in doing so it takes seriously its duty of care to detainees under the supervision of the Mechanism.

My third point is that there remain several outstanding issues, which have an impact on the Mechanism's ability to deliver its mandate and which must be addressed. In particular, we are disappointed by reports of some States blocking cooperation in the Western Balkans. We call on Serbia to fulfil its obligation to arrest and transfer Petar Jojić and Vjerica Radeta to the Mechanism following years of requests. The United Kingdom is also concerned by the situation of the Rwandan individuals relocated to the Niger who have been rendered stateless since 2022 and remain under house arrest. We would welcome further updates on efforts to find a durable solution regarding those individuals.

In conclusion, the Mechanism has much important and sensitive work to do, ensuring sentences are properly enforced, its legacy is preserved and national prosecutions are supported. We see that the Mechanism is well placed to deliver on those ongoing functions and that it is taking seriously the need to do so in a streamlined way. We look forward to reviewing the Mechanism's mandate over the coming months.

**Mr. Simonoff** (United States of America): I thank President Gatti Santana and Prosecutor Brammertz very much for this briefing on the ongoing work of



the International Residual Mechanism for Criminal Tribunals to advance accountability for atrocities committed in Rwanda and the former Yugoslavia. We are grateful to President Gatti Santana for her leadership of this important institution. The Mechanism continues to do tremendous work in delivering justice for some of the gravest crimes of the past century.

The United States would like to once again express its condolences to Uganda on the passing of Judge Elizabeth Ibanda-Nahamya. We welcome the Secretary-General's appointment of Judge Lydia Mugambe Ssali and wish her well in the role. We also look forward to the vacancy on the judicial roster being filled soon.

Notably, in May, South African authorities arrested Fulgence Kayishema, who had evaded arrest for more than 20 years. Kayishema is accused of genocide and crimes against humanity for his alleged role in the brutal murders of more than 2,000 Tutsi men, women and children at the Nyange Parish Church. We congratulate the Mechanism's tracking team and South African authorities on that achievement in advancing justice for all those victims. We look forward to the expeditious and fair conclusion of the legal proceedings surrounding the Mechanism's request to transfer Kayishema into its custody. We also note that, in November, the Office of the Prosecutor announced the death of Aloys Ndimbati, another of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR). And in June, the Appeals Chamber found that Félicien Kabuga — captured 26 years after he was indicted — is not competent to stand trial. The decision to cease Kabuga's trial and Ndimbati's passing cannot restore what was lost and are undoubtedly disappointments to the many victims of those atrocities. We nonetheless hope that the pursuit of those cases provided victims some comfort that the Mechanism and the international community did not forget about them.

With respect to the former Yugoslavia, the International Tribunal for the Former Yugoslavia (ICTY) has consistently demonstrated that even the most senior military and political leaders can be held accountable for atrocity crimes. We are grateful for the decades of work by the judges, attorneys, defence counsel and other court staff of the ICTY and the Mechanism, and their immense contributions to the rule of law and the fight against impunity in the former Yugoslavia. We appreciate the significance of the Mechanism's recent appeals judgment in the case

of Jovica Stanišić and Franko Simatović. That long-awaited judgment, which recognizes the responsibility of those former Government officials for war crimes and crimes against humanity committed in Bosnia and Herzegovina and Croatia, is the final case involving core crimes committed in the former Yugoslavia and closes an important chapter in the history of international criminal justice. The Mechanism has served an indispensable role in carrying out the legacy of the ICTY and the ICTR. We appreciate the Mechanism's efforts to help counter genocide denial by increasing access to the public judicial records of the ad hoc Tribunals and the Mechanism and to enhance cooperation with affected States more broadly.

As the Mechanism moves to a fully residual phase, we appreciate President Gatti Santana's expressed priorities, including that of streamlining its functions. We very much look forward to discussions of the Mechanism's framework of operations to complete its functions, and we greatly appreciate the Mechanism's thoughtful analysis regarding that important phase of its work. Along those lines, we appreciate the Mechanism's efforts to respond to national authorities' requests for assistance to advance justice in their own systems. Ultimately, national authorities must bear the primary responsibility of providing justice to victims.

As President Gatti Santana's report notes, one of the Mechanism's most important functions moving forward will involve supervising the enforcement of sentences handed down by the ad hoc Tribunals and the Mechanism. We recognize the 12 countries that serve as enforcement States holding those who have been convicted. The Mechanism's successful operation will continue to depend on close cooperation with those and other States to ensure war criminals serve out their sentences.

In conclusion, we acknowledge and honour the bravery and resilience of victims, survivors and their loved ones as they continue to fight for official acknowledgement of atrocities committed in their communities. We recognize the courage of the thousands of witnesses who participated in trials before the ad hoc Tribunals, the Mechanism and other courts. Without them, justice could not be done. The United States will continue to press for justice as the foundation for peace and stability in their communities.

**Mr. Geng Shuang** (China) (*spoke in Chinese*): China thanks President Gatti Santana and Prosecutor Brammertz for their briefings.

In accordance with Security Council resolutions, the Mechanism should be a small, temporary and efficient structure, whose functions and size will diminish over time. During the reporting period, the Mechanism advanced its judicial activities in an orderly manner and completed court activities in all its core criminal proceedings. Hence, the Mechanism no longer has ongoing or upcoming trials or appeals proceedings in its core cases. China hopes that, on the basis of such progress, the Mechanism will continue to scale down its functions and size, rationalize its expenditure and continue to optimize the allocation of financial resources.

Pragmatic and effective cooperation between the Mechanism and the countries concerned is crucial to the implementation of its mandate and the conduct of its work. Regarding issues including the tracking of fugitives, information sharing and the resettlement of acquitted and released persons, China hopes that the Mechanism will strengthen its communication with the parties concerned, enhance mutual trust, accommodate the parties' legitimate concerns, draw on previous successes, find proper solutions and join in the fight against impunity.

Lastly, I would like to take this opportunity to express my thanks to Gabon, Chair of the Council's Informal Working Group on International Tribunals, and to the Office of Legal Affairs for coordinating between the Council and the Mechanism's activities.

**Mrs. Chanda** (Switzerland) (*spoke in French*): I would like to thank President Gatti Santana and Prosecutor Brammertz for their detailed presentations. We would also like to welcome the participation of representatives of Bosnia and Herzegovina, Croatia, Serbia and Rwanda in this meeting.

Thirty years have passed since the Council decided to establish an international tribunal for the former Yugoslavia. As we prepare to commemorate the thirtieth anniversary of the genocide in Rwanda, the Mechanism has made the transition from an operational tribunal to a truly residual institution.

This crucial moment calls for a number of observations, which I would like to echo.

Firstly, we would like to reaffirm our support for the Mechanism and commend efforts to implement its mandate. The significant progress made over the past six months shows the determination of the Prosecutor, the President and the judges to bring the perpetrators of international crimes to justice and to combat impunity. In particular, we welcome the conclusion of the latest cases inherited from the international criminal tribunals. The decisions in the *Kabuga* and *Stanišić* and *Simatović* cases, of which we took note, mark the Mechanism's entry into a purely residual phase.

The conclusion of the latest trials, however, in no way diminishes the relevance of the Mechanism. On the contrary, its determination to combat impunity remains crucial to promoting peace and preventing the trends of revisionism, atrocity denial and the glorification of criminals that have been reported to us and which give rise to our deep concern.

