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President: Mr. Kavan ..... (Czech Republic)

The meeting was called to order at 3.05 p.m.

Agenda item 45

Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Note by the Secretary-General transmitting the ninth annual report of the International Tribunal (A/57/379)

The President: May I take it that the Assembly takes note of the ninth annual report of the International Tribunal for the Former Yugoslavia?

It was so decided.

The President: I now call on Mr. Claude Jorda, President of the International Tribunal for the Former Yugoslavia.

Mr. Jorda (*spoke in French*): It is a great honour for me to address this Assembly once again as I present the ninth annual report of the International Criminal Tribunal for the former Yugoslavia, over which I have the honour to preside.

Allow me first, on behalf of all my colleagues and of the Tribunal as a whole, to express my profound gratitude for the support the Assembly has always afforded our institution. When I had the honour of presenting the eighth annual report of the International Tribunal to the Assembly last year, I shared in particular my concerns regarding the need to adapt the achievement of the International Tribunal's mission to the political changes in the former Yugoslavia. In fact, I shared some thoughts on the future priorities of the judicial institution over which I preside, describing in particular the need to direct the Tribunal's activity more towards the prosecution of crimes which constitute the most serious breaches of international public order, and setting out new ways in which to promote the trial of certain cases by courts in the States of the former Yugoslavia.

This process of reflection, initiated in 2000-2001, has since brought about a vast movement of reform, the foundations and main characteristics of which I will attempt to present at a later stage. For the moment, I will just say that 2001-2002 will have been marked not only by the effective implementation of the structural changes adopted in 2000 but also, and more particularly, by the setting out of a plan of action identifying the future directions of the International Tribunal.

The drafting of the plan of action is one outcome of an overall process of reflection, undertaken by the Tribunal in early 2000, on its judicial status and the means by which to accomplish its mission in the shortest possible time. I take the liberty of recalling that, in January 2000, the Tribunal began a large-scale reform of its structure and operation resulting, inter alia, in the adoption on 30 November 2000 of

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resolution 1329 (2000), by which the Security Council approved the creation of a pool of ad litem judges and the appointment of two additional judges to the Appeals Chamber. The aim of these reforms was to implement practical and flexible solutions that would allow the judges to deal with a considerable increase in their workload and thus respond more effectively to the needs of the accused and the expectations of the victims.

Today, I will attempt to present a summary of the Tribunal's activity and the main aspects of this plan of action. To begin, I would recall that the Tribunal is seeing a considerable increase in its activity at this time. I would also emphasize that, despite the increase in its activity, the Tribunal cannot try on its own all those accused of war crimes and crimes against humanity. At any rate, it must be said that, were it to do so, it could not honour its commitments to the Security Council. We therefore had to implement an appropriate and realistic strategy at The Hague that would allow those presumed responsible for crimes constituting the most serious breaches of international public order in the former Yugoslavia to be prosecuted as a priority. Finally, I will describe the effective implementation of the programme, which is far from being accomplished.

First, let me address the commitments and concrete measures undertaken. The Tribunal is today functioning at full capacity. It is honouring the commitments it made to the Security Council and is currently holding six simultaneous trials daily, as opposed to three in previous years. There is a total of 25 judges at the Tribunal. In 2001-2002, nine ad litem judges were appointed by the Secretary-General and served alongside the permanent judges. Consequently, as was to be expected, the number of trials has increased significantly. This increased activity has led to a significant rise in the number of decisions rendered. In fact, in the past year, the Trial Chambers examined over 20 cases and rendered five judgements on the merits.

In November 2001, pursuant to the resolution to which I referred earlier, two additional judges from the International Criminal Tribunal for Rwanda joined the Appeals Chamber of the Tribunal for the former Yugoslavia. I recall that the Appeals Chamber serves both Tribunals. It pronounced 20 or so interlocutory decisions, two appeals on the merits and ruled on two review applications. I would add that the structure and working methods of the Appeals Chamber were subject to reforms. Moreover, we established an international bar for defence counsel and to amend the Code of Professional Ethics. I anticipate greater efficiency of the Tribunal's functioning to result from improved training for defence counsel, a stricter Code and, ultimately, better participation of defence counsel in the Tribunal's effectiveness and efficiency.

At the same time, now is not the moment for self-satisfaction. This report should not conceal the difficulties encountered, particularly concerning the length of trials. The rate at which the Tribunal tries its accused is still too slow. Need I remind the Assembly that, as matters stand, some of the accused will not be tried within the next two years, a period which will only increase if no effective measure is taken to expedite proceedings?

The Tribunal must therefore continue striving to ensure further improvements in our current judiciary processes. We judges must deepen, improve and discuss them. In that respect, a new working group will submit its conclusions to me in the next few weeks.

This being so, the reforms undertaken will not on their own suffice for the Tribunal to honour its commitments to the Security Council, including an end to investigations in 2004, the end of trial proceedings by 2008-2010 and the end of appeals proceedings in a final four-year mandate.

I wish now to discuss the Tribunal's future directions, which I set out to the Security Council and about which the General Assembly should be informed.

A series of steps have been initiated by the Prosecutor, who is present in the Hall and whom I commend, and by the Registrar. The three organs of the Tribunal work hand in hand in exercising this entirely new form of international justice. In January 2002, we gave these issues some thought and decided to move towards a possible referral process of certain cases to the national courts of the States of the former Yugoslavia. The Prosecutor, the Registrar and I drafted a report on the judicial status of the International Criminal Tribunal for the former Yugoslavia and the prospects for referring certain cases to national courts. This reflection also benefited from a certain number of meetings, in particular with a group of experts mandated by the High Representative for Bosnia and Herzegovina, and from visits and meetings with all involved parties in Sarajevo and in the two entities of Bosnia and Herzegovina, the Federation and the

Republika Srpska. I discussed all this at the plenary meeting of a Security Council in July 2002, and the Council has been giving this information its consideration.

This strategy comprises two main aspects: realigning Tribunal activity on the trial of the highest-ranking military, paramilitary and civilian leaders responsible for war crimes and crimes against humanity; and refering certain cases of lesser importance to the national courts. In July 2002, having reviewed the ongoing investigations, the Prosecutor of the Tribunal considered that a certain number of intermediary or lower-level accused could, in fact, be tried by the courts of Bosnia and Herzegovina.

On 23 July, Ms. Del Ponte and I had the honour of presenting the aforesaid directions to the Security Council. I wished to ascertain, on behalf of the judges of the Tribunal, that we were, in fact, duly mandated by the Statute before undertaking all the measures necessary to implement the referral process. Following this discussion, the President of the Security Council issued a statement on behalf of the Council endorsing

> "the report's broad strategy for the transfer of cases involving intermediary and lower-level accused to competent national jurisdictions as… the best way of allowing the ICTY to achieve its current objective of completing all trial activities at first instance by 2008". (*S/PRST/2002/21*)

The Security Council also

> "invites States and relevant international and regional organizations to contribute as appropriate to the strengthening of national judicial systems of the States of the former Yugoslavia in order to facilitate the implementation of this policy". (*ibid*)

The essential question remains as to how the reform may be effectively implemented.

It bears emphasizing that this goal does not depend solely upon the work of the International Tribunal. Since the strategy seeks, among other things, to refer a number of cases to the domestic courts, it involves a large number of players, and not only the Judges and the Prosecutor. I will try to explain. These players are, first of all, of course, the International Tribunal, followed by those officials responsible at the national level, and finally, the international community itself, which you are and which you represent.

First of all, the International Tribunal: What must it do in order to meet the objectives set by the Security Council, in agreement with the Tribunal itself? Several approaches have already been undertaken in just a few weeks. The Judges, first of all, are empowered to create provisions allowing for the referral of certain cases to the national courts. And this is why I appeared before the Security Council.

From a constitutional standpoint, does our statute make it possible for us to refer a certain number of cases? The answer is yes. And so, we the Judges, in consultation with the Prosecutor, went ahead and modified our own rules of procedure and evidence, making it possible for this referral process to be carried out. So, from that standpoint, the Tribunal is ready.

I also met with the presiding Judges of the three Trial Chambers and began to examine with each of them the cases which could be referred to national courts, if need be.

And, lastly, the Prosecutor continued her evaluation of investigations that have been ongoing since the beginning of the year in order to determine how many individuals should be tried by the International Tribunal and how many by the national courts. I will, of course, specify which ones.

In the final analysis, the referral of certain cases — and you, representatives of the Assembly, will agree with me — will be possible only if the national courts have all of the resources required for trying war criminals. When I talk about resources, I am not talking about financial resources; I am also talking about legal resources. Furthermore, we must be sure that if we refer cases to the national courts, we must do so knowing that the mission entrusted to us by the Security Council will not give flea market value — forgive me for using that crude expression — to our cases if we are not absolutely convinced that those accused will be judged by the international standards to which we in this forum are all committed, and no one more so than you yourselves, Member States of the Assembly.

