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Security Council

Fifty-eighth year

Provisional

4838th meeting

Thursday, 9 October 2003, 3 p.m.

New York

President:	Mr. Negroponte	(United States of America)
Members:	Angola	Mr. Gaspar Martins
	Bulgaria	Mr. Tafrov
	Cameroon	Mr. Tidjani
	Chile	Mr. Maquieira
	China	Mr. Zhang Yishan
	France	Mr. De La Sablière
	Germany	Mr. Pleuger
	Guinea	Mr. Sow
	Mexico	Mr. Aguilar Zinser
	Pakistan	Mr. Akram
	Russian Federation	Mr. Karev
	Spain	Ms. Menéndez
	Syrian Arab Republic	Mr. Atieh
	United Kingdom of Great Britain and Northern Ireland	Sir Emyr Jones Parry

Agenda

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

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 and 31 December 1994

03-54907 (E)

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The meeting was called to order at 3.10 p.m.

Adoption of the agenda

The agenda was adopted.

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

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 and 31 December 1994

The President: I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia and Montenegro, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Kusljugić (Bosnia and Herzegovina), Mr. Drobnjak (Croatia), Mr. Gahima (Rwanda) and Mr. Šahović (Serbia and Montenegro) took the seats reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations and in the absence of objection, I shall take it that the Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Theodor Meron, President 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.

There being no objection, it is so decided.

At the invitation of the President, Judge Meron took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations and in the absence of objection, I shall take it that the Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Erik Møse, President 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 and 31 December 1994.

There being no objection, it is so decided.

At the invitation of the President, Judge Møse took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations and in the absence of objection, I shall take it that the Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Carla Del Ponte, Prosecutor 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.

There being no objection it is so decided.

At the invitation of the President, Ms. Del Ponte took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations and in the absence of objection, I shall take it that the Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Hassan Bubacar Jallow, Prosecutor 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 and 31 December 1994.

There being no objection it is so decided.

At the invitation of the President, Mr. Jallow took a seat at the Council table.

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

Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them document S/2003/829, which contains a note by the Secretary-General dated 20 August 2003, transmitting the tenth annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

Members of the Council also have before them a letter dated 3 October 2003 from the Secretary-General, and its enclosures, which will be issued as document S/2003/946.

At this meeting, the Security Council will hear briefings by the President and Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), as well as the President and Prosecutor of the International Criminal Tribunal for Rwanda (ICTR). As there is no list of speakers for the Council members, I invite those who wish to ask questions to so indicate to the Secretariat as from now.

I now give the floor to Judge Meron, President of the International Criminal Tribunal for the Former Yugoslavia.

Mr. Meron: It is a great honour for me to address this distinguished Council to present the tenth annual report of the International Criminal Tribunal for the Former Yugoslavia. Let me first express my profound appreciation to the Council for the support it has always afforded the Tribunal. If I may speak in a personal capacity, I am particularly pleased to address the Council under the presidency of Ambassador Negroponte.

Let me also pay tribute to the wisdom and dedication of my predecessor as President of the Tribunal, Judge Claude Jorda of France. Judge Jorda served as President of the Tribunal during much of the period upon which I report to you today.

In Security Council resolution 1503 (2003) of 28 August 2003, the Council expressly called on the Presidents of the ICTY and ICTR to use their annual reports to explain their plans for implementation of the Tribunals' completion strategy. Heeding that instruction, I will devote much of my statement today to the ICTY completion strategy.

But before turning to those questions I would like to review briefly some of the Tribunal's activities during the last year, and, as we have reached its tenth anniversary, I would like to place those activities in the context of the Tribunal's accomplishments during its entire decade of life.

Ten years ago, in resolution 827 (1993), the Security Council brought the Tribunal into being. It did so in the hope that the Tribunal would do more than simply mete out justice to individual wrongdoers. It would also help to create an impartial record of atrocities committed during the Yugoslav conflict. It would offer victims a sense that their suffering had been recognized. And, by doing all of those things, it would contribute to reconciliation and reconstruction in the republics of the former Yugoslavia.

It has been our task, to use a phrase of Justice Robert Jackson, the United States Chief Prosecutor at Nuremberg, to "patiently and temperately disclose" the record of the crimes that scarred the Balkans in the 1990s and devastated hundreds of thousands of lives. The vast scale of those crimes — the murders, rapes and deportations and the acts of torture, destruction and cruelty — would dwarf the capacity of any single court to bring about more than a very partial reckoning. But, if with painful slowness at first, with growing confidence and efficiency the Tribunal has helped bring to account a considerable number of accused of high rank.

The Tribunal represents an enormous experiment in international cooperation and institution-building. It has 16 permanent judges from 16 countries and nine ad litem judges from a further eight nations. The judges sit in three Trial Chambers, with a total of nine three-judge benches, and one Appeals Chamber. The Tribunal has held, or is holding, 28 trials involving 44 defendants, with another 31 defendants currently in pre-trial proceedings. A further 16 defendants — 16 as of yesterday — have pleaded guilty. After nearly 10 years in operation, the Tribunal's Chambers have handed down hundreds of decisions.

Of the 44 defendants tried, five, from three different trials, have been acquitted. As important as the Tribunal's ability to reach careful judgements of guilt for the terrible crimes within its jurisdiction, one of the essential tests of its fairness and legitimacy has been its insistence on acquitting defendants when the prosecution has failed to meet its burden of proof.

This past year the pace of our activities has reached an all-time high. The Tribunal continues to honour the commitments it made to the Security Council. With morning and afternoon sessions in its three courtrooms, its Trial Chambers conduct between four and six trials at a time. During the year under review, the Chambers examined 29 merits cases, as well as three cases of contempt, and rendered four final judgements on the merits or sentencing judgements.

The trial of Slobodan Milosevic, former Head of State of the Federal Republic of Yugoslavia, continued before Trial Chamber III. The defendant's health has led to a great number of delays, and it is an extremely complex case. It brings together what had been three separate indictments — for Kosovo, Croatia and Bosnia — with 66 counts, hundreds of witnesses and tens of thousands of pages of documents, most of which must be translated from Serbo-Croatian into English and French, the Tribunal's working languages. But the prosecution's case is coming to a close soon, and the timetable for the defence case has begun to be established.

The Appeals Chamber, too, has disposed of a greater number of appeals than in years past. During the period under consideration, it disposed of 36 interlocutory appeals, two requests for review and two contempt proceedings, and handed down one appeal from judgement.

The Trial Chambers also received an increasing number of guilty pleas resulting from plea agreements, including from Biljana Plavsic, former Co-President of the Republika Srpska. A total of 16 defendants have now pleaded guilty at the Tribunal.

I recognize that because of the egregious nature of the crimes charged before it, and because the Tribunal's roles include providing some vindication for victims and contributing to the creation of an accurate record of terrible atrocities, some are hesitant about a too frequent resort to plea agreements. These concerns are legitimate. But I believe that, with properly detailed acknowledgement by defendants of their participation in the crimes for which they acknowledge guilt and with genuine expressions of remorse, plea agreements can play a constructive role. In some cases, a forthright and specific acknowledgement of guilt may offer victims as much consolation as, or even more than would a conviction following repeated protestations of innocence.

Moreover, as a practical matter, the cooperation secured through plea agreements plays an important role in securing convictions of more important participants in large-scale crimes. The time and resources saved by avoiding trials in some cases both contributes significantly to the Tribunal's ability to meet the deadlines indicated by the Security Council for the completion of its work and enables those in detention to have their cases heard more quickly. Guilty pleas could also bring to the victims a faster sense of the vindication of justice.

With those deadlines in mind, let me turn to addressing the Tribunal's completion strategy.

First, I can report that during the past year we have made major strides in carrying out that strategy. Internally, we have undertaken a series of judicially initiated reforms designed to improve the efficiency of our proceedings. The most important was the removal of the ban on ad litem judges adjudicating in pre-trial proceedings. At my urging, and in accord with an earlier recommendation by my predecessor, Judge Claude Jorda, on 19 May 2003 the Security Council unanimously adopted resolution 1481 (2003), amending the Tribunal's Statute to permit ad litem judges to undertake pre-trial work. That reform enables ad litem judges to make even more efficient use of their time and to enhance their already important contribution to the work of the Tribunal, thus helping it to try cases to completion more expeditiously.

At plenary meetings in December 2002 and July 2003, the Tribunal's judges adopted a number of amendments to its rules of procedure designed to improve efficiency. One revises the methods for permitting the continuation of trials when one of the judges hearing the case is unable to continue, thereby reducing the likelihood of mistrials and retrials. Another gives the Trial Chambers enhanced authority to restrict the scope of the prosecution's case by, for example, limiting the time and the number of witnesses and the number of crime sites, thus avoiding the presentation of duplicative and unnecessarily time-consuming evidence.

Externally, the past year has seen a major advance for the completion strategy through the advancement of a plan to create a special war crimes chamber in the State Court of Bosnia and Herzegovina. As I noted in addressing the Council yesterday with Lord Ashdown, the establishment of the war crimes chamber in Sarajevo will provide a forum to which the Tribunal may transfer a number of cases of lower- and mid-level

accused. In anticipation of the chamber's creation, the ICTY judges amended rule 11 *bis* at a special plenary in September 2002 to set out the criteria that must be satisfied before a case may be referred to a domestic court once an indictment has been confirmed.

I would also note that, during my first official visit — the first official visit of the Tribunal's President — to Belgrade in September, I visited the premises and met with the judges and the prosecutor of the new war crimes chamber established in Serbia. As the region moves towards normality, State courts should assume a major role in bringing offenders to account, but they can do so only if they are not used for political ends and if they meet international standards of due process and fair trial.

I can report that we are continuing to search for ways to streamline our procedures. I have revitalized a committee of judges called the Judicial Practices Working Group, giving it a mandate to develop and analyse proposals to shorten trials and speed the hearing of appeals. The Prosecutor has recently circulated a group of proposals with the same goal in mind and the judges are actively considering and reshaping a number of them. The Rules Committee of the judges has some of these proposals under active consideration. The Committee will recommend a package of reforms aimed at improving the rules of disclosure, pretrial management and presentation of evidence to the judges' regular plenary meeting in December. The purpose is to balance the interests of the Prosecutor and the accused so that the task of the former is manageable while the rights of the latter to a fair trial remain protected.

I must report that, while we are striving in every way possible to meet the goal of completing all trials by the end of 2008 and all appeals by the end of 2010, one cannot predict the completion date of judicial proceedings with scientific accuracy. Many factors may affect the outcome. Some of those influences are within the control of the Tribunal, others not; of the former, some are within the control of the judges and others within the power of the Prosecutor.

Shortly after I became President of the Tribunal, I formed a working group composed of representatives from the Chambers, the Registry and the Prosecution in order to improve the efficiency with which trials are scheduled. I have also asked this group to make careful projections of the time required to complete our trials, based on a range of assumptions. Let me now give the Council a summary of those estimates, as of today.

I am pleased to report that we should be able to complete the trials of all individuals currently in the custody of the Tribunal, including those on provisional release — both individuals whose trials have already begun and individuals who are in pre-trial proceedings — within the 2008 deadline. There are 22 cases in these categories.