Secondly, the Mechanism's future deserves our full attention. Having entered a new phase of operation, the Mechanism will continue to play an essential role in monitoring the implementation of sentences, assisting national authorities, tracking down fugitives and establishing the responsibility of the many people suspected of international crimes. We take note of the new priorities and the elaboration of a framework project for the completion of the Mechanism's functions and welcomes the determination of the President and the Prosecutor to optimize resources and strengthen the Mechanism's effectiveness.

We wish to highlight the importance of preserving the legacy of the international criminal tribunals and the Mechanism. We therefore note, with interest, the Mechanism's exchange with the United Nations Office at Geneva concerning its digital preservation programme. We also welcome the Mechanism's efforts to help affected communities, particularly the younger generations, to better know the facts of the crimes committed and to recognize their suffering.

Thirdly, an effective fight against international crimes requires sustained and strengthened cooperation. The functions to be performed by the Mechanism are crucial, and it must be able to count on strong support from the United Nations and the Security Council in that regard. In addition, the Mechanism must be able to count on the support of all States. We deplore the lack of cooperation on the part of certain States in arresting and handing over suspects and urge them to redouble

their efforts in this area. We also encourage States to strengthen their regional cooperation frameworks in criminal matters and welcome, in that context, the efforts made by the Prosecutor in the Western Balkans. We also welcome the Prosecutor's efforts to strengthen national capacities and respond to requests for assistance.

We regret that the situation of the seven people who have been resettled in the Niger for over two years still remains unresolved, despite the considerable efforts made by the Mechanism in that connection.

Since their creation, the ad hoc international criminal tribunals and the Mechanism have made it possible to bring many perpetrators of war crimes, crimes against humanity and genocide to justice and to recognize the suffering of the victims. As the Mechanism enters a purely residual phase, it is essential that we give it our full support until its work is completed. We must continue our efforts to promote justice, accountability and peace.

**Mr. Moretti** (Brazil): I thank Judge Graciela Gatti Santana and Prosecutor Serge Brammertz for their most recent report (see S/2023/566) on the activities of the International Residual Mechanism for Criminal Tribunals (IRMCT). I also commend them for their dedication to the fulfilment of the mandate of the Mechanism.

This is Brazil's last intervention on the activities of the Mechanism in our current mandate. Since January 2022, we have had the privilege of following closely all the activities related to Mechanism and of participating in the Council's debates on it. In this position, we could have an optimal vantage point to examine the challenges the Mechanism faces in terminating its functions, despite the efforts undertaken to that end.

The Security Council conceived the Mechanism to be temporary and its functions to diminish over time. That means that there must be clear timelines for the completion of its activities. While we regret the challenges for the staff's morale and working environment, in general, we understand the need to reduce the proposed budget for 2024 and downsize personnel and resources.

We also welcome the recent conclusion of the core judicial cases. However, there are long-term residual functions that the Mechanism is expected to perform while or if their transfer to national jurisdictions is not

possible, including the supervision of the enforcement of sentences, the protection of victims and witnesses, requests for judicial reviews and the preservation of its archives.

The tracking of fugitives is also a key function of the International Residual Mechanism for Criminal Tribunals. We call for full cooperation with the Office of the Prosecutor with a view to the arrest of the two remaining fugitives. We also highlight the need to collaborate with the Mechanism in respect of the execution of outstanding arrest warrants and orders of surrender and relocation of acquitted or released persons.

The Mechanism inherited judicial cases and the residual functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. It is of the utmost importance to preserve their legacy. By adopting resolution 2637 (2022), the Security Council allowed the Mechanism to continue its work for two years. Ahead of the expiration of the current mandates of its Prosecutor and judges in June, we must acknowledge that the Mechanism still needs time and resources to complete its mandated tasks. The clear-cut draft framework on the completion of functions recently presented by the principals of the Mechanism provides the Security Council with important input for its guidance on the future mandate for the Mechanism.

Brazil reiterates that States bear the primary responsibility for holding accountable those who perpetrate crimes in their territories. International tribunals are supplementary to the national judiciaries. They must act when national institutions are unable or unwilling to adjudicate those crimes themselves. The principle of complementarity ensures that States retain ownership in their right and, above all, duty to provide justice to their citizens. Strong national institutions that ensure accountability for serious crimes make their societies more resilient against relapse into conflict and violations of international law.

**Ms. Gatt** (Malta): I also thank President Gatti Santana and Prosecutor Brammertz for their briefings on the ongoing work of the International Residual Mechanism for Criminal Tribunals (IRMCT).

As we await the evaluation of the Office of Internal Oversight Services, ahead of the review in spring next year, we commend the President's attention to carrying out future planning activities and the focus on the three

new priorities announced at the General Assembly in October (see A/78/PV.19). We look forward to constructive discussions on the draft framework of operations to complete the functions presented to us yesterday.

While we welcome the Chambers' progress in the completion of the judicial work, we also recognize the need to continue its work on the enforcement of sentences, preservation of archives, protection of witnesses and, in particular, assistance to national jurisdictions. We assure the President and the Prosecutor of our cooperation in that regard.

Malta also fully supports the priorities of the Office of the Prosecutor, with a focus on locating and arresting the remaining fugitives and assisting national jurisdictions prosecuting international crimes committed in the former Yugoslavia and Rwanda.

By assisting national authorities, the Prosecutor's office continues to play a critical role in facilitating the rule of law and accountability globally. We acknowledge efforts to build capacities in national jurisdictions, such as the seminars on the prosecution of conflict-related sexual violence crimes for prosecutors from Eswatini and Ghana. The Office of the Prosecutor's support for domestic law reform is another critical area that can facilitate the effective prosecution of conflict-related sexual violence cases.

We also welcome the significant progress made in locating and accounting for the remaining fugitives indicted by International Criminal Tribunal for Rwanda. We echo the call in the report (see S/2023/566) for the cooperation of States to ensure that the remaining fugitives are brought to justice as soon as possible. Cognizant of the Mechanism's challenges in enforcement, we express our hope that States who can do so take on enforcement responsibilities. We join the Mechanism in thanking and commending the 12 enforcement States referred to in the report.

The Mechanism and its predecessors have made significant steps in establishing the facts and providing the historical record of atrocity crimes committed in Rwanda and the former Yugoslavia. In that context, we agree with the President about the critical importance of making the public records of the ad hoc Tribunals and the Mechanism more accessible. We welcome the Mechanism's engagement with Rwandan authorities on matters such as increasing access to the archives, as well as the advanced discussions regarding the

establishment of an information centre in Zagreb, Croatia. Those are essential steps to combat dangerous denial and revisionism of facts and contribute to reconciliation and healing. Ensuring robust victim- and survivor-centred approaches that reflect input from affected communities is also an essential aspect of this work.

I also would like to pay tribute to Gabon for its work as Chair of the Informal Working Group on International Tribunals.

As the President said at the conference entitled "30 Years of the ICTY",

"Against all odds, the Tribunal went beyond developing substance and procedure and helped to create a new legal culture against impunity."

The legacy of the ad hoc tribunals must be this — a culture against impunity.