Now who are the other involved players in this strategy? It is the competent authorities on the national level.

I wish to remind you — and this is the opinion of the Prosecutor as well — that only courts in Bosnia and Herzegovina should for the time being be involved in

the referral of cases. That said, while we were in Bosnia and Herzegovina, Madam del Ponte and I myself observed that, despite the return to peace and the gradual re-establishment of democratic institutions in that country, the local courts were faced with substantial structural difficulties. Moreover, it will take several years before the far-reaching efforts undertaken by the Office of the High Representative to reform the State's judicial system can be completed.

In order to enable the Tribunal to implement its programme at the earliest possible opportunity — by which I mean, to commence the referral of certain cases by 2003 — an interim solution has been identified. This solution consists of establishing a chamber with special jurisdiction to try serious violations of international humanitarian law within a national court already in place, in this instance, the State Court of Bosnia and Herzegovina. In other words, at the time of putting a State or national court into place, there would be a special section or chamber dealing with war crimes. In order to guarantee the impartiality and independence of that chamber, it would be provisionally — and I do emphasize provisionally —- composed of international judges who would assist the local judges. This solution has many advantages. For one thing, it has the advantage of avoiding the inconveniences of referring our cases to jurisdictions that are unable or unwilling to try these cases, whether it be the Croat-Muslim Federation or the Republika Srpska. This is our current view. I say this outright.

It goes without saying that, in order to set the specialized chamber in place, concerted action is required on the part of all the competent authorities in Bosnia and Herzegovina. They are the High Representative for Bosnia and Herzegovina, who must already bear the heavy responsibility of fighting organized crime and stabilizing the country's economy; the local judicial authorities, who are the primary players; and also the international community, whose financial, logistical and legal support are vital.

The Tribunal is aware that this is not an easy task. Nevertheless — and I reiterate this here before the Assembly — such concerted action is the sine qua non for the effective implementation of the referral process and, as such, for the accomplishment of our mandate within the prescribed time frames. Very recently, the Office of the High Representative confirmed to me that the goal of establishing this specialized chamber by 2003 was still on track, provided, inter alia, that the necessary financial support was forthcoming.

May I, from this rostrum, express some confusion, because the High Representative came before the Security Council last week and was not very explicit on this question. We will be discussing this again. I believe there is a need for there to be clear and unambiguous discussions in this regard. It is my firm belief that the establishment within the State Court of a specialized chamber for jurisdiction over violations of international humanitarian law must be supported. And I ask you to support it. All means must be provided so that the chamber can function effectively.

The establishment of a deep-rooted and lasting peace in the former Yugoslavia will become a reality only once all the war criminals that are accused before that jurisdiction are brought to trial. In any event, such is the meaning of the International Tribunal's mission, under Chapter VII of the United Nations Charter.

I have spoken to you of the responsibilities of the Tribunal and of the responsibilities of the competent authorities at the national level. I would like to conclude by referring to the responsibilities of the international community towards this Tribunal.

I would like to recall that the Tribunal will not be able to accomplish its mandate within the anticipated time frames unless the Member States, and especially those created out of the former Yugoslavia, arrest and bring before the International Tribunal the accused in their territory and, further, hand over all of the evidence in their possession. As I indicated previously, the Tribunal has taken all of the measures necessary for the practical implementation of its programme of action. However, the Tribunal is not alone in this important endeavour. For the Tribunal to be able to concentrate its work on the prosecution and trial of the main political, military and civilian leaders, the States of the former Yugoslavia must also actively participate in their arrest and transfer to The Hague, as it is in this way — and this way alone — that we will be able to accomplish our mandate within the anticipated time frame.

The cooperation of the States — and those particular States — is, therefore, essential and remains one of my major concerns. Henceforth — and I want to be very clear about this — I will not hesitate to refer to the competent authorities the failure of any State to meet its international obligations. My predecessors

have done this, and as you know, I myself have done so very recently.

In conclusion, it must be noted that the Tribunal will enter its tenth year of existence in 2003. We must thus examine the results of this institution's activities more than ever, and do so uncompromisingly. I am not speaking in terms of an anniversary, but in terms of a time to assess our work. I have endeavoured today to demonstrate to the Assembly that international criminal justice is possible. Yet, for such justice to flourish, it is also important to underscore the vital character of the collective action that must be taken by the international community, which is represented here, while never forgetting the voice of the victims and the ultimate goal of reconciliation among peoples.

The President: I give the floor to the representative of Denmark, who will speak on behalf of the European Union.

Ms. Løj (Denmark): I have the honour to speak on behalf of the European Union. The Central and Eastern European countries associated with the European Union — Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia — and the associated countries Cyprus, Malta and Turkey, as well as the European Free Trade Association countries members of the European Economic Area, Iceland and Liechtenstein, align themselves with this statement.

The European Union would like to once again express its strong support for the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Tribunal's establishment in 1993 marked a significant step forward in the progressive development of international criminal law and opened up an entirely new field of United Nations action. The Tribunal has been and remains an important element in the international community's strategy for restoring peace, security and the rule of law in the Federal Republic of Yugoslavia, Bosnia and Herzegovina, Croatia and the former Yugoslav Republic of Macedonia.

The impact of the Tribunal will go far beyond the region of the Balkans. By providing innovative and constructive ideas on how to make international criminal justice work, the Tribunal paved the way for the International Criminal Court, the first permanent international structure to combat impunity for the most serious crimes that are of concern to the international community as a whole.

The Tribunal and the Court serve as eloquent examples of the determination of the international community to combat impunity. Under no circumstances shall perpetrators of serious violations of international humanitarian law enjoy impunity, no matter their rank, position or citizenship.

The European Union takes note with great satisfaction of the efforts of the Tribunal to continue the process of structural and operational reforms initiated in 2001 to seek the expeditious resolution of the cases before it in order to be able to finish its remaining tasks by 2010.

Internally, the Appeals Chamber has been reorganized over the last year by strengthening the structural ties with the International Criminal Tribunal for Rwanda. The introduction of ad litem judges has been particularly worthwhile. Their services have allowed the Tribunal to conduct more trials in parallel. Externally, the Tribunal has focused on its completion strategy with the intention of finishing investigations by 2004, completing trial activities at first instance by 2008 and bringing to an end all Appeals cases by 2010, thus fulfilling its mandate. The European Union supports the Tribunal's ongoing efforts to concentrate its work on the prosecution and trial of civilian, military and paramilitary leaders, who bear the greatest responsibility.

We have noted with interest the strategy of the Tribunal to transfer cases involving intermediary and lower-level accused to competent national jurisdictions, as endorsed by the Security Council. We encourage the States in the region to make efforts to facilitate such transfers, inter alia, by providing the necessary legal framework for the trials to be conducted in a fair manner. The Tribunal will wish to satisfy itself that the national jurisdictions, which will receive transferred cases, have the capacity, the competence and the independence to properly investigate such cases within an acceptable timeframe and that the interests of victims and witnesses will be properly safeguarded.

The reforms demonstrate the Tribunal's ability to cope with and adjust to the challenges before it. But despite the remarkable work carried out thus far, a lot remains to be done: persons on remand are awaiting trial, investigations have yet to be conducted and arrests need to be made. The Tribunal must spare no

efforts in seeking to complete its task as soon as possible.

The European Union notes that the successes of the Tribunal have been achieved at significantly increasing cost. The report of the auditors in respect of the biennium 2000/2001 suggests that there is considerable room for improvement in management control and enhanced budgetary efficiency. We look forward to learning more on how the Tribunal has addressed the auditors' recommendations.

Full cooperation of all States is a vital precondition for the ability of the Tribunal to adhere to the goals set out in its completion strategy. The European Union urges all Governments to live up to their international obligation to cooperate fully with the Tribunal, regardless of their domestic legislation.

Full cooperation on all aspects of the work of the Tribunal constitutes a non-negotiable requirement of international law, whether it is required in relation to the location, arrest and transfer of indictees or to securing access to witnesses, documents, archives or other evidence.

Nevertheless, States' cooperation with the Tribunal remains problematic. Many national authorities in the former Yugoslavia continue to provide only the minimum in terms of cooperation. The continuing impunity of Radovan Karadzic and Ratko Mladic, indicted on counts of genocide, crimes against humanity and war crimes, must be brought to an end. It is also high time that Ante Gotovina and Janko Bobetko, indicted on counts of crimes against humanity and war crimes, are arrested and transferred to the Tribunal by the Croatian authorities. Finally, the lack of cooperation on the part of the Federal Republic of Yugoslavia with regard to witnesses and archives, and its failure to track down, arrest and transfer indictees, are totally unacceptable, and has led the Tribunal to report the Federal Republic of Yugoslavia to the Security Council for continued non-cooperation.