Already confirmed indictments cover an additional 17 individuals who are at large. It will take 11 trials to handle the cases of these fugitives. It may be possible to complete the cases of two of the three fugitives whom the Council has identified as being of the highest priority — Karadzic and Mladic — within the 2008 deadline, assuming that they are tried together and brought into custody early enough to allow time for such long trials to be held within the target dates set by the Security Council. If there is an unexpected surge in guilty pleas, it may even be possible to complete the trials of some of the other indicted fugitives within the 2008 goal, but it will not be possible to complete all of them by that time. Trying the cases of all the fugitives without additional guilty pleas would probably require trials at least through 2009.

Our estimate on this count depends on predictions not only about the likely length of the various trials, but also about the timing of the arrest and transfer of these fugitives to The Hague, the number of guilty pleas received and the number of cases to be transferred to the new war crimes chamber in Sarajevo. The sooner fugitives arrive, the better are the chances of joining their cases to those of individuals already at The Hague, thus avoiding the greater time and expense that separate trials would require. How many of the 17 fugitives from justice, and how many of those already in the Tribunal's custody, will plead guilty cannot, of course, be predicted. A large number of guilty pleas could attenuate our present estimates. In short, the sooner fugitives are turned in, the greater the number of guilty pleas received, or the greater the number of cases that can be transferred to Sarajevo, the sooner we will be able to finish the trials of these cases.

The first of these considerations — the handing over of fugitives — is, of course, outside the Tribunal's control. It depends above all on the cooperation of the States of the former Yugoslavia. I join my predecessors in urging this Council to press all Member States to

cooperate fully and promptly with the Tribunal's work. During my recent visit to Belgrade, I was encouraged by an emerging understanding that cooperation with the Tribunal is both necessary and desirable, but much remains to be done on arrests of fugitives, access to evidence, and facilitation of witness testimony, especially by present and former officials.

The Prosecutor has some role to play in the second of these considerations — the number of guilty pleas. The third — the number of cases transferred to the Sarajevo war crimes chamber — depends on how quickly the Chamber becomes operational.

I have recently learned from the Prosecutor that she intends to submit approximately 14 additional indictments covering approximately a further 30 individuals. While four or five of the new indictments will involve individuals whose cases can be joined to existing ones, eight or nine of these indictments will require separate trials.

Here is the problem. By setting 2004 as the end of the Prosecutor's mandate to investigate, the Security Council clearly expected her to produce some results, including new indictments. It may well be that future indictments will in fact target persons more senior and more responsible than persons who have been indicted in the past. But, as I appear before the Council today as President of the Tribunal to report for the first time on the Tribunal's overall activities, it is my duty to be absolutely candid and transparent about how these cases, like those I have described earlier, fit into the calendar established by this Council. Thus, I must tell the Council that, based on our present projections, it will not be possible to accommodate any of these new indictments within the timeframe indicated by the Council. I say this recognizing fully that it is the Prosecutor's prerogative to select the individuals against whom she will file indictments, and recognizing that if the Prosecution has sufficient evidence to make a prima facie case, we judges must confirm the indictments.

Pursuant to the Statute and Security Council resolutions, including resolution 1503 (2003), it is not within judicial authority to assess whether the subjects of each of these new indictments meet the standard set by this Council of being the most senior leaders suspected of being most responsible for crimes within the ICTY's jurisdiction. The matter is clearly between the Council and the Prosecutor.

The Tribunal's mandate is to try persons responsible for serious violations of international humanitarian law committed during the Yugoslav conflicts. In resolution 1503 (2003), the Council did not spell out the goals to be achieved during the sunset months of the Prosecutor's investigatory functions. Clearly, the Prosecutor will thus submit additional indictments, which, according to our present calculations, will inevitably cause a significant additional slippage in the target dates of the completion strategy — perhaps as much as two years beyond what it would take to try the fugitives who are delivered to The Hague. Of course, once the Prosecutor comes to the end of the investigatory phase of her work, we will be in a much better position to make projections with confidence.

One thing must be clear, however: once indictments have been submitted and confirmed by the judges, the legal process will have started, and it will have to run its course in accordance with the governing law and the demands of due process. A strict application of the target dates for the completion strategy must not — I repeat, must not — result in impunity, particularly for the most senior leaders suspected of being most responsible for the crimes within the Tribunal's jurisdiction.

I realize that some members of the Council will find these projections sobering. But, even as I express my commitment to do everything possible, through continuing reforms of procedure and trial management practices, to improve the speed and efficiency of our proceedings, I must also remind the Council that in criminal trials speed cannot be purchased at the price of sacrificing the demands of due process. The legacy of the Tribunal will be measured not only by whether it succeeds in judging those responsible for the most serious crimes falling within its jurisdiction, but also by whether it does so in accordance with the strictest standards of fairness.

Ensuring that those standards are met requires skilful work, not only by our judges, but also by our staff. Particularly as the completion of the Tribunal's work comes into sight, it will be more and more difficult to retain and attract staff of the highest calibre, unless opportunities for advancement or continuation of service within the United Nations are made available. The establishment of additional criminal jurisdictions creates additional pressure in this regard. I hope the members of the Council — and the members of the General Assembly — will recognize the importance of this issue and support our proposals to address it.

The mission of the Tribunal has been to try, not all of those who have committed violations of international humanitarian law, but those most responsible for major atrocities. That mission will not be completed until we have tried, in particular, Mladic and Karadzic.

Ten years ago, the Security Council created the ICTY with the goal of putting an end to impunity for mass atrocities and serious violations of international humanitarian law. During that decade, with the constant support of the Council, the Tribunal has given victims a chance to see their sufferings recorded and, at least in some measure, to be vindicated. By laying bare the consequences of ethnic and religious hatred, the trials held by the Tribunal have demonstrated the viciousness of those who built up their power by encouraging their followers to embrace such hatred. The Tribunal has thus made a fundamental and lasting contribution to bringing justice to the peoples of the former Yugoslavia. Our jurisprudence will also supply a foundation for all international criminal courts and a model for national prosecutions of those who commit atrocities.

The President: I thank Judge Meron for his briefing.

I now give the floor to Judge Møse, President of the International Criminal Tribunal for Rwanda.

Judge Møse: It is a great honour to address the Security Council and to present the eighth annual report of the International Criminal Tribunal for Rwanda (ICTR). This provides an opportunity, first, to take stock of the results achieved so far; secondly, to present the ICTR Completion Strategy, as requested by the Council in resolution 1503 (2003); and thirdly, to introduce the two recent requests submitted to the Security Council concerning ad litem judges.

First, I would like to say a few words about the results achieved so far. In 2003, three judgements, involving four accused, were handed down. The first judgement was delivered in February, two others followed in May, and another four judgements, involving eight accused, are expected by the end of the year, or very early next year. The total number of judgements rendered in the second mandate is, therefore, nine, involving 14 accused. This reflects a 100 per cent increase in the number of accused who were tried during the Tribunal's second mandate, under the presidency of my distinguished predecessor, President Pillay, as compared to the first mandate, from 1995 to 1999. It means that the Tribunal will soon have rendered 15 judgements, involving 21 accused, since the first trials started in January 1997.

The Butare and Military cases, involving six and four accused, respectively, will continue in the third mandate. Members of the Security Council will recall that in resolution 1482 (2003) they decided not to prolong the terms of office of two non-re-elected judges in respect of those two cases. I am pleased to report that we were able to sort out the problems and that those trials are continuing and did not have to start *de novo*.

In the Butare trial, the two remaining judges decided to continue with a substitute judge, in pursuance of the recently amended rule 15 *bis*. Appeals against this decision were dismissed. In the Military case trial, the problems were solved by transferring the trial to another Trial Chamber, with a totally new composition. The parties agreed that the case should continue. This brings the total number of accused whose trials have been completed or are in progress to 31.

A priority at the beginning of the third mandate has been to start new trials as soon as possible. On 27 July, Trial Chamber III commenced the Gacumbitsi trial, involving one accused, and in the course of 15 trial days, 14 witnesses were heard. On 1 September 2003, Trial Chamber I started another single accused case, in which 15 witnesses were heard during 12 trial days. The Prosecution has closed its case in both trials. In addition to those two single accused cases, two voluminous trials, each involving four accused, are scheduled to commence on 3 November this year. Therefore, by the end of 2003, a total of 41 accused will have had their cases completed or in progress.

The commencement of four new trials involving 10 accused during the second half of 2003 is a direct consequence of Security Council resolution 1431 (2003), which allowed for the establishment of a pool of 18 ad litem judges. The first ad litem judge took up office on 1 November 2003, and we were immediately in a position to start a shift system — a morning shift and an afternoon shift in one Chamber. The other three ad litem judges will arrive in Arusha in a couple of weeks, subject to appointment by the Secretary-General. These four ad litem judges will be sitting in four trials. I would like to thank the Security Council for making further progress possible.

However, much work remains, at present 22 detainees are awaiting trial. The ICTR is anxious to

commence these cases as soon as possible. The statutory provision that the ICTR may only use four ad litem judges at any one time seriously limits our capacity to commence new trials. Therefore, on 29 September 2003, the ICTR requested the Security Council to increase that number from four to nine. I cannot stress enough the importance of this reform. If granted, the number of permanent trial chamber sections will increase from four to six. The ICTR will thereby enjoy the same judicial capacity for conducting trials at first instance, as the ICTY has had for a long time.

Our requests, which members have received, explain the need for the nine ad litem judges and how they will facilitate our task, both in relation to twin-tracking and to the so-called shift system. But let me elaborate a bit further.

Several cases will be trial-ready in 2004, but the four big cases — Butare, Government I, Government II, Military — will require most of the time of the eight permanent judges involved in those trials until 2005. An additional number of ad litem judges will provide the necessary flexibility to hear new trials. Three examples may illustrate this point. First, it will be possible to establish a trial chamber section composed of the ninth permanent judge and two ad litem judges. Secondly, when there is a break in one of the big trials, it will be possible to create a trial chamber section with one or more permanent judges from that case, sitting with ad litem judges, to hear a smaller case. Thirdly, by allowing one of the judges in the big case to supervise the out-of-court work in that case, while the two other judges sit in a small trial, the trial chamber may ensure increased progress of the big case at the trial stage. That may reduce the time needed for judgement writing.

These methods can be used very soon. As members know, the General Assembly already elected a pool of 18 judges. Many of them have indicated that they can come to Arusha at short notice. Therefore, additional ad litem judges can be used as soon as a permanent judge is available.

In that context, it should be noted that the ICTR has developed methods of disposing of single accused cases within a limited period of time. They are now heard in two slots — one for the Prosecution case — usually between 15 and 20 witnesses — and one for the Defence case, usually a similar number. Such slots can be heard when there are breaks in the big trials.