**Mr. Stastoli** (Albania): I welcome President Santana and Prosecutor Brammertz to the Council and thank them for the substantive assessments of the International Residual Mechanism for Criminal Tribunals (IRMCT).

We commend the determination that the Mechanism has demonstrated in implementing its mandate by prosecuting and bringing to justice those charged by ad hoc tribunals.

Albania welcomes the work done by the Mechanism for the delivery of the appeal judgment in the *Stanišić and Simatović* case, on 31 May, which represents the conclusion of all core crimes proceedings brought before the Tribunal. It represents a milestone for international justice and provides comfort to thousands of victims, reminding them that the international community is not immune to their suffering.

In the same vein, Albania applauds the arrest, on 24 May, of Fulgence Kayishema, who has been on the run for the past 22 years.

We take note and will be following the steps that the Trial Chamber are taking on the case against Félicien Kabuga case.

While the Mechanism is now transitioning from an operational court to a truly residual institution, we appreciate the President's focus on, first, the framework of operations to complete functions during the Mechanism's new residual phase; secondly, effective



leadership and good governance in the performance of mandated functions and residual activities; and thirdly, the consolidation of the legacy of the ad hoc Tribunals and the Mechanism and working closely with all main stakeholders, in particular by supporting national jurisdictions in the former Yugoslavia and Rwanda and by responding to requests for assistance.

As noted in the report (see S/2023/566), the cycle of justice does not end with the pronouncement of a judgment or the end of in-court proceedings. The enforcement of sentences remains a must. Equally important is the consolidation of the legacy of the ad hoc Tribunals and the Mechanism and the continuation of assistance offered to national jurisdictions in their adjudication of cases in connection with the conflicts in the former Yugoslavia and Rwanda. Above all, justice is also done when the politicians and policymakers engage fully and meaningfully in fighting genocide and the denialism and revisionism of the atrocity crimes. Justice and accountability are also about making sure that the crimes of the past are not repeated.

The IRMCT, the International Criminal Court and the International Court of Justice are the cornerstones of international justice and vivid examples demonstrating the international community's commitment to holding those responsible for atrocity crimes to account. We commend the excellent work of the judges and court staff and thank them for their contribution and dedication to promoting the rule of law, human rights and the fight against impunity in the former Yugoslavia and Rwanda. That is the only path towards reconciliation and peaceful coexistence in the Balkans, Rwanda and elsewhere.

We call upon all Member States to fully and unconditionally cooperate with the Mechanism so that no one can escape justice. In particular, we continue to urge Serbia to arrest and surrender Petar Jojić and Vjerica Radeta.

In conclusion, as this is the last meeting for Albania on the IRMCT, we reaffirm our strong support for international tribunals and independent mechanisms in fighting impunity and delivering justice everywhere.

Albania will continue to work closely with international courts and Member States who share the same priorities and principles.

**Mr. Nagano (Japan):** I thank President Gatti Santana and Prosecutor Brammertz for their informative reports and briefings.

Japan is committed to promoting the rule of law, including the fight against impunity, as well as the pursuit of transitional justice, and thus supports the role of the International Residual Mechanism for Criminal Tribunals (IRMCT). We would like to call upon all States to cooperate therewith.

We are pleased to see that the Mechanism has shown remarkable progress this year. Regarding prosecution, the Mechanism delivered the appeal judgement on the *Stanišić and Simatović* case in May, and the Kabuga case was rendered an indefinite stay of trial in September. Those two cases mark the conclusion of the trials and appeals transferred from the International Criminal Tribunals for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Likewise, regarding investigations, the Office of the Prosecutor succeeded in arresting the long-sought fugitive Kayishema in May and confirmed the death of Ndimbati in November. We appreciate President Santana, Prosecutor Brammertz, as well as all the Mechanism staff for their dedicated efforts.

With the remarkable progress in the areas of investigation and prosecution, we welcome the fact that the Mechanism is now transitioning from an operational court to a truly residual institution. While we acknowledge that the Mechanism continues to have an indispensable role, its activities and size should be narrowed over time commensurate with the reduction in its functions. In that regard, we appreciate the Mechanism's leadership towards the earliest completion of its residual functions, as well as potential options for transferring remaining activities. The draft framework presented by President Santana yesterday to Council members on the completion of the Mechanism's functions during this new phase is significant. We also commend the President's internal restructuring initiative, which combines both a reduction of posts and streamlining workflows in order to optimize resources and efficiencies.

Let me reiterate Japan's continued interest in and unwavering support for the activities of the Mechanism. We are committed to promoting the rule of law together with fellow Member States and international judicial institutions, including the IRMCT.



**Mr. Korbieh** (Ghana): I wish to thank President Gatti Santana and Prosecutor Brammertz for submitting their twenty-third assessment report (see S/2023/566) to the Security Council, pursuant to paragraph 16 of resolution 1966 (2010), which provides Council members with an overview of the progress of work as well as the challenges facing the International Residual Mechanism for Criminal Tribunals over the reporting period.

My delegation acknowledges the important role of the Mechanism in ending impunity and bringing the remaining perpetrators of atrocity crimes to justice and will continue to support all efforts to work constructively with other delegations in that regard. Concerning the contents of the report, Ghana would like to highlight the following four points.

First, on the issue of cooperation between States and the Mechanism, we wish to express concern about the challenges the Mechanism continues to face in the area of enforcement. As rightly indicated in the report, the return of some convicted persons to the United Nations Detention Unit by States puts a financial burden on the Mechanism, as the Unit was not intended for such purposes. In that connection, we continue to thank the 12 enforcement States for agreeing to take up additional responsibilities in enforcing the sentences of one or more convicted persons and encourage those considering enforcing sentences in the future to do so.

Another issue of critical importance on cooperation is the relocation of acquitted and released persons by the Mechanism to third States. Ghana wishes to encourage the Mechanism to continue with diplomatic efforts in finding an amicable solution with the receiving States. We commend the President for complementing the diplomatic efforts of the Registrar by raising such issues during bilateral meetings with States. The arrest of Mr. Fulgence Kayishema, one of the remaining fugitives indicted by the International Criminal Tribunal for Rwanda, on 24 May in South Africa shows that, when States cooperate with the Mechanism, it leads to progress and the early closure of the cases before the Mechanism, in line with resolution 1966 (2010). Non-cooperation by some States leads to delays and further adds to the financial burden of the Mechanism. We therefore call on all States harbouring fugitives to fully cooperate with the Mechanism by honouring their responsibilities under Chapter VII of the Charter of the United Nations.

Secondly, Ghana continues to pledge its support to all efforts by the comity of nations, which have a collective responsibility to remember and not forget that the survivors and families of victims of atrocity crimes are still crying out for justice and accountability. We underscore the fact that sometimes the wheels of justice may grind slowly, but the Council needs to speak with one voice and acknowledge that, if we failed in our responsibility to protect the victims during the genocide, we have a collective responsibility to seek justice for the victims by holding accountable the perpetrators of heinous atrocity crimes, no matter how long it takes. The survivors and the families of victims are looking up to us, and we cannot let them down.

Thirdly, on the issue of complementarity, we continue to note with appreciation the continuous collaboration between the Office of the Prosecutor and the national prosecutions by providing them with access to evidence — and one such instance of collaboration led to the impending transfer of Mr. Kayishema to Rwanda for trial if the legal procedures are exhausted in South Africa. That is also subject to the conditions set out in the relevant referral decisions. We urge the Mechanism to continue with such activities, as this development helps in building the capacities of the officers in the national prosecutions of the affected countries, in line with the principle of complementarity.