The European Union urges the Governments and other relevant authorities of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia to cooperate immediately and fully with the Tribunal. Failure to cooperate fully with the Tribunal would seriously jeopardize further movement of those countries towards the European Union. The European Union will keep close contact with the Tribunal on those matters and continue to closely follow the developments.

I should not wish to end without thanking all the branches of the Tribunal — the Chambers, the Registry and the Office of the Prosecutor — for their continuing endeavours. They provide essential contributions to peace and security in the region by ushering in justice and facilitating reconciliation, and they can rest assured of the full support and cooperation of the European Union.

The President: I call on the representative of Norway.

Mr. Kolby (Norway): Let me begin by expressing our full recognition of the achievements and the high standards of the International Criminal Tribunal for the Former Yugoslavia (ICTY), as reflected in various judgements, as well as in the report before us. We would like to thank the President of the Tribunal for the detailed annual report.

The work of the Tribunal has become a widely recognized contribution to the search for truth and the fight against impunity for the most serious crimes of international concern. Thus, it can assist in the process of rebuilding civil society under the rule of law. The period under consideration coincides with the historic establishment of the world's first permanent International Criminal Court (ICC). That marks yet another milestone in the essential process of making international criminal justice work, thus motivating States to fulfil their duty to bring those who have committed atrocities to justice.

In that regard, the judgements of the Tribunal represent essential contributions to international jurisprudence with regard to the prosecution of the most serious international crimes. The continuing work of the ad hoc Tribunals also paves the way for the future work of the International Criminal Court.

We are pleased to see that the Tribunal now is operating at full capacity, and that both internal and external reforms have been successfully implemented, leading to a remarkable increase in its judicial activity, not least thanks to the arrival of nine ad litem judges. Bearing in mind the need to prepare for the foreseeable rise in the number of cases on appeal, we especially welcome the arrival of two additional judges in the Appeals Chamber, as well as the implementation of means to strengthen the structural links between the

Appeals Chambers of the International Tribunal and the International Criminal Tribunal for Rwanda. The latter measure will guarantee that the case law of the Appeals Chambers is consistent, and it will simplify the work of the judges and staff in the Chambers.

However, certain financial and management issues, mainly related to defence counsel and legal aid, are still a cause of concern for us. We note, however, the Tribunal's efforts to deal with those problems, and we would welcome in that regard the creation of an international criminal bar. The bar would have powers to enforce, inter alia, the substantive amendments and additions to the code of professional conduct for defence counsel, including an explicit prohibition of fee-splitting and more detailed rules on conflicts of interest. In addition, the changes made to the Directive on Assignment of Defence Counsel, including the simplification of the legal aid payment system and the prohibition of the assignment as member of a defence team of relatives and friends of the accused or of counsel, are also important in that regard. Both as a further preventive measure against potential fee-splitting and for cost-saving purposes, we urge the Tribunal to thoroughly consider the recommendations of the Board of Auditors to lower the indigence threshold and to establish a limit on the amount of legal aid that may be provided for the duration of the proceedings.

It is evident that the ICTY alone cannot carry out all the work required to restore and to maintain peace in the former Yugoslavia. The Tribunal will not be able to try all the perpetrators of serious violations of humanitarian law committed during a conflict that lasted more than five years. The Tribunal's completion strategy, as endorsed by the Security Council, seems in practice to be the best way of enabling the Tribunal to achieve its objective of completing all first instance trials by 2008.

Transferring cases involving intermediary-level accused to the competent national jurisdictions paves the way for the ICTY to fully concentrate on trying those who bear the greatest responsibility for the crimes committed. Leaving it to domestic courts to try the subordinates who carried out the orders would further help to reconstruct a national identity in the region. In that process, we must allow for sufficient flexibility in order to ensure that no perpetrator can gamble on impunity based on the provisional nature of the Tribunal.

To a large extent, the success of the Tribunal in the discharge of its mandate lies in the hands of Member States. It is encouraging that 23 accused, almost three times the number for the previous reporting period, either surrendered voluntarily or were arrested during the period under consideration. We regret, however, that problems in international cooperation remain a major obstacle for the Tribunal in accomplishing the reforms that have already been implemented and those under consideration, and thus in completing its mandate. The arrest and subsequent transfer of former President Slobodan Milosevic to The Hague were a landmark in the field of international criminal justice. The transfer makes clear that no individual is above the law, regardless of his or her position. All authorities throughout the former Yugoslavia must now recognize that the duty to cooperate with the Tribunal in accordance with the binding decisions of the Security Council is non-negotiable.

It is critical to the success of the Tribunal that the people of the region be informed about its work and understand its significance. It is our hope and belief that this is happening, albeit gradually. An important initiative taken by the Tribunal in this regard is the Outreach Programme, which provides accurate and topical information on the ICTY and its activities to the people of the former Yugoslavia. In the light of the Tribunal's completion strategy, the role played by the Programme in tracking developments and reforms in domestic criminal justice systems is also becoming increasingly relevant. Norway welcomes the expanded activities and continuous development of the Outreach Programme. During the period under review, Norway has donated almost 100,000 euros to the Outreach Programme. We encourage all States to support actively the continued work of bringing the judicial process closer to the public in order to promote greater insight, which may be an important factor in achieving long-term peace and reconciliation in the area.

We appeal to all States to demonstrate, not only in words but also in practice, their fullest cooperation with the Tribunal by surrendering indictees, providing full and effective assistance with regard to witnesses, giving financial and material support and, not least, providing practical assistance in the enforcement of sentences. The Norwegian Government has demonstrated its willingness to consider applications from the Tribunal concerning the enforcement of

sentences and subsequently, in conformity with national laws, to receive a limited number of convicted persons to serve their sentences in Norway. We encourage other States to prove their continued commitment to the work of the Tribunal through concrete action in this crucial field.

As we are convinced of the need to ensure that no one gambles on enjoying impunity for acts of genocide, other crimes against humanity or serious war crimes, the Assembly may rest assured that we will stand by our long-term commitment to the successful fulfilment of the mandate of the ICTY.

Mr. Cheah (Malaysia): I would first like to join other delegations in expressing appreciation to Judge Claude Jorda, President of the International Tribunal for the Former Yugoslavia (ICTY), for introducing the report of the Tribunal (A/57/379) to the General Assembly.

Malaysia is gratified that the process of reform of the Tribunal, started in 2000 in all of its three organs, is well under way. We are pleased to note that the number of judges has increased from 22 to 25 since last year — with 16 permanent judges, including 2 from the International Criminal Tribunal for Rwanda (ICTR) who are serving in the Tribunal's Appeal Chambers and with 9 ad litem judges on the roster. The Tribunal is now operating at full capacity by optimally utilizing the Three Trial chambers, conducting six simultaneous first instance trials daily. These positive developments will certainly further enhance the capability of the Tribunal.

My delegation also noted that on 23 July this year, at a closed meeting of the Security Council, Judge Jorda presented for the consideration of the Council a broad programme of action with regard to the future direction of the Tribunal in order to fulfil its mandate of completing all first instance trial activities by 2008. The Council endorsed the broad strategy recommendations presented by Judge Jorda including the recommendation to transfer intermediary-level and lower-level criminal cases to competent national jurisdictions. Malaysia welcomes this development as well as the observation made by the Council on the need to further study the proposal to establish a special chamber in the State Court of Bosnia and Herzegovina. We are of the view that the broad strategy will further facilitate their expeditious implementation of the mandate of the Tribunal. Nevertheless, it is important to ensure that the local courts are well prepared and equipped to handle such cases.

The Tribunal was established to, among other reasons, bring to justice persons allegedly responsible for violations of international humanitarian law and to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia.

The Council and the Tribunal must exercise the utmost care so that the reform process is not implemented at the expense of achieving these important objectives. It is also pertinent to seek the views of the countries concerned. Malaysia is confident that, together, the Council and the Tribunal are taking the correct approach on this matter.

It has been almost a decade since the Tribunal was established. Malaysia is pleased to learn that a total of 78 cases have appeared before the Tribunal, of which 30 cases have been completed. However, we are very concerned that 20 publicly indicted persons still remain at large, including the major indicted war criminals, particularly, Radovan Karadzic and Ratko Mladic. We strongly hope that this matter will be addressed as expeditiously as possible.

The continued freedom with impunity of such major characters will not only preclude the Tribunal from concluding its work within the allotted time frame, but also impede the meting out of justice and the reconciliation process in Bosnia and Herzegovina. Malaysia reiterates that the mandate of the Tribunal would not be considered complete without the apprehension and the trial of major indicted war criminals, most of whom are believed to be hiding in the Federal Republic of Yugoslavia and the Republika Srpska.