The other request submitted by the ICTR to the Security Council relates to the increase of the competence of ad litem judges to do pre-trial work. Here I refer to our letter of 8 September 2003. The reform is important, but it should be uncontroversial in view of the identical resolution 1481 (2003), adopted for the ICTY. I will therefore not develop this orally here, but will refer to the reasons given in our letter. Let me simply state that both statutory amendments are instrumental to the timely completion of the Tribunal's mandate.

This leads me to the completion strategy. At the commencement of the third mandate, the ICTR has considered it a priority to elaborate a completion strategy. A revised version of that document was sent to the Security Council on 29 September 2003. It takes into account Council resolution 1503 (2003), in which the Security Council called on the two ad hoc tribunals to take all possible measures to complete all trial activities at first instance by the end of 2008. In the completion strategy, it is estimated that with four ad litem judges, the ICTR will be in a position to finalize all ongoing trials, together with cases involving the remaining 22 detainees, by 2007. However, by 2008, only about eight other accused could be brought for trial out of the 16 indictees who are still at large and the maximum of 26 suspects who have not been apprehended. These projections may have to be revised. Unforeseen circumstances may cause delays. However, with an increase from four to nine ad litem judges, the Tribunal will be in a better position to finalize most trials by the target date, in spite of such unforeseen delays.

At present, the total number of persons actually before the ICTR is 63; that is 41 cases completed or in progress and 22 detainees awaiting trial. With nine ad litem judges, the ICTR will be able to hear trials of a higher number by 2008. Much depends on the number of indictments that will be drawn up. This falls within the discretion of the Prosecutor. But let me say that I consider it impossible within the target date to hear trials involving another 42 persons, 16 indictees and 26 suspects. It will be an important task to single out the leaders for further prosecutions by the ICTR and transfer cases involving intermediate- and lower-rank accused to national jurisdictions, as required by resolution 1503 (2003).

The Security Council decided to establish a separate Prosecutor for the ICTR. I would like to thank the previous Prosecutor, Ms. Carla Del Ponte, for her

great contribution to the ICTR. I was also very pleased to welcome the new Prosecutor, Mr. Hassan Jallow, when he took up office in Arusha on 3 October 2003. I look forward to listening to him today.

During the period under review, a number of reforms have been implemented with a view to accelerating the proceedings. Let me briefly mention some of them: the establishment of a so-called new trial committee, composed of representatives from all three branches of the Tribunal, which facilitated the commencement of four new trials; simultaneous interpretation during trial from Kinyarwanda into English and French in all three trial chambers; amendment of rule 15 *bis*, which makes it possible to continue a trial with a substitute judge where a judge falls ill, dies or is not re-elected. As mentioned, that provision has already been applied.

Another reform is the establishment of a procedure to facilitate plea agreements in cases where an accused has expressed the intention to plead guilty. I note the difference between the ICTR and the ICTY, in that only three persons have pleaded guilty at the ICTR, compared with sixteen, in the ICTY.

The setting up of a Coordination Council, composed of the President, the Prosecutor and the Registrar, was another important reform. It has already served its purpose, and the Council will hold frequent meetings in order to avoid any problems of communication or coordination. Obviously, aspects relating to the completion strategy will be discussed frequently during such meetings.

Let me finally also mention that proposals from a working group to accelerate pre-trial proceedings are presently under consideration by the judges.

Let me now turn to the relationship with Rwanda. As the Council knows, the ICTR experienced difficulties over the flow of witnesses from Rwanda in 2002. I am now pleased to report that the situation has improved. For many months, there has been a steady flow of witnesses from Kigali to Arusha. The ICTR wants to maintain and develop a harmonious relationship, which will make it easier for the Tribunal to contribute to reconciliation within Rwanda. We were recently very pleased to receive two groups of ten Rwandan judicial officers, each composed of judges and prosecutors, as well as officials from the Ministry of Justice. We hope that other representatives of Rwandan society will soon visit the Tribunal in Arusha.

I hope that the Security Council appreciates the results achieved so far. The ICTR will continue to develop its working methods in order to further increase efficiency. Let me end by thanking the Members of the Council and the Secretary-General for their continued support of our work.

The President: I thank you, Judge Møse, for your briefing. I now give the floor to Ms. Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

Ms. Del Ponte: I am most grateful to have once again the opportunity to address the Council. As requested in resolution 1503 (2003), I intend to explain my plans to implement the completion strategy of the International Criminal Tribunal for the Former Yugoslavia (ICTY). In this context, I will also focus on some essential conditions that must be implemented for a successful completion strategy, including the full cooperation of the States in the former Yugoslavia and the deferral of cases to domestic jurisdictions.

In resolution 1503 (2003), the Security Council provides my office with clear guidance regarding the time frame of my investigations. I can report that necessary measures are continuously being taken to ensure the completion of all remaining investigations by 2004. This is also reflected in our budget submission, which proposes significant cuts in the Investigation Division during 2005. I am confident that the remaining most senior leaders who are suspected of being most responsible for crimes falling within the ICTY's jurisdiction will have been indicted by the end of 2004.

Following the information provided to the Council by President Meron, I would like to give members some information regarding the nature of the cases that remain under investigation. It will be understood that I cannot give precise details about these cases, as that would compromise the investigations.

There are now 13 investigations remaining that, in my judgement, must be completed by my office before it can be said that the investigative mandate entrusted to me and my predecessors by the Council has been completed in a responsible manner. I constantly review these investigations. As things stand today, it is possible that not all of them will result in new indictments. All these cases involve the remaining individuals who held the highest possible levels of responsibility, for very serious crimes committed in the

former Yugoslavia, and involving most of the parties to the conflict spanning the period from 1991 to 2001.

Even if all these investigations resulted in new indictments, they would lead to nine additional trials, because some could be joined with other future trials. They involve approximately 30 individual suspects, all at the highest levels of responsibility. At this stage, there is hardly any prospect that these cases could be assumed locally.

In addition to these 13 top-priority investigations, my office has conducted 17 additional investigations that were suspended at the end of last year as a result of my decision to focus solely on the most senior perpetrators. They involve 62 suspects who will not be formally indicted by the ICTY. I expect these cases to be referred to domestic courts for further investigation and prosecution according to the following distribution: 12 cases involving 48 suspects to be referred to Bosnia and Herzegovina; three cases involving eight suspects to be referred to Croatia and two cases involving six suspects to be referred to Serbia and Montenegro. The great attention we and the international community have devoted to the referral of cases to domestic jurisdictions demonstrates a general concern that no impunity should be tolerated.

There are currently three ongoing trials before the ICTY, involving four accused. Another 18 cases, involving 27 accused, are at the pre-trial stage. There are also currently 17 indicted fugitives remaining at large, and if all were surrendered to the Tribunal in a timely fashion, there could potentially be an additional 10 trials, not taking into account that some joinders with other trials or guilty pleas may also be possible.

The bottom line with all these cases is that there could be between 40 and 45 trials to be completed by the Tribunal, including the three ongoing trials, by 2008. It is very likely that some of these trials will result in guilty pleas, while others could be referred to the domestic courts in the former Yugoslavia. That is the scope of the ICTY's potential trial load.

The Council has heard the accurate and realistic report of President Meron regarding the dates for the completion strategy. I obviously share his estimates, which are the result of a very fruitful and transparent process of coordination, in which all three pillars of the Tribunal are closely associated. My Office is committed to continuing this dialogue with the President as closely as possible, so as to ensure that the Tribunal as a whole can fulfil the objectives defined in its mandate and in the various Security Council resolutions, not least in resolution 1503 (2003) of 28 August.

Now, according to the latest calculations made jointly with the Registrar and the President, it will not be possible to prosecute in The Hague before the end of 2008 all the suspects and accused who will have been indicted by the ICTY by the end of 2004. I take this situation very seriously, and, to supplement the conclusions drawn by the President, I would offer the following possible approach for the Council's further consideration.

By the end of next year, we will have a precise view of what remains to be done. All remaining indictments will have been issued and will most probably be public. The Tribunal will know the status of the current list of fugitives and will also know how many additional fugitives there will be, arising out of the new indictments. It will also be much clearer which cases will result in pleas of guilty. In close cooperation with the President, and on the basis of the guidance provided by the Security Council, it will then be possible to decide which cases should be prosecuted in The Hague and which cases could properly and responsibly be referred back to the domestic jurisdictions, in accordance with the procedure foreseen in rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence. Among the many reasons in favour of this option, I would highlight the following.

Referring ICTY-indicted cases to the domestic jurisdictions offers better guarantees that these cases will actually be tried, rather than referring non-indicted cases, as would be the case if I stopped all investigations now. Namely, it would enable the ICTY to use its primacy and call back cases if serious flaws were noted. This would not be possible for non-indicted cases.

As I said before, my remaining investigations cover the region and concern all the main parties to the conflict. By completing these investigations, the ICTY will have proved that it worked impartially towards achieving justice, peace and reconciliation in the former Yugoslavia. I kindly invite the Council to consider the political conclusions that some might draw if I were forced to cease investigations at this juncture.

This option would ensure that the international community has succeeded in maintaining the highest standards of criminal justice in the operations of the

ICTY, in particular those involving the independence of the Prosecutor, as expressed in Article 16 of the Statute.

For these reasons, I believe that we should continue on the road indicated by the Security Council last August, bearing in mind that, by the end of next year, all remaining indictments will have been issued. At that stage, at the very beginning of 2005, we will, with the President, review the situation to determine which cases should remain in The Hague and which should be referred to domestic jurisdictions. This solution conforms with the guidelines provided by the Council in resolution 1503 (2003) and our firm commitment to conclude our investigations by 2004 and the subsequent dates of our completion strategy. We will continue to work diligently towards that end.

In the meantime, in relation to the cases remaining in The Hague, I will also continue to work closely with the President and the Registrar to identify other methods to improve the efficiency of the Tribunal, to shorten the length of trials, and to maximize the use of the courtrooms. It is, and it will of course be, up to the Security Council to provide us with the necessary framework that will allow us to implement the completion strategy, while maintaining the necessity to have independent and impartial justice. In this connection, allow me to elaborate briefly on two key issues directly related to the success of the completion strategy: full cooperation by the States of the former Yugoslavia and fostering reforms and support of national courts.

Full cooperation by the States in the former Yugoslavia is of crucial importance to speeding up the trial process. Providing access to documents and witnesses, as well as carrying out arrests and transfer of fugitives, remains the most basic contribution of these States to the completion strategy. It is also their international legal obligation to do so. Following my address to the Security Council on 29 October 2002, I regret to have to report that Croatia, Serbia and Montenegro, Republika Srpska and the Bosnian Croat party to the Federation of Bosnia and Herzegovina have not so far achieved full cooperation with the Tribunal.

In the case of Croatia, I can report that most of my requests to the Croatian Government regarding access to documents and witnesses are now being treated seriously and professionally — now. The backlog of important benchmark requests has been cleared just recently. It is regrettable, though, that on average it takes more than a year to process a request from my Office. It is also noteworthy that when it comes to important international deadlines, when the status of cooperation is in the limelight, the speed and quality of compliance with my requests increase considerably. I hope — and, indeed, I have received assurances from the Government on this matter — that with the new requests from my Office there will be no undue delays.