Finally, Ghana takes note of the measures put in place to protect witnesses. We have noted that the Mechanism has conducted threat assessments and coordinated responses to security-related needs under judicial protection orders and, more significantly, in cooperation with national authorities. We believe such measures will encourage other victims not to recant when called upon to give testimony.

In conclusion, I would be remiss if I concluded my last statement to the Council on this subject matter without applauding the untiring efforts of the President and the Prosecutor of the Mechanism and their staff in carrying out their mandate by bringing the perpetrators of atrocity crimes to justice. I would also like to thank Ambassador Michel Biang of Gabon and his delegation for the able manner in which they chaired the Informal Working Group on International Tribunals.

**Ms. Zabolotskaya** (Russian Federation) (*spoke in Russian*): Allow me to start by expressing our gratitude to the President and the Chief Prosecutor of the International Residual Mechanism for Criminal

Tribunals for their briefing to the Council and by also thanking the delegation of Gabon for chairing the Informal Working Group on International Tribunals.

Resolution 1966 (2010) created the Residual Mechanism and mandated it to be a small, temporary and efficient structure whose functions and size were intended to decrease over time. Given that the docket of the Mechanism is now empty, the efforts of its leadership should now be focused on drawing down its activities, as called for by the Security Council. That should be the focus of reports from the President and the Prosecutor. However, time after time, these lengthy documents received at the Council present an increasing number of reasons to extend the existence of the Mechanism. In the most recent report (see S/2023/566), they describe some steps in the right direction, including the closure of the United Nations Detention Facility in Arusha and the Sarajevo field office, and some cuts to staff, in addition to the planned closure in 2024 of the Mechanism's office in Kigali.

At the same time, the bigger picture has still not been covered. We do not see any specific dates for the drawdown of the Mechanism. There is only a forecast for the conclusion of some of its functions with time frames that are, in our view, outrageous. Some go as far as 2055, and this is despite the fact that the international criminal tribunals, to which the Mechanism is the successor, were established 30 years ago. Thus, the anticipated life cycle of the structure is now 60 years. There can be no rational explanation for such an unusually long life of an ad hoc tribunal. I would like to recall that the Nuremberg Tribunal, which dealt with a category of crimes that is no less serious, lasted one year and a half, having transferred its archives to the International Court of Justice. And, as we know, no residual mechanisms or centres for knowledge and history dissemination were established. It may have been a mistake, of course, but it remains a fact.

We also recall that, in 2004, resolution 1534 (2004) instructed the International Tribunal for the Former Yugoslavia to take all necessary measures to complete the investigations by 2004, the trials by the end of 2008 and its work, as a whole, by 2010. The Tribunal did not meet the deadline. The expectation that the Residual Mechanism that replaced it would make up for the red tape of its predecessors was not met. After 13 years, it not only continues to exist, but as we can already see, expects to be around until at least 2055.

We note that paragraph 109 of the report of the President of the International Residual Mechanism makes a passing reference to the possibility of starting new appeals proceedings in the case against Fulgence Kayishema. We would like to recall that, in 2012, the International Criminal Tribunal for Rwanda decided to refer the case to the Rwandan courts. We see no possible justification for reviewing that decision 12 years later.

We are also wary of the ongoing attempts to artificially increase the number of trials on so-called contempt of court proceedings, which are of secondary importance, not a matter of prosecuting persons suspected of serious crimes under international law. Contempt of court charges can be adjudicated perfectly well by national courts. We see the use of the Mechanism's resources for that purpose, even against the backdrop of the empty judicial docket, as an artificial prolongation of its mandate. The situation has become absurd. The Mechanism is considering initiating a new contempt of court case related to the circumstances surrounding the recently stayed proceedings in the case against Félicien Kabuga. The main trial will therefore not take place. For some reason, however, a case of secondary importance will be taken up by the Mechanism. Is it possible that such a situation raises questions for our delegation only?

However, the Mechanism does not approach all its functions with the same zeal as it does in cases of contempt of court. It continues to overlook the disregard for the rules and minimum standards of detention conditions for a certain category of convicts, namely, Serbian convicts. The former President of Republika Srpska, Radovan Karadžić, was unable to get the British authorities of HM Prison Isle of Wight to provide his cell with normal lighting, according to his daughter. The former Head of the Republic of Serbian Krajina (Croatia), Milan Martić, and army general Dragomir Milošević of Republika Srpska have been in isolation in an Estonian prison for years. They are allowed contact with only a few prisoners. They are also being deprived of adequate medical care. The Mechanism refuses to apply the practice of granting early release to Serbs after they have served two-thirds of their sentences. Such petitions from Vlastimir Đorđević and Radivoje Miletić have been denied. In our view, the conditions faced by Serbs in detention are in stark contrast to those that were established for Kosovo Albanians accused of committing serious crimes during the 1998 and 1999 armed conflict. Those people had long been at large,

and no one was searching for them. The International Tribunal for the Former Yugoslavia did not see anything wrong with their actions at all.

It was only after the publication of the notorious and scandalous Dick Marty report, stating that they had committed numerous atrocities, including torture, murder and trafficking in persons and human organs, that the so-called Kosovo Specialist Chambers, established by the European Union, became concerned about such acts. The pretrial detention regime established by that court for eight Kosovo Albanians, including the former so-called President of Kosovo, Hashim Thaçi, are extremely lenient. They include the right to visit the gymnasium, library and chapel, walk in designated areas and buy goods and services with money from a special account. Punishments for violating the rules of the pretrial detention regime are very mild — warnings, fines and the temporary suspension of certain privileges. The so-called harshest punishment is two weeks of solitary confinement, with no ban on telephone calls. Furthermore, the same detainees were allowed 880 visits by family members and others in 2022 alone. Moreover, in late May and early September 2023, Mr. Hashim Thaçi was allowed to travel to Kosovo to visit his ailing parents, despite the high-profile scandals involving the intimidation of witnesses in his case.

In other words, we are witnessing a glaring difference in the conditions of detention for Serbian convicts and for Kosovo Albanians. We believe that the situation can be labelled as discriminatory. We demand that the Mechanism take measures to end such discrimination and ensure that Serbian convicts be provided with adequate conditions for serving their sentences. In particular, given the fact that Ratko Mladić's health remains extremely poor, we recall article 26 of the statute of the Mechanism. It authorizes the President to decide on pardons and sentence commutations in the interests of justice and the general principles of law. The adoption of such a decision would be objectively justified by the circumstances surrounding the case of Mladić, given his advanced age and poor health. We would like to underscore that in the case of Félicien Kabuga, the Mechanism took into account similar circumstances by staying the proceedings and considering his release on medical grounds. We expect the Mechanism to be consistent and apply the same approach to Mladić as it did to Kabuga. As a last resort, the Mechanism should consider the

option of transferring Mladić to Serbia to serve out his sentence there or granting him conditional release on medical grounds.