In this regard, Malaysia views with concern the letter addressed to the President of the Security Council by Judge Jorda regarding the failure of the Federal Republic of Yugoslavia to cooperate with the Tribunal. We commend Judge Jorda's letter and reiterate the importance of the Tribunal receiving the necessary support and cooperation of all the parties concerned in the implementation of its mandate. We also urge the authorities in Republika Srpska to cooperate fully with the Tribunal in this regard.

While we acknowledge that the political will of States is needed in apprehending these indicted war criminals, the international community, especially the

Security Council, must also show determination in rendering full assistance to the Tribunal. In this regard, we note with concern the comment made by the Head of the United Nations Mission in Bosnia and Herzegovina at the Council meeting on 23 October 2002, regarding the limited mandate of the Stabilization Force on this issue. We hope therefore that the Council and all parties concerned would give serious thought to this matter in order to assist the Tribunal in carrying out its work of rendering justice to the victims of war and crimes against humanity in the former Yugoslavia.

We wish also to take this opportunity to express our profound appreciation to the outgoing Judges for their outstanding service to the Tribunal on behalf of the international community and humanity in general. In reiterating its fullest support for the Tribunal, Malaysia calls once again on the international community to give all-out and sustained support to the Tribunal in carrying out its mandate.

Mr. Šimonović (Croatia): As we welcome the entry into force of the permanent International Criminal Court less than ten years since the adoption of Security Council resolution 827 (1993), there can be no doubt that the International Criminal Tribunal for the Former Yugoslavia (ICTY), together with the Rwanda Tribunal, played a crucial role in this evolution of international criminal justice. Over the last nine years, the two ad hoc Tribunals have significantly advanced the development and enforcement of international criminal law by shaping new legal standards, strengthening the rule of law and bringing justice to the victims.

However, as we are rightly reminded in the report's conclusions, there is yet another dimension to the Tribunal's role — that of establishing a reliable record of the past events. For the countries in the region and for their future, the political and historical account established through the Tribunal's jurisprudence is equally as important as the punishment of the perpetrators.

Because of its legal, political, historical and educational importance, the trial of Slobodan Milosevic is central to the ICTY. It is an opportunity to establish a framework and identify a context within which all individual crimes in the former Yugoslavia have been committed. Regretfully, the non-chronological sequencing of the trial — which began with charges related to Kosovo, rather than Croatia and Bosnia — creates problems with respect to the reconstruction of the logic of the events related to the charges, thus failing to establish a coherent political and historical record.

The Republic of Croatia attaches utmost importance to the successful completion of the Tribunal's mandate. We support the work of the ICTY and we closely cooperate with it. As the report correctly notes, the Prosecutor maintains constant dialogue with the Croatian authorities, which have opened its archives and handed over more than 10,000 documents, and ensured access to all witnesses. Only in recent weeks Croatia has received and fulfilled half-a-dozen requests related to various investigations.

The most telling example of Croatia's commitment is undoubtedly the recent testimony of the President of Croatia before the ICTY in the trial against Milosevic. As the first head of State ever to appear before the Trial Chamber of an international war crimes tribunal in a case against a former president of another State, President Mesić helped to create another important precedent in international criminal adjudication.

In this spirit of co-operation, Croatia was also very open in expressing its concerns with regard to some elements of the indictment against General Bobetko, the former Chief of Staff of the Croatian armed forces. As certain factually and legally unfounded qualifications in that indictment risk some undesirable implications for the historical record of the events that took place during the liberation war in Croatia, the Government decided to explore the legal avenues available under the ICTY's Statute and the Rules of Procedure and Evidence in order to challenge respective parts of the indictment. It therefore submitted two interlocutory legal remedies, based on the interpretation of relevant provisions of the Rules of Procedure and Evidence. The ICTY has already established an Appeals Chamber that will decide on the interlocutory appeals. The Government of Croatia has made it very clear that it will comply with the ruling of the Appeals Chamber, which is expected in the following weeks.

A year ago the President and the Prosecutor of the ICTY presented a plausible exit strategy for the Tribunal. Various institutional and procedural improvements undertaken over the past year should be

continued, to ensure that the Prosecutor will finish its investigations by 2004, and that the Trial and Appeals Chambers will finish their cases by 2008 and 2010. Taking into account the limited capacity of the ICTY and the need for national mechanisms to strengthen and ensure respect for the rule of law, we welcome these efforts, in particular models of complementarity justice, relying on domestic courts elaborated before the Security Council in July this year.

In Bosnia and Herzegovina, the new State Court can take over specific cases, while the local courts continue to operate under the "Rules of the Road" procedures. The Croatian judiciary, which is not bound by these rules, has independently initiated a number of proceedings against perpetrators of individual war crimes against Croatian citizens, irrespective of their nationality.

Mr. Grey-Johnson (Gambia), Vice-President, took the Chair.

We recognize that concentrating on the highest-level perpetrators is a cornerstone of the exit strategy, and we support this approach. However, any attempt to create an artificial balance between all parties to the conflict should be prevented for the sake of establishing a reliable historical record. The work of the Tribunal should accurately reflect the extent and level of involvement in war crimes of individuals on different sides of the conflict.

The command responsibility introduced by the Tribunal should be applied to the highest level actively involved in planning and commanding genocide, crimes against humanity and war crimes, without turning it into objective responsibility, which could generally be attached to the leadership of any country involved in armed conflict.

Regarding the importance of the apprehension of the highest-level war crimes perpetrators, we are encouraged by the statement made by Mr. Jacques Paul Klein in the Security Council last week calling for a clear Stabilization Force (SFOR) mandate to find and apprehend Radovan Karadzic. We sincerely hope that the Security Council will act accordingly.

Mr. Šahović (Yugoslavia): Allow me at the outset to thank the President of the International Criminal Tribunal for the former Yugoslavia (ICTY) for his presentation of the Tribunal's annual report, which we have studied carefully. The report testifies to the very active work of the Tribunal over the past year, both within the Trial and Appeals Chambers but also in other aspects of its activities. In this regard, I would like to make a few comments.

We welcome the Tribunal's structural reforms, including its exit strategy, which should ensure that the first-instance trials are completed by 2008 and the remaining workload finished two years later. Indeed, as an ad hoc institution, the Tribunal has to have a time-frame to fulfil its mandate. The ICTY's intention to focus on the most serious crimes and to refer other cases to the national courts is, we believe, a good approach.

In this connection, I would like to emphasize the importance of the establishment of a special Chamber to try war crimes within the State Court of Bosnia and Herzegovina as part of a policy to improve the capabilities of national jurisdictions to take over such cases. However, we consider that this concept of referral of cases should in future apply to all States under ICTY jurisdiction. We in the Federal Republic of Yugoslavia are making efforts to reform our judiciary in order to strengthen its capabilities to deal with these complex and serious cases.

On another issue of a more general nature, allow me to draw the Assembly's attention to the fact that neither the Statute nor the Rules of Procedure and Evidence of the ICTY provides for compensation for persons held in the custody of the Tribunal and subsequently acquitted. My Government believes that it would be appropriate and fair to offer the remedy provided for in the national legislation of many States, including our own. If compensation were provided to individuals held in custody and later acquitted, it would greatly contribute to the fairness of the treatment of indictees.

I would also like to touch upon the work of one specific program of the ICTY — the Outreach Program designed for peoples in regions of the former Yugoslavia. In order to successfully fulfil its mandate, the ICTY should make additional efforts to be perceived and recognized as a just, impartial and non-political body that applies equal standards to all who fall within its jurisdiction.

As indicated in the report before us, cooperation between the Federal Republic of Yugoslavia and the ICTY is a complicated and complex process. In this context, we would recall that the present Government

of Yugoslavia took office less than two years ago. During that period, cooperation with the Tribunal, which had been virtually non-existent, constantly improved and intensified. Allow me to give just a few concrete examples.

As many as 14 indicted persons were transferred from the territory of the Federal Republic of Yugoslavia into the custody of the ICTY, nine of them within the reporting period. Besides former President Slobodan Milosevic, whose trial marked the work of the ICTY in the past year, those persons included the former Chief of General Staff of the Army of Yugoslavia and the Federal Minister of Defence, the former Federal Deputy Prime Minister, several high-ranking military officers and a number of suspects from Republika Srpska. The Yugoslav courts have issued warrants for an additional 17 accused persons whose arrest has been sought by the ICTY.

In early April this year, the Federal Parliament passed a law on cooperation with the Tribunal. A National Council for Cooperation with the ICTY has been established, headed by the Federal Foreign Minister. We are aware that some of the provisions of this law need improvement, and we are currently seeking to deal with this issue. However, my Government would like to emphasize that those provisions have not in practice so far been an obstacle to cooperation.