At the same time, the Croatian authorities bear the responsibility for the failure to arrest and transfer General Ante Gotovina. The Croatian Government recently submitted reports to the Registrar, pursuant to ICTY rule 59, providing additional explanations and pointing to the conclusion that the accused Gotovina was outside Croatian territory. Most of the information provided in these reports was already known and outdated. In the meeting I had this week with Prime Minister Račan, I shared information available to me about the whereabouts of Gotovina, which comes from various sources, concurring that the accused is in Croatia. I also gave details about the protection that he is receiving in Croatia from persons within the institutions.

In front of me, the Croatian authorities — the President and Prime Minister — did not deny that the accused could be in Croatia, despite public statements saying that he would be in a European country. We agreed to work together in order to locate and arrest him, and I received firm assurances from the Government in this respect. Until we see results, though, Croatia's obligations in accordance with Security Council resolution 1503 (2003), in particular its paragraph 2, will remain to be fulfilled.

Our cooperation with Belgrade remains very difficult and heavily politicized, whether in regard to arrests and transfer of fugitives or access to documents and waivers for high-level witnesses. I continue to face serious problems regarding access to key documents, in particular those held in various archives. I showed understanding for the Serbian concerns regarding protective measures for some materials, even providing the Government with my written commitment in the Milosevic case. It is understood that protective measures ought to be reasonable and not contradict the public interest and the principle of transparency of the trials. It is regrettable that the requested documents only started to arrive in my Office in recent months and only as a result of binding Court orders issued by the Trial Chamber, not as a result of my requests for assistance or voluntary contribution.

Also, I proposed a mechanism in February this year to ensure proper access to key archived documents by my staff, respecting the Government's confidentiality concerns. It took more than seven months to receive a reply, which arrived only last week. It is actually a counter-proposal that is totally unacceptable, since it would forbid my staff to have access to the documents for the whole period from 1991 until the end of 1995, which obviously corresponds to the wars in Croatia and Bosnia and Herzegovina — the core of the ICTY's mandate.

In the Milosevic trial and other cases, I sense a willingness on the part of the authorities to retain crucial material that could prove the implication of the then Belgrade authorities — the former regime — in the crimes committed in Bosnia and Herzegovina. Belgrade invokes national security concerns in regard to these materials, but in fact such an approach is limiting or slowing down the Tribunal's access to critical evidence. This goes against the interests of justice and truth, and also does not help in terms of our completion strategy. As an example, we have been asking for Ratko Mladic's personal file for about two years now, and, while a file is not a fugitive, we still cannot get it.

Moreover, witnesses still have to go through a lengthy process whereby they have to be granted waivers by the authorities. That process, which exists only in Serbia and Montenegro, has proved to be extremely slow and painful, and it has an obvious detrimental effect on the trials and on our efforts to reduce their length. For example, to this day, over 60 such requests for waivers are pending a decision.

I was inclined to speak about some improvement in Belgrade's cooperation with the ICTY before my visit to Belgrade last week, but I am not in a position to do so. There is no true commitment for cooperation or readiness to take difficult steps, which are badly needed, and not only from the point of view of the Tribunal. The authorities are unanimous in stressing the necessity to cooperate with the Tribunal; however, when it comes to tough decisions or the need to provide sensitive documents, we face obstruction and negative attitudes.

I have reason to believe that, among the 17 fugitives remaining at large, well over half of them, including Ratko Mladic, reside in Serbia and Montenegro. The authorities now concur with me that at least seven accused are in Serbia. On a number of occasions this year, my Office has transmitted very precise information to the Serb authorities, in the expectation that it could lead to the arrest of fugitives. Unfortunately, we received very limited feedback after such intelligence was passed on, and it was not convincing.

In relation to Bosnia and Herzegovina, the authorities of the Republika Srpska still have not located or arrested a single indicted fugitive to date. Karadzic is known to be constantly moving between the Republika Srpska and Montenegro. Additionally, we cannot obtain full access to the necessary documents or individuals, while certain archives and their contents are, clearly, being hidden from my investigators. It appears that there are still influential elements in the police and army structures in the Republika Srpska that actively protect and support the fugitives and war crimes suspects.

To conclude my comments on the level of cooperation on the part of the States and entities of the former Yugoslavia, I must mention the Bosnian Croat party to the Federation of Bosnia and Herzegovina. For several years now, my office has received very little cooperation from the Bosnian Croat authorities in respect of cases involving Bosnian Croat perpetrators. The reality is that there is no cooperation in these cases, and there have been no steps or efforts to comply with the Tribunal's requests. Although my Office has received some assistance in the location of witnesses, there has been no response to requests for relevant documentation — in fact, there has been consistent and deceitful denial of the existence of such material. Much remains to be done on the part of the Bosnian Croat party to the Federation.

Finally, I have to share my concern that the 2004 deadline set in the completion strategy, instead of speeding up cooperation, may well, on the contrary, encourage States in the region to buy time and to place additional obstacles in the way of cooperation with the ICTY.

As is clear, lack of cooperation by the States concerned can endanger the completion strategy. Another key development that will influence the implementation of the completion strategy is the ability of the countries of the former Yugoslavia to prosecute lower-level perpetrators themselves, including suspects or indictees that the ICTY might wish to refer to

Bosnia and Herzegovina, Serbia and Montenegro, or Croatia — and they will not be low-level perpetrators; they will be mid- and high-level perpetrators.

I am relieved to hear that the donors conference for the War Crimes Chamber in the State Court of Bosnia and Herzegovina will take place soon. My office is obviously prepared to assist in this process.

When considering which cases to refer back, the main problems confronting us are the absence of adequate domestic witness-protection arrangements and the lack of legislation in any country in the region to enable evidence gathered by the Tribunal to be admissible in the domestic courts. We are already facing this situation in a case which is to be referred to Bosnia and Herzegovina. The witnesses who were prepared to testify at The Hague are not willing to do so before the domestic court. None of the States of the former Yugoslavia have a legal obligation in their national legislation to recognize and act upon the indictments issued by the ICTY, in particular those transferred to the domestic courts for prosecution. The same can be said about the status of the non-indicted cases I intend to refer to the domestic courts, together with the evidence I have gathered during the course of my investigations.

This, obviously, constitutes a serious impediment to the transfer of cases from ICTY to domestic jurisdictions, and it is my hope that the international community will assist in providing the necessary input for the relevant changes in domestic legislation to occur.

It would appear that Croatia, Bosnia and Herzegovina, and Serbia and Montenegro each understand the need for domestic war crimes prosecution, and that this involves a long-term commitment. This is highly commendable and is essential if true reconciliation and a lasting peace are to be achieved. However, without cooperation between them in terms of bilateral legal assistance, provisions for the protection of witnesses and evidence, and, finally, mutual agreements on the extradition of accused persons, any realistic prospects of dealing with the cases referred by the ICTY to the domestic courts of the former Yugoslavia will be slim.

Let me assure the Council once again of my determination to implement the objectives set by the Security Council. In so doing, I will continue working closely with the President. Let me also reiterate that I am grateful to the members of the Council for their support and trust. That support remains crucial, notably to encourage States to cooperate fully with the ICTY and to foster the creation of reliable domestic judiciaries in the region. Ultimately, we will all benefit if justice, the rule of law and reconciliation prevail in the former Yugoslavia.

The President: I thank Prosecutor Del Ponte for her very informative briefing, and I now give the floor to Mr. Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

Mr. Jallow: I feel particularly honoured, first, by the Council's decision to appoint me as the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR), and, secondly, by its having invited me to address the Council specifically on our plans for implementation of the Tribunal's completion strategy and generally to report on the work of the Tribunal. I shall endeavour, to the best of my ability, to discharge my duties as Prosecutor, and I look forward to the cooperation of all States and to the support of the United Nations in this regard.

Since my appointment, I have had a briefing session with my immediate predecessor, Ms. Carla Del Ponte, whose immense and invaluable contribution to improving the efficiency of the ICTR, and, more generally, to the cause of international criminal justice, I wish to acknowledge. Representatives of the Government of Rwanda whom I have met here in New York and in Arusha all have assured me of the cooperation of their respective Governments with the Tribunal for the effective discharge of its mandate. I am greatly encouraged by such assurances and look forward to fruitful cooperation with them. I myself propose to go to Rwanda shortly for consultations with that Government.

I am also pleased to report to the Council that I am now based in Arusha, the headquarters of the Tribunal, where I have been holding discussions with the President, as well as with the Registrar, the Deputy Prosecutor, Mr. Bongani Majola, and the rest of the staff.

As I enter the early stages of my mandate, I am acutely conscious of the challenges that lie ahead. The process of international criminal justice is for many reasons, many of which have been well documented, very difficult. But it is a process which can and must be undertaken if we are to succeed in reducing, if not eliminating, impunity and preventing egregious

violations of human rights which are a blot on our conscience and a threat to peace, justice and security.

I believe that there has been a substantial learning experience, which should now provide an adequate foundation for this next, crucial phase in the Tribunal's mandate. Our focus in this phase will be set firmly on the proper and effective implementation of the completion strategy. In that respect, I shall be guided by the Statute of the Tribunal, particularly with regard to the selection for prosecution of those persons who bear the greatest responsibility for the tragedy which occurred in Rwanda. Similarly, the concerns of the Council, expressed in inter alia its resolution 1503 (2003), of 27 August, will guide the policy of the Office of the Prosecutor.

In the ensuing months, while the investigation and prosecution processes continue — particularly with the cases involving top Government and military leaders — my staff and I will devote considerable effort to reviewing the case load with a view to determining which charges should be proceeded with or transferred to national jurisdictions, as well as the measures which need to be taken to meet the target date set by the Council for the conclusion of all investigations, the completion of all trial activities at first instance, and the conclusion of the work of the Tribunal, as stated in the resolution.

I have already put in place mechanisms for a review of the cases of those in detention without trial — those have not been brought before the courts; of the 16 indicted fugitives who are at large; of the 26 targets of investigation; and of the 40 cases earmarked for possible transfer to national jurisdictions. The aim of the review is to determine within the next few months more realistic figures, which I do not expect to exceed and which may indeed fall below the completion strategy ceilings indicated for the workload of the Tribunal.

With regard to work in progress, there are currently four trials involving 12 accused before the Trial Chambers. We have the so-called Military I case, with four accused; the Butare case, with six accused; and the Gacumbitsi and Ndindabahizi cases, with one accused each.

Moreover, the Tribunal plans to commence two additional trials, involving four accused each, on 3 November 2003, following the filing of first charges by the Office of the Prosecutor. These are the so-called Government cases, which will bring to the dock a large number of political leaders of Cabinet rank who were responsible for, inter alia, the planning of the genocide and instigating others to carry out the terrible events of that tragedy. The Military I trial, the Butare trial and the Government cases are big and voluminous cases which involve multiple accused persons and high numbers of witnesses per case. They are at a relatively early stage of development.