The upcoming 2024 regular review of the Mechanism needs to provide clarity with regard to its timeline for the completion of its work. The endless promises and vague projections of the past 30 years have only prolonged the process. The instructions of the Security Council must be implemented. That is imperative. Moreover, the judicial docket is empty and the main trials have been concluded. National law enforcement agencies and the Secretariat can deal with remaining issues. In the next report, we expect to see a detailed description of concrete and realistic options for the transfer of the remaining functions that will enable the Mechanism to complete its activities within a concrete time frame.

**Mrs. Dime Labille** (France) (*spoke in French*): I thank President Graciela Gatti Santana and Chief Prosecutor Serge Brammertz of the International Residual Mechanism for Criminal Tribunals for their detailed briefings.

Allow me to take this opportunity to thank Gabon for the outstanding work that was carried out by the Informal Working Group on International Tribunals, in particular Mrs. Annette Andrée Onanga, who truly guided our work and was a true leader. We would follow her lead anywhere — even to Gabon, if necessary.

France commends the Mechanism's efforts to carry out its mandate, whether in concluding trials, arresting indicted fugitives or assisting national jurisdictions in prosecuting the perpetrators of international crimes committed in the former Yugoslavia and Rwanda. The Security Council must continue to support its activities.

With regard to the former Yugoslavia, the handing down of the appeal judgment in the *Stanišić and Simatović* case on 31 May marked a crucial point in the Mechanism's judicial activity. And for the victims, it represents a victory of justice over impunity.

With regard to Rwanda, in their decision of 6 June the judges of the Trial Chamber concluded that Mr. Kabuga, who was arrested in France in 2020 and handed over to the Mechanism, was not fit to stand trial. On 7 August, the Mechanism's Appeals Chamber requested a stay of the proceedings and referred the matter back to the Trial Chamber, which on 8 September suspended proceedings sine die. We still encourage the

Mechanism to find ways to respond to the victims' quest for justice. Those last two cases mark the conclusion of the Mechanism's judicial phase.

France urges all States to cooperate with the Mechanism in accordance with their international obligations, and to support it in its activities in order to deliver justice to the victims and promote reconciliation. We regret that certain partners have continued to refuse to do so, despite repeated appeals from the President of the Mechanism, its Chief Prosecutor and many Member States, supported by the Council. It is imperative that the remaining fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR) be brought to justice. Only two fugitives indicted by the ICTR now remain, the Prosecutor having confirmed on 14 November the death of Aloys Ndimbati, who had been wanted for nearly 20 years. In that regard, we welcomed the arrest on 24 May of Fulgence Kayishema, thanks to collaboration between the Office of the Prosecutor and the authorities of South Africa and other countries. His arrest exemplifies efficient and effective international cooperation in combating impunity.

We welcome the efforts made to rationalize the Mechanism's activities, and we are pleased that it is actively planning its future as a truly residual institution. In that regard, we welcome the President's presentation of a framework of operations in response to the Security Council's request to identify possible avenues and receive recommendations from the Office of Internal Oversight Services in order to develop scenarios for the future.

Significant decisions will have to be made about a number of issues, including assistance to national jurisdictions, the protection of victims and witnesses, the management of archives and the monitoring of the execution of sentences. On that last point, we note with concern that the Mechanism continues to face difficulties with the relocation both of acquitted persons and convicted persons who have served their sentences, who all need to be successfully resettled.

We welcome the contribution made by the President of the Mechanism to the adoption in Paris on 15 May of the Ethical Principles for International Criminal Judges, part of the Ethica project, which France supports.

Finally, we want to repeat the following, which is key. We remain deeply concerned about denials of the commission of crimes and about hate speech and the glorification of perpetrators of genocide and war

criminals convicted by international criminal tribunals following impartial and independent proceedings.

**Mr. Azzam** (United Arab Emirates) (*spoke in Arabic*): I would like at the outset to thank Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals, and Mr. Serge Brammertz, its Chief Prosecutor, for their valuable briefings. I also welcome the representatives of Croatia, Rwanda, Serbia and Bosnia and Herzegovina to this meeting.

I want to take this opportunity to express my delegation's appreciation to the delegation of Gabon for its efforts and successful chairing of the Informal Working Group on International Tribunals in 2022 and 2023.

The United Arab Emirates reaffirms the important role that the Mechanism has played in carrying out the residual functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Its contributions have been instrumental in achieving and ensuring justice, protecting the rights of victims of serious international crimes and combating impunity. We would like to take this opportunity to reiterate that the international community must address the root causes of such crimes, which are often fuelled by hate speech, discrimination and racism. We will continue to monitor the Mechanism's progress in performing its core functions, including developments related to the indefinite suspension of trial proceedings in the *Kabuga* case owing to the accused's health problems.

We commend the Mechanism's ongoing efforts to be more effective and efficient and to reduce its workload. We urge it to focus on planning for the future, guided by the Security Council's vision for the Mechanism as a temporary and effective body whose functions should diminish over time. We therefore commend the progress that it has made in its work, resulting in its finally becoming the genuinely residual mechanism it was designed to be. In that context, we urge the Mechanism to continue to perform its mandated tasks and make progress, particularly with regard to overseeing the enforcement of sentences, providing assistance to national jurisdictions and protecting victims and witnesses.

We would like to emphasize that States bear the primary responsibility for holding the perpetrators of crimes accountable, while at the same time we



acknowledge the complementary role played by international bodies in achieving international justice. We also appreciate the efforts led by the Mechanism's judges and the Office of the Prosecutor to streamline and conclude its pending work. The United Arab Emirates urges all States, particularly those directly concerned, to comply with their obligations and cooperate with the Mechanism while supporting it in completing its tasks. Ensuring accountability and upholding justice are the best ways to honour victims.

In conclusion, as this is our final meeting on the Mechanism during our membership of the Security Council, the United Arab Emirates affirms that strengthening international justice and the rule of law based on the Charter of the United Nations is vital to enabling the international community to achieve peace and security effectively and sustainably.

**The President** (*spoke in Spanish*): I shall now make a statement in my capacity as the representative of Ecuador.

I thank President Gatti Santana and Prosecutor Brammertz for their remarks, and I welcome the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia to the Security Council today.

As other delegations have done, I would like to express my delegation's appreciation for Gabon's work as Chair of the Informal Working Group on International Tribunals.

Today, at a time when the rule of international law is under threat and it is increasingly important to show that justice institutions can succeed, the Mechanism is an example of what can be achieved when there is a strong and enduring commitment on the part of the international community. I would like to highlight the following elements of the reports we heard today (see S/2023/566).

First, the conclusion of the *Stanišić and Simatović* and *Kabuga* cases marks the Mechanism's transition to becoming a truly residual institution. With no further judgments to deliver, the Mechanism's attention must shift to the longer-term functions entrusted to it by the Council in 2010. We therefore welcome the fact that the President has established as one of her priorities the presentation of a framework of operations for completing the Mechanism's functions, which should provide a timetable for the completion of all activities and options for their transfer. We suggest that the

framework take into account the recommendations of the Office of Internal Oversight Services and the panel of judges established for that purpose.

Secondly, the Mechanism should continue to carry out such functions as supervising the enforcement of sentences, arresting the accused and tracking fugitives. Given that its ability to perform those functions depends on States' collaboration, we appeal to their sense of collective responsibility to bring the perpetrators of international crimes to justice. We acknowledge the work of the Office of the Prosecutor in confirming the death of Mr. Ndimbati, one of the fugitives indicted by the International Criminal Tribunal for Rwanda, and we encourage the Office to determine the whereabouts of the remaining fugitives. We support the Office's actions to protect witnesses and strengthen the capacity of national judiciaries.