Thus far, the Federal Republic of Yugoslavia has responded to 34 requests to provide documents sought by the ICTY Prosecutor, including full reports from 17 sessions of the Supreme Defence Council and from the Commander-in-Chief of the Army of Yugoslavia.

As far as access to witnesses is concerned, the Governments of Yugoslavia and Serbia have provided the requested information on as many as 100 witnesses and suspects. More than 30 former and current State officials and employees were authorized to testify, including on matters that constitute military and State secrets. Among them were the former President of the Federal Republic of Yugoslavia and the former Chief of the General Staff of the Army of Yugoslavia.

The Office of the Prosecutor itself has recently pointed that the Government of the Federal Republic of Yugoslavia increased the number of its responses to requests for documents and access to witnesses.

In conclusion, let me emphasize that the Federal Republic of Yugoslavia believes that all individuals responsible for international crimes should be brought to justice, either before international courts such as the ICTY or before national courts. My Government recognizes its obligation to cooperate with the ICTY and will continue to do so. I am confident that the trend of improvement and strengthening in the cooperation between the Federal Republic of Yugoslavia and the ICTY that we have witnessed over the past two years will continue in future.

Mr. Kusljugić (Bosnia and Herzegovina): The Government of Bosnia and Herzegovina welcomes the report of the International Criminal Tribunal for the former Yugoslavia (ICTY), presented to the General Assembly by the President of the Tribunal, Judge Claude Jorda, and commends the achievements registered by the Tribunal over the past year.

I wish to take this opportunity to thank both President Jorda and Chief Prosecutor Mrs. Del Ponte for their clear and straightforward statements on the Tribunal's current efforts and future plans, which they have articulated in their reports.

The presidency and Government of Bosnia and Herzegovina fully support the activities of the ICTY, not only by words but also by deeds. We believe that the ICTY plays a substantial role in the processes of reconciliation and of the maintenance of stability and peace, both in my country and in South-eastern Europe. We also underline the role of the Tribunal in the individualization of war crimes as a precondition for sustainable inter-ethnic reconciliation in the region as a whole.

Recently, Biljana Plavsic, one of the highest-ranking persons indicted for crimes against humanity by the United Nations Tribunal, not only pleaded guilty, but also expressed remorse to the victims for her role in the persecution and deportation of countless Muslims and Croats. Such a gesture should be considered a milestone in the reconciliation process. We also agree that the apprehension and trial of high-level perpetrators should be the primary role of the Tribunal.

Citizens, especially war crime victims and witnesses in my country, have carefully followed the work of the ICTY, reflecting the impact it has had on their everyday lives. Many families, in all ethnic groups in the region, especially in Bosnia and

Herzegovina, suffered during the 1991-1995 war. In the past year numerous new mass graves have been discovered, bearing witness to the scale of the crimes committed. Each verdict of the Tribunal helps to alleviate the pain and suffering of the victims and their families. For many in Bosnia and Herzegovina, the ICTY's activities represent the only hope that justice will eventually be done. The trial against Slobodan Milosevic, whose indictment includes the crime of genocide committed in Bosnia and Herzegovina, is being followed with special attention, since it is expected that new, substantial evidence about the root causes of the conflict in the region will be unveiled.

War criminals are symbols for the use of violence in achieving political goals. Hence, they present a source of continued instability in the region. That is why we are very disappointed and seriously concerned by the fact that 20 publicly indicted war criminals still remain at large. Last year, when I addressed this Assembly, there were 26 indicted persons at large. The fact that today there are 20 indicted persons at large is not a sign of success. The fact that publicly indicted war criminals, especially Radovan Karadzic and Ratko Mladic, remain not only at large, but also in a position to influence the political situation in my country, is a sign that their political programmes, based on the theory of "ethnically clean" territories, are still alive.

The evidence of public unrest with regard to the work of the ICTY, which has recently been recorded, as well as the well-known fact that some indicted war criminals are considered to be heroes among a substantial part of the population in all countries in the region, clearly shows that the nationalists, who strongly oppose ICTY activities, are still operational.

We agree that a lasting and stable peace in the Balkans will not be achieved unless the Tribunal brings to justice all indicted high-level individuals. We also consider that the leading role of the international community regarding the arrests of these individuals is of crucial importance. It has already been shown that local political parties and Governments fully cooperate with the Tribunal only when they are forced to do so under consistent international pressure. The commitment of the international community to support the work of the Tribunal, both financially and politically, will be proof of its credibility in the region. Its readiness to give the utmost priority to making arrests of indicted war criminals will be proof of its commitment to universally accepted ethics and moral values.

We in Bosnia and Herzegovina have experienced crimes against humanity that should not, and never could, be forgotten. Mass murder, detention camps, the humiliation and torture of civilians, systematic mass rape, ethnic cleansing and even genocide were the Bosnian reality for more than three years at the end of the twentieth century. As a result of those experiences, Bosnia and Herzegovina made a special commitment to the establishment of the International Criminal Court (ICC). Our hope is that, in addition to carrying out its primary function — bringing to justice individuals responsible for the most serious crimes — the ICC will be able to act preventively in order to deter future war crimes. It is our hope that the ICC will create greater awareness in the international community with respect to the principles of international criminal justice, as well as accountability, which can play a significant role in the consolidation of peace and global stability. However, the ICC will use the same instruments as the ICTY to bring to justice indicted persons. The ICTY has so far not received the necessary support in the apprehension of the high-level leaders and notorious offenders responsible for the most serious crimes. The ineffectiveness of this process therefore is threatening to diminish the credibility of the ICC itself, even before it becomes operational.

We are aware that many more suspected war criminals in the region must be prosecuted. Considering the intention of the ICTY to try only high-level perpetrators, the Government of Bosnia and Herzegovina welcomes the Tribunal's initiative for some cases to be tried by the Court of Bosnia and Herzegovina under the auspices of the Tribunal. However, we expect that the apprehension and trial of the most notorious offenders will remain the responsibility of the international community and the United Nations, even after the conclusion of the current mandate of the United Nations Mission in Bosnia and Herzegovina.

The Acting President: We have heard the last speaker in the debate on agenda item 45.

The General Assembly has thus concluded this stage of its consideration of agenda item 45.

Agenda item 46

Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Note by the Secretary-General transmitting the seventh annual report of the International Criminal Tribunal (A/57/163)

The Acting President: May I take it that the Assembly takes note of the seventh annual report of the International Criminal Tribunal for Rwanda (A/57/163)?

It was so decided.

The Acting President: I call on Ms. Navanethem Pillay, President of the International Criminal Tribunal for Rwanda.

Ms. Pillay: It is my honour to present to the Assembly a report on the activities of the International Criminal Tribunal for Rwanda (ICTR) for the year 2001-2002.

The year has been marked by both progress and crisis. To quote Charles Dickens, "It was the best of times, it was the worst of times." (*A Tale of Two Cities*)

During the year under review, the ICTR has been actively engaged in nine trials of 22 accused. Each of the three Trial Chambers is conducting three trials contemporaneously in shifts of two to six weeks for each trial. The system of conducting multiple trials is onerous for the judges, and entails elaborate planning and scheduling, in consultation with all parties concerned, including some 60 defence counsel from various countries. Nevertheless, in the light of the large number of accused persons in custody, the lengthy period of their detention and the need to advance the date of completion of the Tribunal's mandate, the judges have been compelled to undertake many cases. It must be observed that, while trials by shift allow trials for a maximum number of accused, the consequence is that the delivery of judgement in completed trials is prolonged, as judges spend more time in the courtroom and have less time to concentrate on the preparation of judgements.

I am happy to report that we are now seeing the fruits of two years of pretrial preparation. Judgements in two trials of three accused persons — the Ntakirutimana and Semanza trials — will be delivered before the end of this year and early next year, respectively. In the following five trials, the prosecution has completed testimony and the Courts are hearing the defence case: in the Media trial, the prosecution called 47 witnesses over a period of 163 days, the defence commenced in September and we have just heard three witnesses; in the Kajelijeli trial, there were 15 prosecution witnesses and 11 defence witnesses have testified; in the Kamuhanda trial, there were 28 prosecution witnesses and seven defence witnesses have testified; in the Cyangugu trial, 40 witnesses testified for the prosecution and 37 defence witnesses have testified; and, in the Niyitigeka trial, 13 prosecution witnesses testified and the defence commenced its case in October. In the Military case of Bagosora and in the Butare trial — totalling 10 accused persons — the prosecution case is being heard.

From the foregoing, it will be observed that, at the end of our second term of service, the number of completed trials will be significantly higher. The pace of the proceedings is slow, but the judges must be scrupulous in their observance of international fair-trial norms, with full respect for the rights of accused persons. In that regard, I note that all of our judgements have survived the test of appeal.