All these cases are, by their nature, quite complicated and difficult. It is therefore not easy to predict how long each will take or how long the two aforementioned trials will last. We have only our experience from the previous multi-accused and multi-witness trials on which to base estimates. The experience of cases such as the Media trial, which lasted three years, and the Cyangugu trial, which also lasted three years, enable us to estimate roughly that the Butare trial may last four to five years and the Military II trial may last about two and a half years.

The Gacumbitsi and Ndindabahizi trials are relatively small. Both the Chambers and the Office of the Prosecutor plan to complete the hearing of all the evidence and the closing arguments in those two cases before the end of 2003. If that happens, it will have taken less than four months per trial to complete the hearing of the evidence.

For our part, we in the Office of the Prosecutor will make greater efforts to use the Rules of Procedure and Evidence which are aimed at shortening trials. For instance, the time required to adduce the testimony of genocide experts has been considerably shortened by resort to Rule 94 *bis* of the Rules of Procedure and Evidence, which permits the presentation of written, instead of oral, testimony to Chambers under specified circumstances. We shall also constantly review witnesses in order to avoid duplication and wasting the time of the Trial Chambers. A major effort will also be launched to ensure that all trial teams meticulously keep to the Rules of Procedure and Evidence in order to reduce the incidence of motions, which consume a large part of the Tribunals' time. Internal measures are also being implemented in the Office to enhance the monitoring and supervision of prosecutions as well as to foster a greater sense of urgency on the part of the staff with regard to the work at hand.

Regarding the other accused currently in detention at the facility in Arusha, the Office of the

Prosecutor is ready to proceed in the first quarter of 2004 with trials in six cases involving nine accused. Another seven cases, each with a single accused, could be ready for trial in the second quarter of 2004. However, owing to limits in the availability of Chambers to handle these trials, I do not expect that all the cases that will be trial-ready in the first and the second quarters of 2004 will go to trial during those periods, unless there is an increase — from the current four to nine — in the number of ad litem Judges made available to the ICTR at the same time, and unless an amendment is also made to the Statute to increase the competence of those Judges, as proposed by the President of the Tribunal. Those measures would enable the ICTR to commence the trials during the periods mentioned, and I would urge that a decision be taken in that direction.

In line with the strategy of concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes falling within the ICTR's jurisdiction, I have also begun the process of reviewing the case of each accused who is awaiting trial, with a view to assessing the level of responsibility. With respect to those who do not meet the standard, the Office of the Prosecutor will immediately take steps to file motions in Chambers, under Rule 11 *bis*, requesting that indictments against them be suspended and that their cases be referred to other jurisdictions for trial. The review will also assess the relative strength of each case. Should there be any case with significantly questionable chances of success, a decision will have to be taken whether to withdraw the indictment or indictments. It is quite possible that that process will reduce the number of those awaiting trial from the current 21. I plan, following that review, to make the cases of the rest of those detained ready for trial before the end of 2005.

With regard to guilty pleas — the case for which has been very well put by the President of the Tribunal for Yugoslavia — we at the ICTR are now adopting much more of an open-door policy towards plea bargains and, as a result, towards acceptance of guilty pleas. This is an acceptable part of the criminal justice process, provided that the rules relating to protection of the accused and to fair trial are scrupulously observed. Once that is done, I think it is fair enough that plea-bargain processes be engaged in and that guilty pleas resulting from such bargains be respected and recognized. In the ICTR, of course, we have had past experiences which have inhibited guilty pleas or plea agreements. But we are committed to removal of the factors that have so far inhibited detainees from entering into such agreements. If there is any success in this direction, we are certain it will again reduce the number of detainees that will eventually have to be processed in full and lengthy proceedings before the chambers of the ICTR.

In addition, there are twenty-six new targets for investigation. Again, with regard to those targets we are carrying out a process of assessing the evidence collected so far in respect of each suspect. Where the evidence is weak and there are poor prospects for producing fresh, strengthening evidence, the file will probably have to be closed and no more resources and time spent on it.

Where the evidence indicates that the target is not one of the most senior leaders suspected of being most responsible for crimes within the ICTR jurisdiction, I propose to take such measures as are necessary to divert the target away from prosecution before the ICTR, and to explore possibilities of transfer to national jurisdictions.

These measures would include transferring targets to national jurisdictions. I believe making allowance for the fact that some of the targeted suspects may not be reached for reasons of death or other cause and that some who are apprehended may be jointly charged and tried, it is reasonable to assume that the final number of indictments within this category will be lower than the 26 projected so far.

An important mechanism, therefore, for the successful implementation of the completion strategy is the referral to national jurisdictions of those cases in which the accused does not fall within the category of those bearing the greatest responsibility for the atrocities, whether the accused are already in detention pending trial or they are merely targets for investigation. The numbers of persons that we may have to deal with in this manner will become known only after the completion of the review that is in progress.

My immediate plan in this regard after the review would be to establish contact with States in which those in detention were arrested to negotiate the transfer of the accused concerned to their jurisdictions where appropriate.

There is another category of cases comprising 40 case files which were partly investigated but, because it was clear at the very early stages of investigations that the targets in question bore low levels of responsibility, they were already earmarked for transfer to national jurisdictions. We do intend to carry out a review of these files, with a view to determining the viability of each case before final plans can be drawn up for transfer. Those cases that clearly have no prospect of success will be expunged from the system, as it would serve no purpose to send them to national jurisdictions.

Regarding the remainder of the cases, I intend to negotiate with States, including the Government of Rwanda, for their transfer to the respective national jurisdictions. Because investigations are not complete in many of these cases, I am convinced that States that agree to receive such files, including Rwanda, will need assistance from the international community and from the United Nations to complete the inquiries and to mount the prosecutions under the supervision of the ICTR, which will continue to retain its primary responsibility for these cases.

It is evident from what I have said that, whilst the ICTR has formulated a well considered completion strategy, in line with the request of the Council, the picture of the full extent of our workload will become clearer in the few months ahead, and probably before the end of the year.

International cooperation from States remains a crucial factor in the successful conclusion of the strategy. Several high-ranking military and political indictees remain at large. We shall continue to search for them and to negotiate with the States in which they reside for their surrender to the Tribunal or their prosecution by the host State. Further surrenders of such high-level suspects to the Tribunal may also require the Office of the Prosecutor (OTP) and the Tribunal as a whole to re-evaluate their priorities in terms of targets for prosecution.

Our planning is based on the assumption that we shall receive the fullest cooperation from all States, particularly those within whose jurisdiction the fugitives are found. A policy of transferring appropriate cases to national jurisdictions in order to enable the Tribunal to deal with the major cases can only succeed with the cooperation of States that are willing and able to dispense justice under conditions of due process and fair trial. Those who are willing but are inhibited by shortcomings should receive assistance to enable them to discharge their obligations. In all these matters the Tribunal looks to the cooperation of all States and ultimately to the support of the Security Council.

The President: I thank Prosecutor Jallow for his informative briefing.

Mr. Pleuger (Germany): I would first like to thank Judge Meron, Judge Møse and Prosecutors Del Ponte and Jallow for the very impressive and comprehensive briefing they have given us.

Please allow me to make one remark and to ask two questions. The remark pertains to the broader picture of the juridical institutions that we now have in the international field. There are now various types of institutions in the field of criminal justice. First, we have the ad hoc tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Secondly, we have mixed tribunals, such as in Sierra Leone and possibly soon in Cambodia. Thirdly, we have national courts or chambers that receive international assistance, such as has been proposed for Bosnia, and finally, of course, we have the International Criminal Court (ICC).

The ad hoc tribunals have been important precedents and they were the only reasonable choice at the time they were created. Now, we are faced with a dilemma. It is not quite clear whether the tribunals will be able to finish their work within the timeframe set by the completion strategies. At the same time, we are increasingly aware that these tribunals are tremendously costly. The operation of the ICTY will soon have reached an expenditure of one billion dollars for trying a limited number of people.

What does this mean? Of course, we must stick to the ad hoc tribunals and make sure that the completion strategies are adhered to as much as possible. This might mean that we need, first, more ad litem judges, secondly, more flexibility in using the ad litem judges, and thirdly, increased pressure for cooperation with the court. We feel it is a scandal that Mladic, Karadzic and Gotovina are still at large.

Let us also look at the broader picture, now that we have various options at hand. We should promote the devolution of cases to national justice whenever there are sufficient guarantees for judicial standards and fairness of trial, and the Council should take up the

proposal we recently made here. This proposal contains four elements. First, the Council should take a realistic look at the various international and national judiciaries.

Secondly, the Council should encourage the various actors of international justice to cross-fertilize and to exchange information, expertise and personnel. Thirdly, the Council should set up an expert group to examine the performance of the various actors, which would also serve to check their comparative advantages. Fourthly, the Council should take into account in its future plans that we can now include the ICC.

For example, if Mr. Mladic is arrested only in 2007, that is one year before the supposed end of the ICTY trials, why would we extend the ICTY with all the costs involved, provided we could refer the case to the ICC for less than half the cost?

After these general remarks, I would like to address two questions to today's speakers. The establishment of a special War Crimes Chamber within the Bosnian State Court will contribute towards decongesting the agenda of the ICTY, which is important in the interests of compliance with the completion strategy. This strategy is important, also, in other instances.

My first question, to President Meron and Prosecutor Carla Del Ponte, concerns the prospects for a comparable process in Croatia and in Serbia and Montenegro to devolve cases from the ICTY to specialized national courts in those countries. My second question goes to President Møse and Prosecutor Jallow. According to the report, 40 Rwandese cases have been handed over by the ICTR Prosecutor to Rwandese judicial authorities. Beyond that, can they imagine an even broader process of devolving cases from the ICTR to national Rwandese courts?

Mr. Aguilar Zinser (Mexico) (*spoke in Spanish*): As the delegation of Germany has done, we too would like to express our sincere thanks to the Presidents of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda — Judges Theodor Meron and Erik Møse — for the exhaustive presentations they have made to the Security Council regarding the reports on their work. Those presentations have given us the useful information necessary to conclude that those judicial institutions are functioning efficiently and with the dedication to dispensing criminal justice and ending impunity. We also recognize the difficulties they face in seeking to complete their cases satisfactorily. We are considering their recommendations to the Council with regard to strengthening their capacity to carry out their work in the phase they are now beginning.

I would also like to extend a warm welcome to Mr. Hassan Bubacar Jallow, who was recently appointed Prosecutor for the International Criminal Tribunal for Rwanda. My delegation wishes him every success in his work and expresses its confidence in him. We would also like to congratulate Ms. Carla Del Ponte for the professional and independent work she has done as the Prosecutor of the International Criminal Tribunal for Rwanda, as well as to once again express our confidence in her ongoing work as the Prosecutor for the International Criminal Tribunal for the Former Yugoslavia.

Allow me to take this opportunity to make a few comments and ask a few questions. I should first like to turn to the International Criminal Tribunal for the Former Yugoslavia.