Thirdly, we recognize the importance of consolidating the legacy of the Mechanism and the ad hoc Tribunals, with regard not to only sentences but also to evidence and specialized knowledge that are being transferred to national authorities. We agree that a key component in achieving this goal is to ensure that public judicial records are accessible. Disseminating the legacy of the Mechanism is also one of the most powerful tools for countering the rhetoric of historical revisionism and the glorification of war criminals. Ecuador rejects those practices in all their forms, as they undermine efforts to bring about reconciliation for the communities affected.

In conclusion, we reiterate our commitment to supporting the Mechanism and its essential work to ensure that international criminal justice prevails.

I resume my functions as President of the Council.

I now give the floor to the representative of Rwanda.

**Mr. Rwamucyo** (Rwanda): Rwanda welcomes the work carried out by President and Judge Graciela Gatti Santana and Prosecutor Serge Brammertz and values the good cooperation between the International Residual Mechanism for Criminal Tribunals and the Government of Rwanda.

It is crucial to underscore that the Mechanism has officially acknowledged Rwanda's capability to conduct genocide trials in strict adherence with international due process standards. Rwanda has effectively managed trials and appeals for cases referred to it by the Mechanism in recent years. Despite this positive



development, given the considerable volume of appeals, we continue to appreciate the ongoing collaboration and support extended by the Mechanism. Additionally, Rwanda anticipates that the Office of the Prosecutor will continue to provide assistance to Rwanda in addressing the persistent challenges posed by more than 1,000 genocide fugitives, thereby furthering justice for the victims and survivors.

As we commemorated the momentous seventy-fifth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide last week, we are revisiting the core principles of the Convention, which are prevention and accountability. For Rwanda, accountability extends beyond the individuals responsible for the 1994 genocide against the Tutsi. It also involves the responsibility of the nations where they seek refuge to ensure their trial, in accordance with the principles outlined in the Convention.

As of December 2023, Rwanda has issued more than 1,000 indictments against genocide suspects in 33 countries and the INTERPOL secretariat. Considering this, we urge nations for which indictments have been issued to intensify their cooperation in apprehending these fugitives within their jurisdictions.

We extend our gratitude to countries that have demonstrated their commitment to justice by extraditing or prosecuting fugitives on their soil, including Belgium, France, the United States of America, Uganda, the Netherlands, Canada, Norway, Germany, Denmark, Sweden, Malawi, the Republic of the Congo, Finland and Switzerland. Their actions underscore the belief that the pursuit of justice is not insurmountable but requires the political will to act. Despite several Security Council resolutions, there is observable reluctance from some States to cooperate. This inaction, despite available options for deportation, extradition or conducting trials within their territories, poses a significant obstacle to the fight against impunity.

Ensuring justice for the victims and survivors of the genocide against the Tutsi transcends mere prosecution. It is fundamentally about securing timely justice. Each delay in this process equates to a denial of justice, and, unfortunately, the pace is often hindered by a lack of cooperation from certain Member States, despite clear Security Council mandates and legal instruments urging collaboration. These delays not only impede the pursuit of justice but also obstruct the opportunity for criminals to face trial and be held

accountable for their crimes. A recent case highlighting this challenge is the decision of the Trial Chamber of the Residual Mechanism, ruling that Félicien Kabuga is unfit to continue standing trial — an outcome deeply disheartening for survivors, victims and the Rwandan people as a whole.

The fight against impunity is not a task that Rwanda should shoulder alone. It is a collective responsibility that we, as the global community, must undertake. We passionately appeal to all Member States to consider the gravity of the crimes committed during the genocide against the Tutsi, the prolonged suffering of the survivors and the potential instability that ongoing impunity poses. Each day a fugitive remains free is another day that justice is delayed and, as we all know, justice delayed is justice denied.

The Court has regularly reported on genocide denial. Rwanda and many other countries have also expressed grave concern about this matter. Action must be taken by the Council to condemn genocide denial. Rwanda welcomes the prosecution of those who interfere with witnesses' accounts, with the aim of revising established facts. We agree with the Court that contempt is a form of genocide denial, and those guilty of it must face the full force of the law.

On the issue of the resettlement of the acquitted and released persons, Rwanda wishes to remind the Council that in all meetings with the principals of the Court, the Government has consistently made it clear that the nine Rwandans acquitted and released by the Court are free to come back and live in Rwanda should they wish to do so. If they decide to do so, they will certainly not be the first Rwandans to return to Rwanda and live side by side with all other Rwandans in the enjoyment of their full rights. This has been the case for hundreds of thousands of Rwandans, former refugees, combatants or former genocide convicts, who today live peacefully side by side with genocide survivors — a testament to the success of Rwanda's unity and reconciliation. That decision to return to Rwanda is, however, theirs to make. What we find highly questionable is why those acquitted or released, who are today free men and have no ongoing proceedings with the Court, should continue to be the burden of the international community and to benefit from assessed contributions of Member States.

As I conclude, let us reflect on the plight of survivors, whose peace is continually disturbed by the knowledge that perpetrators are still at large. They, and

indeed all of us, yearn for the day when justice will no longer be delayed, when the guilty will finally answer for their actions and when the victims can find solace in knowing that their suffering has not been forgotten. We call on the Member States hosting genocide fugitives to extend judicial cooperation to Rwanda to bring to justice fugitives, to account for crimes committed in the 1994 genocide against the Tutsi. Justice can only be rendered where there is the political will to do so.

**The President** (*spoke in Spanish*): I now give the floor to the representative of Bosnia and Herzegovina.

**Mr. Lagumdžija** (Bosnia and Herzegovina): First, I want to thank the President of the International Residual Mechanism for Criminal Tribunals, Ms. Graciela Gatti Santana, and, of course, the Prosecutor, Mr. Serge Brammertz, for their briefings related to the progress report on the work of the Mechanism (see S/2023/566).

As the Mechanism is now shifting towards long-term residual functions, we appreciate detailed projections of this new stage of its mode of operation. On that note, I wish to highlight the following.

This year, we mark several milestones when it comes to international criminal justice — the seventy-fifth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, 30 years since the Security Council decided to establish the International Tribunal for the Former Yugoslavia (ICTY), closely followed by the establishment of the International Criminal Tribunal for Rwanda (ICTR), and 10 years since the Mechanism took over residual functions from the Tribunals. In between, we have witnessed numerous accomplishments and victories for international criminal justice, not least through its precedent-setting decisions on genocide, whereby the Genocide Convention was invoked in service of accountability for this crime and in support of its prevention.

Those intrinsically linked developments were of major importance for both Bosnia and Herzegovina and international criminal justice. For our part, while we want to take every opportunity to remind ourselves of the failures in Bosnia and Herzegovina, today more than ever we are doing so for the sake of lessons we urgently need to learn and stop repeating. The work of those pioneering institutions is vital for our understanding of the past as well as the future. It has contributed to an indisputable historical record — a crucial element in combating denial and revisionism — and stands as

a distinctive and decisive warning that there will be consequences. Dedication to the pursuit of justice and the fight against impunity are our most valuable tools in preventing future crimes.