The judges have continued to implement measures to enhance judicial functions and to expedite trials. At plenary meetings of judges held in May and July this year, the progress of trials was reviewed and new rules were adopted to further expedite trials and appeals. Some of those rules include rule 11 bis, which facilitates the transfer of accused to national jurisdictions to stand trial; rule 65 bis, which authorizes the Trial Chamber or a judge to supervise exchanges between the parties to ensure expeditious trial; rule 92 bis, which permits the admission of written statements as evidence in lieu of oral testimony; and article 5 bis, which explicitly prohibits fee-splitting arrangements between counsel and client.

The judges have implemented measures for the exercise of greater judicial control over proceedings. They have held pretrial and status conferences to

streamline trial proceedings, to determine the number of witnesses and documents to be introduced as exhibits, and to place stipulations on the length of witness testimony. The judges have ordered the non-payment of costs to assigned counsel as a way of discouraging frivolous motions and abuses of due process. Motions have been disposed of more expeditiously by assigning motions to single judges instead of to a full Chamber; by considering motions on brief, instead of holding court hearings; and by rendering oral decisions on motions during trial and thereby limiting interruptions of testimony.

Despite the best efforts of the judges and of all support sections, trials continue to be drawn out and often defy our plans to expedite proceedings. Let me share with the Assembly some of the reasons for that. The issues that emerge during a trial are legally and factually very complex, often much more so than at the national level. The accused are charged with conspiracy and with command responsibility; hence, their trials may involve as many as 100 witnesses and may last several years. The interpretation of trial proceedings into three languages — namely, Kinyarwanda, French and English — together with cultural and linguistic nuances and unique characteristics associated with understanding questions in Kinyarwanda, cause trial proceedings to double or treble the time required compared with that required for trials conducted in one language. In addition, there is a large volume of court documents, and delays occur in the translation and disclosure of such documents into the three languages. Additional time is required for defence counsel to investigate and prepare, to search for and locate witnesses in many countries and in refugee camps, and to accommodate their respective schedules accordingly. Counsel travel to Arusha from many parts of the world. Delays are encountered in the appearance of witnesses — and, in some instances, the non-appearance of witnesses — from Rwanda. Many States have assisted the ICTR in arranging contact with and facilitating the travel of witnesses, even those who have no travel documents. However, this year, the ICTR has experienced difficulties with regard to the flow of witnesses from Rwanda. The non-appearance of witnesses from Rwanda has disrupted the careful planning of the judicial calendar and is a severe setback to judicial work.

In June 2002, Trial Chambers I and II drew the attention of the Rwandan authorities to their statutory obligation to cooperate with the ICTR and to facilitate the travel of witnesses so that trials could continue. Despite such requests, witnesses were not sent, with the result that the two trials had to be adjourned and 15 trial days were lost. On 26 July, I reported that lack of cooperation to the Security Council. I noted that the administrative changes made by the Rwandan authorities had led to the non-issue or the delayed issue of travel documents for Rwandan witnesses and that the Rwandan Government was not observing its obligation to facilitate the appearance of prosecution and defence witnesses. The Rwandan Government appeared to have suspended its cooperation with the ICTR, and I urged the Council to prevail upon the Government of Rwanda to restore the previous good cooperation that it had accorded to the ICTR over the past seven and-a-half years.

At present, trials are proceeding, but it is pertinent to note that in five trials, the defence case is being presented and most of the defence witnesses come from outside Rwanda. Of the 122 defence witnesses who came before the ICTR this year, 20 came from Rwanda. The issue of the travel of witnesses from Rwanda must be resolved so that trials hearing prosecution testimony may resume on time.

I have invited the Minister of Justice and Institutional Relations in Rwanda, the Honourable Jean de Dieu Mucyo, as well as the President of the Supreme Court and the Prosecutor General of Rwanda to visit the Tribunal in order to observe the judicial proceedings first-hand and to meet with us. I was very glad to learn this morning that the invitation will be accepted, and I wish to thank the Rwandan Government for that.

I shall now give a brief overview of our cases. The ICTR has indicted 81 persons; 62 persons are in custody and 18 persons are still at large. Of the 62 people already arrested, eight have been sentenced, one has been acquitted, 22 are involved in ongoing trials and 31 are in custody, awaiting the commencement of their trials. The Prosecutor has indicated that she is ready for trial in seven cases, involving 13 of the 31 persons in custody. However, the Trial Chambers are currently fully engaged and will be engaged in ongoing trials of 22 accused persons until and beyond the expiration of the judges' term on 23 May 2003 and therefore cannot undertake any new trials, including the seven cases ready for trial. The accused are entitled to expeditious trials. The present lengthy period of pre-

trial detention is a matter of grave concern and does not bode well for the interests of justice. How are we addressing this concern?

Firstly, the Prosecutor has revised her future investigation programme from the originally estimated number of 136 new suspects to 16 new suspects, together with 10 ongoing investigations. The resulting 26 new indictments, which the Prosecutor intends to submit for confirmation by the end of the year 2004, will conclude her investigation programme. In addition, the Prosecutor has identified 40 suspects whose prosecution she intends to defer to national jurisdictions for trial. Fifteen of these suspects are in countries that have already adopted the principle of universal jurisdiction and these individuals could stand trial in those countries. The cases of 25 other suspects whom the Prosecutor has determined did not occupy high positions of responsibility could be transferred to the Rwandan authorities.

Secondly, a pool of ad litem judges has been created. In anticipation of a heavy workload for the Tribunal, I submitted a proposal to the Security Council on 9 July 2001 for ad litem judges to increase the judicial capacity of the ICTR. The Security Council adopted resolution 1431 (2002) on 14 August 2002, authorizing a pool of 18 ad litem judges for the ICTR and the use of four ad litem judges at any one time. Allow me to take this opportunity to express our appreciation to the Security Council for providing this resource.

The four ad litem judges will, upon taking office sometime in June 2003, be assigned to sections of the Trial Chambers composed of both permanent and ad litem judges. They will work in shifts. The precise manner in which the shift schedule will operate will depend on the progress of the respective trials and the availability of parties. Currently, the Trial Chambers hold morning sessions from 9 a.m. to 1 p.m. and afternoon sessions from 2.30 p.m. or 3 p.m. to 5.30 p.m. to 6 p.m. When the ad litem judges join us, we will work in two shifts, with some Trial Chamber sections sitting from 8 a.m. to 1 p.m. and the other sections sitting from 1.30 p.m. to 6.30 p.m., thus dispensing with the need to build additional courtrooms.

In the month of October, Trial Chamber I has conducted two trials in a shift system. The media trial was conducted from 8 a.m. to 1 p.m. and the Niyitegeka trial from 2 p.m. to 6.30 p.m. Sitting on both trials, the Vice-President and I were consequently in court for 10 hours each day. Nevertheless, this schedule served as a trial run for the ad litem shift system, which will have two shifts with different judges. I therefore envisage no difficulties over the integration of the ad litem judges.

My original proposal to the Security Council, however, was for nine ad litem judges to take office at any one time, which is the number of ad litem judges that was granted to the International Criminal Tribunal for the Former Yugoslavia (ICTY). I also requested flexibility to form trial chamber sections comprising ad litem judges alone. These proposals were made to enable us to complete the ICTR mandate by the years 2007 and 2008. It is of utmost importance that, when the matter is again reviewed, the additional ad litem judges we requested be authorized if the projected date of the years 2007-2008 for the completion of the ICTR mandate is to be maintained.

With regard to the Registry, the Registrar took office in March 2001 and the Deputy Registrar was appointed in October 2001. The appointment of the Deputy Registrar, who has the responsibility for the Registry's Judicial and Legal Services Division, has strengthened the Registrar's capacity to provide judicial and administrative support to the Chambers, the Prosecution and the Defence. Regular meetings are held between the President, the Registrar and the Prosecutor to coordinate management of the Tribunal. I note, however, that the Office of the Deputy Prosecutor has remained vacant for more than one year.

With regard to the arrests of suspects, 18 accused are still at large and warrants have been issued for their arrest. The cooperation of Member States is sought to secure their arrest and transfer. For this year, six persons have been arrested, with the most recent arrest being that of Colonel Tharcisse Renzaho. Renzaho was arrested on 29 September 2002 in Kinshasa, in the Democratic Republic of the Congo. This was the first arrest of an ICTR suspect by the Democratic Republic of the Congo and is the third since the announcement of the United States' reward for justice campaign, which identified nine high-profile suspects.

With regard to the enforcement of sentences, the French and Italian Governments are due to sign agreements shortly with the ICTR to enforce sentences of ICTR convicts. Other countries that have concluded

similar agreements are the Republic of Mali, the Republic of Benin and the Kingdom of Swaziland. On 23 November 2001 and 3 December 2001, I designated the Republic of Mali for the purposes of enforcing the sentences of six convicted prisoners, including the former Prime Minister of Rwanda, Jean Kambanda, who is presently serving a sentence of life imprisonment. I wish to thank those Governments for their support in respect of the enforcement of sentences.