Mexico has on previous occasions stressed that full cooperation by all States with that Tribunal is essential to achieving the goals set out in the completion strategy and the ultimate goals for which the Tribunal was established, namely, to maintain peace and security in the region, bring about national reconciliation and put an end to impunity. In that regard we welcome the efforts and progress made with regard to the cooperation extended by Balkan States in apprehending persons charged by the Tribunal. However, as Security Council resolution 1503 (2003) itself recognized, we must remember that the States mentioned in the resolution should provide greater cooperation and assistance to the Tribunal in order to bring before it all persons charged, including those specifically named in the resolution. It is important for my country to emphasize that nothing at all should stand in the way of the Tribunal's ability to exercise its powers. There should be no obstacles to bringing accused persons before the Tribunal, with the full cooperation of the States involved.

Yesterday we welcomed the presence in the Chamber of Lord Ashdown and Judge Meron, who provided us with information regarding the establishment of a chamber within the State Court of Bosnia and Herzegovina to specifically address serious violations of international humanitarian law. Undoubtedly, that represents a significant step towards the full implementation of the completion strategy.

With regard to the International Criminal Tribunal for Rwanda, my delegation would like in particular to thank President Erik Møse for having presented to us an encouraging picture of the visible progress made concerning the efficiency of that Tribunal's judicial and administrative functions. In that connection, we believe that the Security Council should continue to consider with interest the request by President Møse to authorize the use of 9 ad litem judges at any given moment. We believe that will contribute to the sound implementation of the completion strategy. It will also make it possible for the investigations begun by Ms. Carla Del Ponte to lead to bringing those responsible to trial under the new Office of the Prosecutor.

I would like to ask Prosecutor Jallow some questions with regard to the completion strategy. My delegation is aware of the fact that Ms. Del Ponte began investigations of the Rwandan Patriotic Army. Resolution 1503 (2003) itself appealed to all States to cooperate with the Tribunal in those investigations. In the completion strategy, recently drafted by the Tribunal, it is, in the judgement of my delegation, not entirely clear what steps the Office of the Prosecutor will have to take to continue the investigations concerning elements of the Rwandan Patriotic Army. Although we are aware of the need to make some reductions in the list of accused persons, as has been explained here, that should not be at the cost of investigations begun by the previous Prosecutor. That would create an atmosphere of impunity. My delegation would therefore like to know from Mr. Jallow how he intends to continue those investigations and how that will be properly reflected in the completion strategy. Likewise, we would like to know what steps are going to be taken in order to have those investigations culminate in trials of the persons involved.

In raising those questions my delegation is aware that the purpose of the completion strategy is to focus on investigations and trials of those with the greatest responsibility for crimes that fall under the Tribunal's jurisdiction, namely, genocide, crimes against humanity and violations of international humanitarian law. However, we believe that there will be no chance for national reconciliation in Rwanda if impunity thrives or if the same treatment is not afforded to all perpetrators of crimes. There is therefore a need for independence and universal treatment.

Finally, we believe that the completion strategy has served to underscore the importance and complementary nature of national justice systems. We share the views expressed here by both Judges and both Prosecutors that it is important to have a very complete view of the cases in order to be able to transfer to national courts the cases that are indeed suitable for such treatment, depending on the circumstances and merits of the individual cases. However, we believe that enhancing the capacity of national courts is critical in order for the countries to actually be in a position to fulfil their tasks. We also believe that the necessary resources and capacities must exist in post-conflict periods to build institutions and to establish and strengthen independent and impartial judicial systems.

A few days ago in this Chamber, at the initiative of the United Kingdom, we discussed the role of the United Nations in justice and the rule of law. We believe that that discussion was very useful in helping us recognize the importance of our Organization's work in promoting and strengthening national judicial systems in post-conflict situations.

Mr. De La Sablière (France) (*spoke in French*): I should like to begin by thanking the President Meron, President Møse, Ms. Del Ponte and Mr. Jallow for their interventions, which my delegation listened to most attentively. Once again, we reiterate my country's support for the two Tribunals.

Like previous speakers, the French delegation has closely followed the implementation of the completion strategy as developed by the two Tribunals and supported by our Council, most recently in resolution 1503 (2003). It is, of course, clear that it is important for all of the players involved — the organs of the two Tribunals, the judges, the prosecutors, the registrars and, above all, the States of the regions concerned — to mobilize themselves with regard to arrests, transfers, cooperation, witnesses and evidence. The international community must assist and support competent national jurisdictions in the delocalization of these matters.

I have two very brief questions to add to those that have already been asked, addressed to President Meron and to President Møse. I should like to ask them whether they have planned or are planning specific mechanisms to follow up on a regular basis the way in which the completion strategy is being implemented in its particulars. Are they planning, in particular, for the

establishment of warning criteria to address any difficulties that may arise?

Sir Emyr Jones Parry (United Kingdom): The United Kingdom is particularly grateful for the presentations we have just heard. I thank the speakers for the work they are doing.

If I may, I should like to pay a particular tribute to Carla Del Ponte for her work, what she has done and what she will now do, with particular focus on the situation in the former Yugoslavia. I thank Mr. Jallow for his presentation, clearly proving himself a worthy successor.

Bringing war criminals to confront justice is an essential element of post-conflict situations and a basic element of establishing the rule of law — a precondition of creating peaceful, stable, democratic States. But there is, too, a balance with reconciliation, with the development of a community within the emerging country. That, too, has to be put into the equation.

The obligation on us, as the international community's representatives, and on our institutions is evident. We all need to do everything we can to delivery the indictees to the Tribunals and to give every possible support to the two Prosecutors. In the former Yugoslavia, I am conscious that British troops have been involved in the arrest of more than one third of those indictees who have been transferred to The Hague. And in the former Yugoslavia, in the annals of a very sad history, three individuals stand out even among the most serious of criminals. Karadzic, Mladic and Gotovina deserve to be brought to The Hague as soon as possible. In the past, these individuals have enjoyed protection from some — I am not quite sure whom, but they certainly include some of the State organs of the countries concerned. The United Kingdom very much hopes that that is no longer the case.

Quite apart from the legal and moral obligations, the international community and organizations like the European Union have policies that will hold directly accountable those countries and authorities that fail to take any action which is possible and, still worse, that afford protection to those individuals. We will all have noted very carefully the words of Ms. Del Ponte in her report when she described the degree of cooperation which she is receiving and has received from the authorities in Croatia, Republika Srpska and Serbia and Montenegro. Essentially, those involved in the region have to understand and accept that the fugitive status of these individuals remains a major obstacle to the final stage of reform and reconciliation across the region.

Indictments and the conduct of cases are properly for the courts and for the prosecutors. Having said that, I think I would welcome clarification of Judge Meron's remarks that it is between the Council and the prosecutor as to whether the subject of an indictment meets the standards set by the Council. I think I have quoted his remarks more or less verbatim. But the Security Council clearly has a duty to encourage the support of nations for the work of the courts and to ensure that the means are found for the necessary work to be carried out and that indictees with the gravest charges against them are tried before the Tribunal.

So the Security Council legitimately comments on the strategic framework for the International Tribunals, the balance between reconciliation and justice, and the evolving role of national courts as they gradually take over the responsibility of the Tribunals. It may set a completion strategy for the Tribunals and, indeed, comment upon the efficiency of the delivery of justice.

I think we have all noted Ms. Del Ponte's continuing commitment to completing the investigations and to ceasing the issuance of indictments beyond 2004, focusing on the most serious offenders. But we also heard Judge Meron's clear — and, I thought, very fair — statement on the implication for the calendar of 14 or so extra indictments. I welcome also the assurance that, in both Tribunals, the need for reform must be addressed, but clearly balanced out against the essential dimension of a due and fair legal process.

My conclusion is that we should pursue justice with renewed vigour. We should aim to complete the work at the same time within the proposed timetable. The role of the domestic war crimes chambers will be vital, and we should give them every support, not just because they will contribute to the completion strategies, but because justice delivered by such courts will be a sign of a maturing political process, both in Bosnia and Herzegovina and in Rwanda, and as such may be more acceptable locally.

I do not think that what we have heard will require a change of strategy so much as an intensification of effort and the fullest cooperation in practice between the Tribunals themselves and between the Tribunals and the States. As the Security Council keeps the issue under review, we will need to weigh and remember Judge Meron's wise words about the

need to complete the process with regard to the most serious crimes, and to do so in a way that is consistent with due process.

The United Kingdom has a number of detailed points. In my remarks I sought to address a general strategic issue, but in the ongoing discussion in the working groups my colleagues will bring out other points.

Mr. Karev (Russian Federation) (*spoke in Russian*): First of all, I would like to join my colleagues in thanking the Presidents and the Prosecutors of the two Tribunals for their extremely interesting and detailed statements. I would also like to make several comments and ask a question, as previous speakers have done.

The International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda have, without doubt, played an important role in the establishment of a modern and independent judiciary. Of course, it has not been possible to travel down that very long path without encountering problems and making mistakes — that is completely to be expected. As has been rightly noted, there have been problems related to very low productivity and a slow rate of work, and drawbacks and delays of various kinds in the organization of work.

We note with satisfaction the fact that in recent years the leadership of the Tribunals has persisted in trying to correct the mistakes and overcome the problems. In this respect, the insistence of both Tribunals on fully implementing the completion strategies by 2008-2010, pursuant to Security Council 1503 (2003), is of fundamental importance.

As noted in the resolution, that strategy is based on three fundamental elements: the prosecution and trial of the key indictees; the transfer of others to national courts; and assistance to the relevant States with a view to strengthening their judicial systems.

In this respect, an important contribution to resolving related issues is being made by the ad litem judges. In that context, we are sympathetic to the proposal of the President of the Rwanda Tribunal as to how the number of ad litem judges can be increased and greater use made of them in trials. We also welcome the proposal to establish a Special Chamber to deal with war crimes in Bosnia and Herzegovina and the passing on of the torch from the International Criminal Tribunal for the former Yugoslavia. That issue was discussed in detail yesterday here in the Council. We also believe that the competent judicial bodies in other Balkan States should consider similar cases. We note with satisfaction that the leadership of the Tribunals has moved from totally rejecting that possibility towards allowing that such a development might take place in the future. It has been made clear today that such a development would require the fulfilment of certain conditions, which is only to be expected.

In this respect, I would like to ask the leadership of the Yugoslav Tribunal whether, in addition to taking note of the necessity for changes in the work of those judicial bodies in the Balkan States, the Tribunal is carrying out any specific work with those States with a view to bringing about such changes in the judiciary and to ensuring that there is the same possibility for handing over cases as was done with Bosnia and Herzegovina.

We are also looking forward to hearing the answers to questions that were asked by our colleagues earlier.

Mr. Zhang Yishan (China) (*spoke in Chinese*): I would like first of all to thank Judge Meron, President of the International Criminal Tribunal for the former Yugoslavia (ICTY), and Judge Møse, President of the International Criminal Tribunal for Rwanda (ICTR), for their briefings on the annual reports and the activities of the Tribunals.

I am also grateful to Ms. Del Ponte and Mr. Jallow, the Prosecutors, respectively, of the ICTY and the ICTR, for the briefings that they provided on their work.

The Chinese Government attaches importance to the work of the two Tribunals in the establishment of judicial bodies in their respective areas. We would like to see the work of the two Tribunals prove positive for the development of international law in that area. We have every confidence in the capacity and ability of the Judges and Prosecutors of the two Tribunals, and we express appreciation to them.