For our part, we are committed to investigating, prosecuting and punishing all persons responsible for war crimes, regardless of the offender's nationality, ethnicity, religion or political affiliation or any other kind of affiliation. Our revised national war crimes strategy contains measures aimed at overcoming the remaining challenges hindering the efficient processing of those cases. It will contribute to the realization of justice for the victims of war crimes and support the country on its path towards reconciliation and lasting peace. On 30 March this year, the Council of Ministers of Bosnia and Herzegovina formed a supervisory body to monitor the implementation of the revised war crimes strategy. We have established a specific sublegal framework designed to improve the efficiency and quality of the processing of war crimes and thereby help to implement the strategy's goals. In that regard, the adopted normative framework that established control over the management and influx of newly registered cases of war crimes has already resulted in a clear reduction in the number of unsolved cases of war crimes registered within the judicial system.

In addition, the coordination of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina regarding the activities of the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina has improved the functionality of the mechanism in transferring proceedings in accordance with the third objective of the revised State strategy, thereby contributing to a more effective allocation of war-crimes cases by levels of justice, based on the legal complexity of each case.

One of the strategy's goals is regional cooperation, which is not yet at a satisfactory level. Around 3,000 suspected perpetrators of war crimes, crimes against humanity and genocide committed in the former Yugoslavia have yet to face justice. Of the total number of all unresolved cases in Bosnia and Herzegovina alone, more than 35 per cent refer to those where persons are unavailable to our domestic criminal prosecution authorities, with 63.3 per cent of those people located in the Republic of Croatia, Montenegro or the Republic of Serbia. In its daily practice, the Court of Bosnia and Herzegovina has noticed a problem with the channels of communication with regional prosecutions that take

place through the Ministries of Justice of the States in the region. In the light of those challenges, more must be done to strengthen regional cooperation.

After the escape to Serbia of the accused Novak Đukić, the Court of Bosnia and Herzegovina requested the judicial authorities of Serbia to recognize and enforce the final judgment in that case, but the Serbian judicial authorities have never acted on the verdict. Today Đukić is a retired Republika Srpska army general living in Serbia, where he has been avoiding serving a well-deserved prison sentence ever since. That is not only damaging to the fragile process of rebuilding trust and open and future-oriented relations between our countries, but it also perpetuates narratives that go against every civilized norm and principle of humanity, justice and the rule of law. Assistance from the Mechanism here is crucial, and we are grateful for the support extended by the Office of the Prosecutor. However, the main responsibility in delivering meaningful justice now lies with national judicial institutions, and effective and open regional cooperation among prosecution offices is crucial. The unavailability of suspects or accused not only undermines our courts' general effectiveness in carrying out that heavy responsibility, but it also encourages impunity and hinders the reconciliation process in the region.

I would now like to briefly touch on the legacy of the ICTY, the ICTR and the Mechanism. The Tribunals' jurisprudence has become an indispensable part of today's international legal system. The consolidation, preservation and availability of all documents, evidence and records — both physical and digital — therefore remains vital. They represent testimony that transcends individual moments in history and becomes a legacy that will exist far into the future. We should therefore make every effort and provide adequate support to enable that important process to be properly concluded.

However, I want to make a further point, which is that the archives of the Tribunal and the Mechanism are very much also archives of the recent history of my country, Bosnia and Herzegovina, and of priceless significance to us. We believe that the historical circumstances dictate that the archive material should be stored in Bosnia and Herzegovina. It is above all documentary evidence that was very largely given to the court by the institutions of Bosnia and Herzegovina. The citizens of Bosnia and Herzegovina make up a majority of the witnesses — and, unfortunately, the victims — who have appeared in the court, as a

majority of all the crimes committed in the wars during the dissolution of the former Yugoslavia were indeed committed in Bosnia and Herzegovina. The archive of the court is therefore an archive of the recent history of Bosnia and Herzegovina and is of priceless significance to us — especially the victims and their loved ones.

We acknowledge the establishment of the Sarajevo Information Centre on the ICTY in 2018 in accordance with resolution 1966 (2010), which allows for the dissemination of information and access to public judicial records as a first step towards modern digital transformation and full archive preservation. We would like to take this opportunity to express our desire and support for comprehensive, state-of-the-art digitalization of all archive materials, which would be available for ongoing trials, as well as for research and education in particular, and which would be available to the public based on the nature of the archive materials and within a legal framework that provides for their credible preservation, protection and, ultimately, their proper presentation.

Finally, Bosnia and Herzegovina's cooperation with the International Residual Mechanism for Criminal Tribunals has been stable and complete. We will continue that close collaboration in order to implement our national war crimes strategy, advance investigations and prosecutions and clear the existing backlog. We will not falter or tire in our support for the Mechanism as it completes its work or in our determination to deliver well-deserved truth and justice for crimes committed in Bosnia and Herzegovina.

**The President** (*spoke in Spanish*): I now give the floor to the representative of Serbia.

**Mr. Stevanović** (Serbia): I would like to thank Judge Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals, and Prosecutor Brammertz for their report (see S/2023/566) and today's briefings.

The Mechanism's specific aim, in accordance with resolutions 1966 (2010) and 2637 (2022), is to evolve into a "small, temporary and efficient structure, whose functions and size will diminish over time." In that context, we welcome President Gatti Santana's stated intention to attempt to ensure that the Mechanism can complete its remaining work without delay. However, certain of its activities suggest a tendency towards prolonging its existence.

The President of the Mechanism also notes in her report that there has been no progress regarding the contempt-of-court case of Petar Jojić and Vjerica Radeta. We once again emphasize that Serbia's handling of the issue in no way constitutes a violation of our international obligations but rather reflects an effort to act in accordance with resolution 1966 (2010). Serbia remains ready to undertake criminal prosecution in that and all other similar cases. We call on the Mechanism to reconsider its decision based on the evidence, including Serbia's previous submissions to the Mechanism, in order to allow the Jojić and Radeta case to be referred to the judicial authorities of our country.

During the previous reporting period, the Mechanism confirmed indictments for contempt of court against Vojislav Šešelj and four other individuals. The process of deciding whether the case against the accused should be referred to the authorities of the Republic of Serbia is ongoing. We hope that in those proceedings there will be no oversights such as those in the case of Jojić and Radeta. We offer strong assurances that the justice system of the Republic of Serbia has the appropriate legal and institutional framework to enable it to assume and handle those cases in a transparent and very qualified manner. During those proceedings, Serbia will maintain full cooperation with the Mechanism.

On this occasion, we find it necessary to once again restate the requests of the Republic of Serbia.

First and foremost, we insist on the return of the comprehensive documentation previously submitted to the Mechanism. That is a matter visibly absent from both previous and current reports by the President and the Prosecutor of the Mechanism.

Secondly, we emphasize the need to review the newly established criteria for early release and parole. It seems reasonable to conclude that those criteria have been set primarily to prolong the Mechanism's operation, resulting in unequal treatment of convicted individuals. Given that all convicted individuals are in an advanced stage of life and generally suffer from poor health, requests for early release or parole need to be promptly addressed.

Thirdly, we once again express our readiness to execute the prison sentences imposed by the International Criminal Tribunal for the Former Yugoslavia and the Mechanism within the Republic of Serbia under the full supervision of the Mechanism.