During the period under review, the Appeals Chamber delivered one appeal judgment on the merits, 10 interlocutory appeal decisions and 25 other decisions and orders. In two appeals on the merits, hearings were held from 2 to 5 July in Arusha and the Appeals Chamber is now deliberating over judgment.

The current mandate of the judges expires on 23 May 2003 and elections are expected to take place early next year. I will conclude this, my final appearance before this body, with the following comments.

I wish to place on record the commitment and industry of the staff at the ICTR. They have worked unstintingly in a duty station classified as hardship C — not without accidents, illness and even deaths — to ensure the successful functioning of the ICTR.

When setting up the ICTR, the Security Council was convinced that the Tribunal would contribute to the process of national reconciliation and the restoration and maintenance of peace. Much that the ICTR does will, in due course, contribute to that long-term end. However, compensation for victims is essential if Rwanda is to recover from the genocidal experience.

On 9 November 2000, I submitted a proposal to the Secretary-General that victims of genocide should be compensated. My proposal referred to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the General Assembly in 1985. This Declaration reminds the world that victims of crime should be treated with compassion and respect, and states that they are entitled to receive justice, should be treated fairly and obtain redress in the form of restitution, compensation and other assistance for the injuries they have suffered.

Many Rwandans have questioned the ICTR's value and its role in promoting reconciliation where claim for compensation is not addressed. For every hour of every day for the past seven and-a-half years, we have lived with the voices of the survivors of genocide; and, so, we strongly urge the United Nations to provide compensation for Rwanda's victims.

It would be true to say that the last 10 years have seen more rapid growth in the international rule of law than in any time since the inception and planning of the Nuremberg and Tokyo Tribunals. The ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY) have contributed significantly to international criminal justice. The world has forever been altered by the establishment of the ICTR, ICTY and the International Criminal Court (ICC). Together, these institutions have made it possible to contemplate a time when political leaders can no longer act with impunity, depriving groups of their own citizens of the right to life, the right to be free from physical harm or sexual violence or political or religious persecution.

As I come to the end of my eight years of service, looking back to my first days when there were no premises, virtually no staff and little more than an idea and a Statute, I recall confirming the first indictment of the ICTR out of a hotel room in Arusha. While progress may seem slow, it has been steady and strong. We are engaged in a new undertaking without precedent, and there have been many peaks and valleys. Over time, though, we have grown from the weeping "*mille collines*", or a thousand hills, of Rwanda, to the heights of Mount Kilimanjaro, and our judgments will occupy a place in history.

Allow me, Sir, through you, to take this opportunity to express my sincere gratitude to the President and Members of the General Assembly for their support, and hope that support for the work of the ICTR will continue. I also wish to thank the Secretary-General, His Excellency Mr. Kofi Annan, for his assistance.

The Acting President: I thank the President of the International Criminal Tribunal for Rwanda and wish her well in her future endeavours.

Ms. Dissing (Denmark): I am honoured to speak on behalf of the European Union (EU). The countries of Central and Eastern Europe associated with the European Union — Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia

and Slovenia — and the associated countries of Cyprus, Malta, Turkey, as well as the EFTA (European Free Trade Association) countries of the European Economic Area, Iceland and Liechtenstein, align themselves with this statement.

The European Union would like to once again express its strong support for the International Criminal Tribunal for Rwanda (ICTR). The Tribunal has continued its work to ensure that crimes against international humanitarian law, and in particular the crime of genocide, will not go unpunished. Together with the Tribunal for the Former Yugoslavia (ICTY), the Tribunal for Rwanda serves as an example of the determination of the international community to combat impunity. Under no circumstances shall perpetrators of serious violations of international humanitarian law enjoy impunity, no matter their rank, position or citizenship.

The impact of the Tribunals will go far beyond the cases under their jurisdiction. Their pioneering work, not least in prosecuting individuals for the crime of genocide, and the decision that crimes of sexual violence are war crimes within their jurisdiction, has paved the way for the International Criminal Court (ICC), the first permanent international structure to combat impunity for the most serious crimes that are of concern to the international community as a whole.

The European Union thanks the President of the Tribunal for her annual report. The report illustrates the progress made and draws to our attention ways and means to further improve the work of the Tribunal. The fact that no first instance judgments have been rendered since we last discussed this agenda item in the General Assembly is a painful reminder of the necessity of these improvements.

The European Union notes with interest the introduction of a multiple trials system, by which each Trial Chamber conducts three trials at the same time in phases of two to six weeks per trial. This system is only one of a number of initiatives taken on first instance and appeals level in order to speed up and improve the work of the Tribunal. We support the Chambers in their continued dedicated work in this respect.

The adoption by the Security Council of resolution 1431 (2002) two months ago is yet another step on the path towards a more efficient Tribunal. The resolution enables the creation of a pool of 18 ad litem judges and will significantly enhance the Tribunal's capacity to decide within reasonable time on the cases before it. The European Union is, however, deeply concerned that the Security Council has found it necessary to extend the deadline for nominations for replacement or re-election of the Tribunal's full-time judges by an additional two months in an attempt to reach the minimum requirement of 22 nominations. We urge all Member States to consider nominating qualified candidates in order to reach the mandated minimum.

As regards the Office of the Prosecutor, the European Union notes with interest the revised investigation programme by which the estimated number of new investigations has been reduced dramatically from 136 to 16 individuals. This reduction brings the number of outstanding indictments to 26, which the Prosecutor intends to submit for confirmation by 2004. A further 40 cases are envisaged as being transferred to other jurisdictions. We appreciate that this represents a more realistic programme, enabling the Tribunal to complete its first instance trials by 2008.

Since assuming office in March 2001, the Registrar has given priority to a reform of the legal aid programme and taken much-desired steps to avert abuses of the system, most notably fee-splitting between the defence counsel and the accused. However, the European Union remains concerned at the absence of checks on the size of defence teams and of the extravagant fees paid, highlighted in the recent Auditors' report. The European Union commends the Registrar for improved disciplines introduced to date and urges him to continue in this spirit.

The cooperation of States with the Tribunal has generally been good. The European Union encourages all States concerned to continue along these lines. The recent divergences between the Tribunal and the Rwandan Government are a source of deep concern. We strongly urge the Rwandan Government to comply fully with its international obligations to cooperate with the Tribunal and to deliver all information asked by it, regardless of the persons or institutions concerned.

Since its establishment, the Tribunal has encountered significant difficulties. The European Union has voiced its concern on many occasions in that regard. We are pleased to see the Tribunal showing

signs of improvement. It is our sincere hope that the various measures taken will enhance its work so that substantial progress will be seen in the next annual report. We thank all the members of the Tribunal for resolutely pursuing that objective. Their action to further the causes of justice, peace and national reconciliation is essential. We wish to conclude this statement by ensuring them of the European Union's wholehearted support.

Mr. Kolby (Norway): Let me begin by expressing our full recognition of the achievements and the high standards of the International Criminal Tribunal for Rwanda (ICTR), as reflected both in various judgements and in the report before us (A/57/163). We would like to thank the President of the Tribunal for the detailed annual report which, in our view, accurately reflects the progress made during the period under review.

The measures implemented by the Tribunal to better streamline the conduct of business so that capacity is utilized to a maximum have yielded tangible results. We recognize the Tribunal's persistent efforts to identify areas for improvement, in particular measures to enhance efficiency and judicial economy, and to take necessary steps.

The judgements of the Tribunal constitute essential contributions to international jurisprudence with regard to the prosecution of the most serious international crimes. The continuing work of the Ad Hoc Tribunals and their activities also pave the way for the future work of the newly established International Criminal Court.

The success of the Tribunal will to a large degree be judged by the manner in which the investigation, prosecution and proceedings are managed. It is imperative that the Tribunal carries out those tasks in an efficient manner so that detainees are not subject to undue delays in the completion of their trials.

We, therefore, regret that certain proceedings continue to be long drawn out. At the same time, we are aware of the immense resources required to try the most serious international crimes. The number of witnesses, the demanding nature and complexity of cases, the frequency of various kinds of appeals on issues of law and the need for interpretation into three languages, together with cultural and linguistic nuances, all contribute to explaining why the turnover of cases is not comparable to that in our national systems when dealing with ordinary crimes. We have followed with close attention the efforts of ICTR judges to progressively improve trial procedures in order to speed up cases. We are confident that such streamlining of internal court management procedures has in no way jeopardized the right of the parties to a fair trial.