In August, the Council adopted a resolution requesting the two Tribunals to increase their efficiency and implement the completion strategies, and appointing separate Prosecutors for the two Tribunals. The resolution also requested the Tribunal to focus on those indictees with the greatest level of responsibility and to consider referring those cases

involving mostly mid- and lower-level accused to domestic jurisdiction. We believe that those measures will help the two Tribunals to successfully accomplish their mandate. We have taken note of the fact that, in their briefings, the Judges and Prosecutors specifically referred to measures to be taken for implementing the completion strategies. We will give serious consideration to those recommendations and proposals. We hope that the completion strategies will be fully implemented.

We also believe that the success of the two Tribunals in implementing the completion strategies will depend upon the cooperation of the countries concerned. We hope that the two Tribunals will demonstrate wisdom and that the countries concerned will fully cooperate with them.

I would like to ask two questions. First, with regard to the ICTR, if the number of ad litem judges is increased from four to nine, and if the Tribunal transfers lower-level cases to domestic jurisdiction, can it ensure that all the trials will be completed within the time frame set out for the completion strategy?

Secondly, does the ICTR have other options if difficulties are encountered in transferring cases or if the pace of transfer is not what is expected? I would like a response on that.

Mr. Tidjani (Cameroon) (*spoke in French*): On behalf of the delegation of Cameroon, I would like to thank Presidents Theodor Meron and Erik Møse and the Prosecutors, Ms. Carla Del Ponte and Mr. Hassan Bubacar Jallow, for the clear and exhaustive presentation of their reports, which, together with the contents of the reports, enables the Council to assess the work done and the efforts that still need to be made to achieve the set objectives.

I shall limit my comments to the following matters.

Regarding progress made, we have noted with much interest that the pace of the activities of the International Tribunal for the Former Yugoslavia (ICTY) has been unprecedented in the period under review. To a large extent, that has also been true of the International Criminal Tribunal for Rwanda (ICTR). These meritorious efforts are the result of internal and external reforms that have been vigorously implemented by the leaders of the Tribunals.

As for future action, the reports emphasize the importance of the cooperation of the States concerned for the success of the completion strategy. My delegation therefore calls for the strengthening of open cooperation between the two Tribunals and States directly involved, particularly with regard to the ICTY. We believe that a regular exchange of views between the two Tribunals is necessary for the harmonious accomplishment of their respective tasks.

The two Tribunals must also be given the means necessary for their functioning and for carrying out their worthwhile reforms. We believe that for the Rwanda Tribunal to accelerate its work, strengthening its capacity is essential. Its leading figures have indeed asked for that, and particularly for an increased number of ad litem judges.

In conclusion, allow me to ask one or two questions.

The ICTY has presented a detailed completion strategy plan, which requires a number of reforms. My delegation would like more precise information about the implementation of such a strategy for Rwanda and about the assistance to be provided to the Rwanda Tribunal — for example, in terms of training and applicable law. How will the current system reconcile the need for punishment with the need for reconciliation, not only in Rwanda, but in the entire region?

We note that the Prosecutor will be concluding investigations by the end of 2004. What are the possible implications of that decision for the normal functioning of the special War Crimes Chamber?

In conclusion, we would like to express our appreciation for the efforts being made by the Presidents and the Prosecutors of the two Tribunals and their staff to bring to justice those individuals who, as President Meron has said, bear the greatest responsibility for the greatest atrocities.

Mr. Mahmood (Pakistan): We too are grateful for the comprehensive briefings of the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Pakistan fully supports the work of the two Tribunals and attaches great importance to the timely realization of their respective completion strategies.

We have noted the statement about the level of cooperation afforded to the ICTY in certain instances. We cannot express enough how important it is for the Tribunal to have full cooperation from all concerned in

the prosecution and ultimate conviction of the perpetrators of some of the worst war crimes committed in recent memory.

Through resolution 1503 (2003), the Security Council called on States to cooperate with the two Tribunals. We believe the Council must send a signal that it remains serious about ending impunity for war crimes, and that it will be watching closely as the Tribunals proceed further with their work, which has important applications for justice and the rule of law and respect for international humanitarian law.

To conclude with a question, we would like to ask what additional steps can be taken to elicit greater cooperation for the prosecutorial work of the two Tribunals.

Mr. Sow (Guinea) (*spoke in French*): I congratulate Judge Theodor Meron on his able presentation on the activities of the International Criminal Tribunal for the Former Yugoslavia (ICTY) during the period in question. I also warmly congratulate the ICTY on its tenth anniversary, which is, happily, marked by important and praiseworthy achievements.

Our full appreciation also goes to Judge Erik Møse, President of the International Criminal Tribunal for Rwanda (ICTR), Ms. Carla Del Ponte, Prosecutor of the ICTY, and Mr. Hassan Bubacar Jallow, Prosecutor of the ICTR, for their very comprehensive and instructive presentations. I welcome Mr. Jallow here, and wish him success in his mission. I reaffirm my appreciation for the positive achievements of his predecessor, Ms. Carla Del Ponte, whom we encourage. We pay a warm tribute to them all for the performance of their institutions in promoting and protecting human rights, international humanitarian law and the attainment of the rule of law.

Analysis of the reports shows the vast experience of the two Tribunals in creating legal institutions and in international cooperation, of which they have been the foundation in recent months.

What I have to say today concerns primarily the functioning of the ICTR, my questions having already been asked and my comments about ICTY having been covered by previous statements.

Thanks to reforms intended to improve its functioning, reforms invigorated by the recent appointment of Prosecutor Jallow, the ICTR now has better conditions in which to fully accomplish its mission and achieve its mandate within the set timeframe. In the new context described in the report, the ICTR is better able to achieve its main objectives defined in the completion strategy. However, for its part, the ICTR should draw up a detailed strategy, in keeping with our requests, to defer to national jurisdictions, including Rwanda, accused persons of middle or lower rank.

We take note of the commitment of the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) to present his plan of action before the end of this year. My delegation in this regard endorses the recommendations made by the President of the ICTR and we very much encourage our Council: firstly, to endorse the elimination of the prohibition of ad litem judges to take part in pre-trial proceedings — this requires the amendment of the ICTR rules; and secondly, to increase from four to nine the number of ad litem judges for the ICTR. We believe these requests are feasible inasmuch as we have already taken similar measures in regards to the International Criminal Tribunal for the Former Yugoslavia (ICTY). These reforms will contribute to a more rapid resolution of the cases before the Tribunal.

My delegation also calls on the Secretary-General to appoint as soon as possible the remaining three ad litum judges so that the ICTR can improve its ability to function.

I would also ask the question, already posed by China, that is whether, once these conditions are met, the Tribunal will indeed be in a position to complete its work within the time limit requested by the Council.

We invite the international community to help with the strengthening of the national jurisdictional capacities involved here, to enable them to take up the cases that would be referred to them by the ICTR. We particularly urge our peace partners to support Rwanda in its sustained efforts to consolidate its national judicial system. We believe that this is essential for restoring security and lasting reconciliation in that country so torn by genocide.

My delegation reiterates its appeal for the full cooperation of all States of the Great Lakes region in arresting at-large persons who are charged with grave violations of international humanitarian law by the ICTR. Undoubtedly, that willingness would facilitate the calling of witnesses before the Tribunal, whether for the prosecution or for the defence, and of the

accused. In any event, we have the conviction that no country has the right to help fugitives escape international justice by offering sanctuary in their territory.

To conclude, we would stress that the completion strategy of the work of the ICTR is under way already and is on the right track, with the proper impetus. By giving the Tribunal appropriate resources, consolidating it and responding to its requests to the Security Council, the international community would guarantee the success of a unique enterprise in Africa for promoting and protecting human rights.

Finally, I would like to commend the Presidents and Prosecutors of the ICTY and the ICTR for the progress they have achieved and especially for their commitment and dedication to the rapid restoration of lasting peace and reconciliation, both in the Balkans and in Central Africa.

The President: Before giving the floor to the Judges and the Prosecutors to respond to the questions that have been raised and make any additional comments they might wish to make, I have four speakers inscribed under rule 37, Bosnia and Herzegovina, Rwanda, Serbia and Montenegro and Croatia.

I therefore invite the representative of Bosnia and Herzegovina to take a seat at the Council table.

Mr. Kusljugić (Bosnia and Herzegovina): I would like at the outset to thank you for the opportunity to comment on the tenth annual report of the International Criminal Tribunal for the former Yugoslavia (ICTY) (S/2003/829) and to share with you some recent views of my Government regarding the work of the Tribunal.

Bosnia and Herzegovina welcomes the report of the ICTY President and Chief Prosecutor submitted to the Secretary-General. I am also taking this opportunity to thank both Judge Meron and Chief Prosecutor Del Ponte for their comments and clear messages presented to the Council today regarding Tribunal achievements in the last year and current problems they are encountering in their work.

Bosnia and Herzegovina fully supports the ICTY's activities and is committed to fulfilling its obligations related to cooperation with the Tribunal. We are committed to following the path of proven success strategies in order to overcome as soon as possible the difficult heritage of our past and to start building, with mutual understanding, a modern Bosnia and Herzegovina. Only in this way may we pass on to future generations the message of peace and development, based on mutual understanding and tolerance.

We deem that the Tribunal plays an important role in the process of inter-ethnic reconciliation in our country as well as in all of South-east Europe, since its work is based upon the individualization of responsibilities for war crimes. We also believe that the work of the ICTY will unveil new evidence regarding the atrocities committed from 1992 to 1995, thus providing new facts about the true nature of the conflict in the region.

We stress that, lately, the responsible institutions of Bosnia and Herzegovina, in cooperation with the experts of the Office of the High Representative, have made measurable progress, especially in the process of restructuring the Bosnia and Herzegovina court system at all levels. The new Legal Reform Unit, High Judicial and Prosecutorial Councils, and Special Chamber in the State Court and the Special Department in the Bosnia and Herzegovina Prosecutor's Office in the country are now functioning. Together with the Criminal Code, which entered into force on 1 March 2003, the court of Bosnia and Herzegovina is now operative. This will enable the ICTY to begin transferring some cases of mid- and low-level accused by the end of next year. However, we expect that the apprehension and trial of the most notorious offenders will remain the continuing responsibility of the United Nations and the international community.

Bosnia and Herzegovina expects the ICTY to take all possible measures to complete its investigations by the end of 2004, all trial activities at first instance by the end of 2008, and to complete all work in 2010, as decided in Security Council resolution 1503 (2003).

In order to better meet the requirements of the Security Council resolutions with regard to the work of the ICTY, especially those of resolution 1503 (2003), Bosnia and Herzegovina is fully committed to fulfilling all its obligations and is ready to cooperate with the responsible authorities of the countries in the region in apprehending all remaining at-large persons indicted by the ICTY.

Bosnia and Herzegovina expresses its hopes that the international community will, as part of the completion strategy, assist the national judicial system in improving its capacity to prosecute cases transferred to it from the ICTY. We also expect that that the ICTY

will further develop and improve their outreach programmes.