While the claim that sentences cannot be carried out in the countries of the former Yugoslavia is based on the Secretary-General's report of 1993 (see S/25704) and aligns with paragraph 2 of resolution 808 (1993), we believe that the circumstances have changed significantly. Today the prosecution of war crimes falls exclusively under the jurisdiction of national justice systems, and we see no compelling reason for why some convicted individuals should not serve their prison sentences in their home country. That would be done under the supervision of the Mechanism, granting full authority, including on matters such as early release and parole, to the Mechanism.

In that context, I want to highlight the insufficient health care provided to General Ratko Mladić, who suffers from several serious health conditions. We recall that the Mechanism, as part of the United Nations system, is bound by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which was adopted by the General Assembly in 1988 (see General Assembly resolution 43/173). Nevertheless, Mladić's requests for a hearing on his health condition have been denied by the President of the Mechanism. Serbia believes that a hearing is necessary to allow for relevant medical testimony regarding General Mladić's current condition and the challenges of his health treatment in the detention unit. In that context, it is crucial that Mladić, his lawyer and his family have access to all his medical records, because we have indications that that is currently not the case. If, after the examination and hearing, it is decided that Mladić cannot be adequately treated in his current detention unit, the Mechanism should, in line with Principles 1, 3, 23 and 24, consider humanitarian release to ensure his proper treatment in a nursing or medical facility. Serbia is ready to assist by providing qualified medical personnel for Mladić's comprehensive examination and is willing to accommodate him under any conditions set by the Mechanism upon his release for humanitarian reasons.

It is also crucial to highlight the issue in the Prosecutor's reports concerning the legal framework for cooperation between Serbia and Croatia in war crimes proceedings. The Prosecutor consistently overlooks the presence of existing legal frameworks rooted not only in national legislation but also in two conventions of the Council of Europe, which are binding for both countries as members of that body.



More importantly, we want to emphasize once again that the complaints about Serbia's denial of crimes and glorification of victims totally lack merit. Serbia has successfully concluded numerous legal proceedings imposing strict penalties for crimes committed in the former Yugoslavia, particularly those involving Serbian citizens or compatriots. Moreover, the substantial number of ongoing proceedings and investigations underscore our commitment to addressing those issues.

In conclusion, it is essential to acknowledge that the legacy of the International Tribunal for the Former Yugoslavia and the Mechanism should be open to criticism. Acquittals, such as those of Ramush Haradinaj, for terrible crimes in Kosovo and Metohija; Naser Orić, for serious crimes in Podrinje; and Ante Gotovina, for serious crimes in Croatia, are a part of the Mechanism's history. Those verdicts have strengthened a policy of impunity for the crimes committed against the Serbian people.

**The President** (*spoke in Spanish*): I now give the floor to the representative of Croatia.

**Mr. Šimonović** (Croatia): I would like to thank the President of the International Residual Mechanism for Criminal Tribunals, Judge Gatti Santana, and Prosecutor Brammertz for the report (see S/2023/566) and for their briefings today.

At this turning point for the Mechanism, after the conclusion of the last core crimes case pertaining to the International Tribunal for the Former Yugoslavia (ICTY) and the indefinite stay of proceedings in the *Prosecutor v. Félicien Kabuga* case, Croatia would like to reaffirm its strong support for the work of the Mechanism and its transition to a truly residual institution.

We reiterate the significance of the verdict delivered in May 2023 against Jovica Stanišić and Franko Simatović, former top Serbian security service officials, who participated in a joint criminal enterprise led by the late Serbian President, Slobodan Milošević. That judgment established a clear link between the top Serbian leadership and the atrocity crimes committed in Croatia and Bosnia and Herzegovina.

We regret that the President of the Mechanism felt compelled to raise once again with the Security Council Serbia's failure to arrest and transfer to The Hague Petar Jojić and Vjerica Radeta, who were accused of having threatened, intimidated, offered bribes to or otherwise interfered with two witnesses in the case

against Vojislav Šešelj. Those are serious crimes, which is why we reiterate that acting in accordance with the Mechanism's arrest warrants is a national obligation under Chapter VII of the Charter of the United Nations. Impunity for contempt of the Mechanism and especially for disrespect and violation of the security of witnesses only encourages further occurrences of contempt of the Mechanism.

In that regard, we have to point out that, during the reporting period, an indictment was confirmed in yet another contempt case, namely against Vojislav Šešelj and four other defendants, for disclosing a large volume of confidential ICTY information, including information on the identities of dozens of protected witnesses.

Croatia remains fully committed to complying with its obligations under the relevant Security Council resolution, namely, constructive, transparent, non-politicized, evidence-based judicial cooperation with other neighbouring States on matters related to war crimes. To that end, we need to reiterate that meaningful and productive cooperation is not a one-way process and that, alongside transparency and openness, good practices and international legal standards must be upheld.

We feel compelled to stress that Croatia is still waiting for Serbia's response to our invitation to the fourth and final round of negotiations for a bilateral agreement on processing war crimes. We are convinced that the provisions of such a bilateral agreement would prevent the further misuse of the instrument of mutual legal assistance and help to finally end the harmful practice of initiating politically motivated processes that do not comply with international legal standards.

Regrettably, even in these extremely challenging times, as we face serious and blatant violations of international law, it is devastating to see the ongoing denial of the factual findings and disrespect for the legal qualifications of the Tribunals and the Mechanism. The glorification of war crimes and the denial of crimes committed, including the genocide in Srebrenica, are unacceptable, especially now, as they present clear risks to international peace and security and therefore require our full and undivided attention. They increase the suffering of the victims, hamper reconciliation and destabilize the region. They also confuse — if not poison — future generations.



Notwithstanding our appreciation of the efforts made in that regard by the Mechanism, we are compelled to raise again the issue of insufficient cooperation with Serbia in the tracing of missing persons and mortal remains. Determining the whereabouts of the 1,803 missing Croatian citizens is our long-standing priority. Regrettably, we need to stress that a lack of political will in Serbia to share information and enable access to archives remains the greatest obstacle we have to progress in resolving these cases. To that end, we reiterate that establishing the fate of the missing persons, as well as finding their mortal remains and ensuring their proper burial, are essential for closure and reconciliation. In addition to its call for improved bilateral cooperation, Croatia urges the Mechanism to prioritize its support for tracing missing persons and mortal remains during its short remaining mandate.

In conclusion, I want to reaffirm our strong support for the important work of the Mechanism and its successful completion of its transition to a truly residual institution.

**The President** (*spoke in Spanish*): The representative of Serbia has asked for the floor to make a further statement. I now give him the floor.

**Mr. Stevanović** (Serbia): Of course, the Permanent Representative of Croatia has an obsession with the Republic of Serbia in every statement that he makes on any subject, but I would just like to read something from a report by the Prosecutor — the Prosecutor, that is, not the Republic of Serbia. The report states that Croatia's cooperation regarding war-crimes cases with national judiciaries in the region has significantly worsened,

“while the Croatian justice sector concerns itself almost exclusively with ... in absentia prosecutions of ethnic Serbs that do not achieve real justice” (S/2023/357, *annex II*).

As a result, Croatian perpetrators continue to enjoy impunity.

*The meeting rose at 12.15 p.m.*