Bearing in mind the need to prepare for the foreseeable rise in the number of cases on appeal, we especially welcome the arrival of two additional judges in the Appeals Chamber, as well as efforts to strengthen the structural links between the Appeals Chambers of the ICTR and the International Criminal Tribunal for the Former Yugoslavia. The establishment of a system for the more frequent dissemination of information and the setting up of a common database will be important contributions to make the case law of the Appeals Chambers consistent and simplify the work of the judges and staff in Chambers.

As we are committed to the timely fulfilment of the mandate entrusted to the ICTR, we welcome the Prosecutor's revision of her future investigation programme. The reduction in the estimated number of new indictments, combined with the identification of 40 suspects whose prosecution is intended for deferral to national jurisdictions, makes completion of the Tribunal's mandate possible by the years 2007-2008.

However, the timely completion of the mandate is also dependent on added resources. We are, therefore, very pleased that the Security Council reached agreement on resolution 1431 on 14 August 2002, with a view to creating a pool of 18 ad litem judges, which will hopefully significantly enhance the capacity of the Tribunal to dispose of the cases pending before it. We look foreword to a swift implementation of the resolution.

Certain financial and management issues, mainly related to defence counsel and legal aid, are still a cause for concern to us. We note, however, the Tribunal's efforts to deal with those problems, and welcome in this regard the new provision in the code of professional conduct for defence counsel that explicitly prohibits fee-splitting. According to that provision, when a counsel is found to have engaged in fee-splitting, the Registrar will take action in accordance with the Tribunal's Directive on Assignment of Defence Counsel.

Furthermore, we welcome the establishment of a panel to improve the legal aid programme in order to ensure the efficient use of resources and the protection of the integrity of the Tribunal's judicial process. We trust that the Board of Auditors' recommendations for improving the legal aid system will be thoroughly considered in that connection. Those recommendations include measures for establishing clear and quantitative criteria to determine whether a person qualifies for legal aid, as well as reliable working relationships, to ensure that Member States provide the assistance needed to verify the financial position of the accused.

It is critical to the success of the Tribunal that the people of the region are informed about its work and understand its significance. In that respect, the proactive profile of the Outreach Programme is an essential complement to the main public information activities of the Tribunal. During the period under review, Norway has donated almost 100,000 Euros to a project for training African journalists from the Great Lakes region in legal reporting. We encourage all States to actively support the continued work of bringing the judicial process closer to the public in order to promote greater insight and feedback, which may be an essential factor in achieving long-term peace and reconciliation in the area.

We further appeal to all States to demonstrate, not only in words but also in practice, their fullest cooperation with the Tribunal. Facilitating access of witnesses to the Tribunal is paramount. Moreover, States that have not yet done so should take all the legislative steps necessary to ensure effective State cooperation with the Tribunal. We note that the Tribunal has received valuable assistance from several States, enabling the arrest of several indictees. In addition to legislation and compliance with the Tribunal's requests for assistance, concrete support to the Tribunal should be shown through financial and material contributions. The Tribunal must be provided with the necessary resources to carry out investigations and prosecution in a proper and expedient manner and to increase its activity. The Tribunal deserves political, practical and financial support. Normative structures alone are far from sufficient.

As we are convinced of the need to ensure that no one gambles on impunity for acts of genocide, other crimes against humanity or serious war crimes, the Assembly may rest assured that we will stand by our long-term commitment to the successful fulfilment of the ICTR.

Mr. Ng Lip Yong (Malaysia): I would like to thank Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda (ICTR), for her lucid presentation of the seventh annual report of the Tribunal, contained in document A/57/163 - S/2002/733. The report provides a comprehensive overview of the progress of the work of the Tribunal as well as the difficulties encountered by it. We commend the President and her fellow judges as well as the Prosecutor and her team for the progress achieved thus far.

Malaysia continues to believe strongly in the importance of upholding the principles of justice and equality which international humanitarian law stands for. We regard adherence to the rule of law as a necessary basis in upholding these principles. The Tribunal plays a significant role in clearly demonstrating that genocide and other serious violations of international humanitarian law cannot be tolerated. The Tribunal is there to ensure that the perpetrators of genocide and other serious violations of international humanitarian law will not get away with impunity.

My delegation deems that the work of the Tribunal is of immense importance in bringing to justice perpetrators of atrocities and in the development of international justice and international humanitarian law. There is no doubt that the decisions of the Tribunal, as well as that of the International Criminal Tribunal for the former Yugoslavia (ICTY), have contributed to the progressive and constructive development of case law in the spheres of general international law and international humanitarian law, in respect of different questions of procedure and competence and also on substantive issues of considerable importance. The experience of both Tribunals would undoubtedly be helpful to assist the International Criminal Court (ICC) and the Special Court for Sierra Leone (SCSL) in their work.

Further, my delegation notes that the Tribunal has led to pioneering advocacy methods for victim oriented restitutive justice in international criminal law — a concept which has been included in the Rome Statute. As reflected in the report, this involves providing legal guidance, psychological counselling and medical

assistance to victims and witnesses. We warmly welcome this move.

We are pleased to note from the report that the Tribunal has undertaken further measures to improve its performance in expediting proceedings towards the completion of its mandate within a reasonable time. We believe that such measures, including practices to ensure the exercise of greater judicial control over proceedings and to streamline them, assigning motions to respective judges rather than a full Chamber, consideration of motions on brief, and resort to oral rulings instead of written decisions, are practical. We recognize that in resorting to such measures, the Tribunal is mindful of the need to ensure that the conduct of fair trial is not compromised.

We are pleased to learn from the report that a number of proposals for amendments to the rules of the Tribunal, including for fair trial and expediting trials and appeals, are under consideration. We would encourage the Tribunal, which is constantly striving to improve its working methods, to continue deliberations on such proposals. We note the President's remarks regarding lengthy trials and the reasons for them. We think that many lessons can be drawn from the Tribunal's experience in this particular instance, in order to improve the Tribunal's future work as well as the work of other similar tribunals.

During the fifty-sixth session of the General Assembly, my delegation supported the proposal to create a pool of ad litem judges to serve in the Tribunal in order to enhance its judicial productivity. We believed this was necessary, considering the workload of the Tribunal and the need for cases to be expeditiously dealt with. In this regard, we are satisfied that the Security Council on 14 August 2002 unanimously adopted resolution 1431 to establish a pool of 18 ad litem judges. Their appointment would definitely assist in expediting cases that the Trial Chambers are currently unable to undertake, particularly the seven cases ready for trial and the cases of the remaining 16 detainees awaiting trial. We look forward to the election of the ad litem judges to enable the Tribunal to conclude its mandate.

My delegation shares the President's concern that the post of the Deputy Prosecutor has been vacant for over a year. We think that the absence of such an important official to assume responsibility of the activities of the Office of the Prosecutor in Kigali is likely to adversely affect the quality and pace of investigations and the Prosecutor's preparation of trials. We hope that efforts would be intensified to find a suitable candidate to fill this vacancy as soon as possible.

We note that the Prosecutor has revised her strategy for conducting investigations and preparations of trials and will now only conduct investigations against 14 new individuals, together with 10 ongoing investigations. We also note that she has identified 40 suspects whose prosecutions she intends to defer to competent national jurisdictions and is seeking the introduction of a new rule 11 bis, to facilitate deferral of cases to Rwanda where indictments have already been confirmed, provided the death penalty is not imposed. While we understand the need for such measures, we hope that this arrangement would not prejudice the right of the victim to justice and the right of the accused to a fair trial.

We welcome the efforts of the Registrar of the Tribunal in improving the visibility of the Tribunal and support for its work, particularly his efforts at establishing and strengthening institutional cooperation between the Tribunal and African States. We are pleased to note that the Outreach Programme of the ICTR remains popular and important to the national reconciliation of Rwanda. We welcome the publication of the Daily Journal which increases public understanding of the work of the Tribunal.

We support the measures taken by the Tribunal to deal with the abuse of the legal aid system. The establishment of a panel to improve the legal aid programme, ensure the efficient use of resources and protect the integrity of the Tribunal's judicial process, is most appropriate.

Towards improving the efficient use of the Tribunal's time, my delegation welcomes the use of simultaneous interpretation during proceedings and the employment of a video-satellite link to take the testimony of witnesses unable to travel to Arusha. We note the problems faced in ensuring the availability of witnesses. We hope that all States concerned with facilitating their travel for trials would continue to assist the Tribunal in this respect.

Malaysia continues to support the role of the Tribunal not only in upholding justice, and but also as a tool to facilitate national reconciliation in Rwanda. We hope it will continue to have the strong and sustained

support of the international community until the completion of its work.

The President: We have heard the last speaker in the debate on Agenda item 46. The General Assembly has thus concluded this stage of its consideration of Agenda item 46.

The meeting rose at 5.10 p.m.