The war criminals who remain at large present a source of continued instability in the region. We underline that a lasting and stable peace in the region will not be achieved unless all suspected war criminals, including the two most notorious, Radovan Karadzic and Ratko Mladic, are brought to justice.

The President: The next speaker is the representative of Rwanda.

Mr. Gahima (Rwanda): Allow me to thank Council members for allowing my delegation to participate in this important debate. I would like to take this opportunity to thank the President and the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) for their reports and to assure them of my Government's continued support for their work.

Allow me also to take this opportunity to thank the Secretary-General and the Security Council for the recent decision to appoint a separate Prosecutor for the ICTR, a change in the structure of the ICTR that my Government had long advocated. We believe that this change will go a long way towards addressing some of the concerns that my Government has raised about the work of the Tribunal in the past.

The Government of Rwanda is committed to seeking justice for the victims of the 1994 genocide, particularly as far as the senior Government, military and civil society leaders who planned and oversaw the genocide are concerned. Promoting the rule of law, in general, and accountability for genocide and other violations of international humanitarian law that occurred in Rwanda between 1990 and 1994, in particular, has been one of the pillars of the programme of the Transitional Government of National Unity. Consequently, we attach very great importance indeed to the work of the ICTR.

To assist the ICTR to achieve its mandate, the Government of Rwanda has put in place mechanisms to facilitate its work. We have provided facilitation and hospitality to ICTR personnel in Rwanda for the last nine years. All judicial, law enforcement, central Government and local government organs in Rwanda have standing instructions to assist ICTR personnel in their work in our country.

We provide access to vital witnesses. We undertake investigations for the Office of the Prosecutor whenever we are requested to do so. We have put all evidence in our possession relating to cases in which the ICTR is interested at the disposal of its trial attorneys and investigators. We facilitate the travel of witnesses to testify before the ICTR. We continue to actively assist and cooperate with the Tribunal in locating fugitive genocide suspects with a view to their apprehension.

We regret, however, that the invaluable assistance that Government institutions and private citizens of Rwanda have provided and continue to provide to the ICTR, at considerable sacrifice and expense, often goes unacknowledged and unappreciated.

As the ICTR focuses on its completion strategy, it should be recognized that the people of Rwanda are stakeholders in the institution's work, with a legitimate right to express views on aspects of the institution's performance that could be further improved. Not only are we part of the international community, we are also the victims to whom the Tribunal was established to bring justice.

The following are some of the areas in respect of which the Tribunal's performance has had shortcomings that we feel require attention. The Tribunal is remote and alienated from Rwandan society. Few of our people know about its work. Still fewer care about it. The Tribunal has failed to have any significant impact, as was envisaged in Security Council resolution 955 (1994), which established the Tribunal.

The Tribunal's management organs have often worked as unrelated institutions lacking cohesion, instead of being complementary organs of the same institutions working in close collaboration. The Office of the Prosecutor has over the years failed to develop a realistic and comprehensive prosecution strategy. The Tribunal has failed to develop a credible and effective witness protection programme and has neglected to address other pertinent concerns and needs of victims and witnesses.

The Tribunal has hired perpetrators of genocide and close relatives and friends of suspects as defence investigators and legal assistants, who threaten genocide survivors who are prosecution witnesses. There are fee-splitting arrangements between genocide suspects in detention and defence lawyers, with the result that financial contributions made by the international community to bring to justice the perpetrators of genocide are used instead to enrich the

criminals and their families and friends and to fuel conflict in our region.

The Office of the Prosecutor has failed to indict and apprehend large numbers of prominent genocide suspects who remain at large in many countries. The Office of the Prosecutor has also failed to develop a credible and realistic completion strategy to date. The perception in Rwanda, and indeed the world at large, is that, in view of the vast resources at its disposal, the ICTR has until now been slow, inefficient and ineffective.

We would like to recognize that there has been some progress in addressing some of the concerns, which the Government and people of Rwanda have had with regard to the performance of the Tribunal. In this regard, I would cite the following examples: the appointment of a separate Prosecutor; the appointment of ad litem judges; and the initiatives taken by the new President of the Tribunal to expedite the pace of trials and to promote the effective functioning of the Tribunal.

Rwanda, like the rest of the international community, believes and hopes that the new leadership of the Tribunal offers a window of opportunity for addressing the problems that have plagued the Tribunal in the past and sets the institution on a course on which it shall leave a legacy of which we can all be justly proud in the years to come.

My Government reiterates its sincere determination to continue to render full support to the ICTR to enable it achieve its mandate. We also call upon the Security Council to continue to explore ways of making the ICTR more efficient and effective, and we take this opportunity to make the following recommendations for consideration by the Council.

As far as the proposed completion strategy is concerned, we recommend that there should be greater consultation between all the stakeholders concerned than has hitherto been possible. We recommend that the proposed completion strategy should urgently address the problem of the large numbers of perpetrators of genocide, whom the Office of the Prosecutor has not indicted and who are still at large in many countries. We also recommend that the completion strategy should address the financial implications of the transfer of cases to Rwanda and make provision as to how the financial resources required to assist Rwanda will be raised.

On the remoteness and alienation of ICTR from Rwandan society, we recommend that the Tribunal undertake a credible and substantial outreach programme to bridge the gap between it and Rwandan society. We are of the view that the ICTR could have very useful lessons to learn from the experience of the Sierra Leone Tribunal in this regard. We would also once again recommend that hearings of at least some of the cases being heard by the Tribunal in Arusha be conducted in Rwanda.

As regards the Tribunal's relationships with survivors, we urge the ICTR to resolve its long-standing misunderstandings with the survivors of the genocide through dialogue with their chosen representatives. Concerning the hiring of persons suspected of having participated in genocide, we recommend that the Government of Rwanda and ICTR agree on mechanisms for vetting prospective employees to ensure that persons responsible for genocide are not employed by the Tribunal.

We would also recommend the appointment of an independent commission to investigate and urgently to report on the presence, among the personnel of the Tribunal, of persons suspected of having committed genocide, and that proposals be made and measures undertaken to ensure that the perpetrators of the genocide and their relatives and friends do not continue to be unjustly enriched by money which the international community pays to ensure that they are brought to justice.

With regard to the treatment and protection of witnesses, we call upon the ICTR to provide adequate counselling and preparation to prosecution witnesses prior to their appearance before the Tribunal. We call also for the establishment of an effective witness-protection programme agreed upon between the ICTR and the Government.

As regards the mismanagement of the Tribunal in general, which the United Nations itself, in several reports, admitted has taken place, we urge greater collaboration between the various organs of the ICTR, so that they act as complementary organs of one institution instead of perceiving themselves as separate, distinct and competing organs.

We call upon the organs concerned to end recruitment practices based on factors other than merit, which have in the past had an adverse effect on the competence of personnel.

Lastly, with regard to the relationship between the ICTR and the Government of Rwanda, we believe that, in order to address shortcomings in the investigation and prosecution of cases, there should be closer collaboration between ICTR personnel and Rwandan prosecution and investigation authorities to ensure a better preparation of cases.

We recommend greater use of Rwandan professionals within the ICTR during the remaining period of its mandate, because they are more familiar with the facts and circumstances of the genocide, and their experience would be beneficial to the domestic courts of Rwanda as they begin to assume responsibility for the cases which the ICTR proposes to send to domestic courts.

Finally, we propose to enhance collaboration and cooperation through the appointment of liaison officers between the ICTR and the Government of Rwanda.

In conclusion, I would like to express my Government's appreciation to the Security Council and the Secretary-General for their continuing interest and support to the Tribunal.

The President: The next speaker on my list is the representative of Serbia and Montenegro. I invite him to take a seat at the Council table and to make his statement.

Mr. Šahović (Serbia and Montenegro): I wish first of all to congratulate you, Sir, on your assumption of the presidency for this month and to thank you for having convened this very important meeting. I wish also to express our appreciation to Judge Møse and Prosecutor Jallow of the International Criminal Tribunal for Rwanda (ICTR).

My delegation would like to thank the President of the International Criminal Tribunal for the former Yugoslavia (ICTY), Judge Theodor Meron, for his comprehensive briefings — yesterday on the referral of war crimes cases to national jurisdictions, and today on general aspects of the Tribunal's work, both in the General Assembly and here in the Council. We appreciate Judge Meron's assessment that the cooperation of my country with the Tribunal has improved, although much more needs to be done. We are fully aware of that.

We also listened to the statement of Chief Prosecutor Ms. Carla Del Ponte with great interest and attention, as always. I must say that I disagree with some of the points she made, although I do agree with others. What I mostly disapprove of is the manner in which the Prosecutor passes judgement, basically of a political nature, on the authorities of Member States here in the Security Council. That is not helpful.

I spoke in some detail this morning in the General Assembly about the report of the ICTY, and I will try to save the Council's valuable time by limiting my statement to just a few points.

First, I want to reiterate the position of the Government of Serbia and Montenegro that the individual responsibility of all perpetrators of war crimes committed during the conflicts in the former Yugoslavia should be established in proceedings before both the ICTY and national courts. In this context, I would also like to state my Government's full commitment to implementing Security Council resolution 1503 (2003).

Secondly, I will now offer a brief update on the results of my country's cooperation with the ICTY since the matter was last debated before the Council.

First, the Law on Cooperation with the Tribunal was amended in accordance with the ICTY Statute. Article 39 of that law, preventing the surrender of any accused indicted by the Tribunal after the passage of that Law, was deleted. All internal legal obstacles to full cooperation with the ICTY were thus removed.

Secondly, in the past year, Serbia and Montenegro transferred the following indictees to the Tribunal: Milan Milutinovic, former President of Serbia, who voluntarily surrendered on 20 January 2003; Vojislav Seselj, President of the Serbian Radical Party and member of the Federal Parliament, who surrendered on 24 February 2003; Franko Simatovic, former commander of the State Security Special Units, was arrested and transferred to the Tribunal on 30 May 2003; Miroslav Radic, former officer of the Yugoslav Army, indicted for crimes in Vukovar, surrendered on 17 May 2003; Jovica Stanisic, former head of State Security of Serbia, was arrested and on 11 June 2003 transferred to the ICTY; Zeljko Meakic, former commander of the notorious Omarska camp in Bosnia and Herzegovina, surrendered on 4 July 2003; Veselin Sljivancanin, former officer of the Yugoslav Army — the last of the so-called Vukovar Three — was arrested and transferred on 1 July 2003; and Mitar Rasevic, indicted for events in Foca, Bosnia and Herzegovina, surrendered on 9 August 2003.

Proceedings are under way for the surrender of Vladimir Kovacevic, a former officer of the Yugoslav Army indicted for crimes in Dubrovnik.

It is our hope that this list will serve to clarify possible misunderstandings arising from the data offered in the ICTY report. Namely, the chapter on the activities of the Prosecutor states that only one indictee — Veselin Sljivancanin — had been arrested, leading to the Prosecutor's conclusion that

> "Unfortunately … Serbia and Montenegro … apart from assisting with some voluntary surrenders, has failed to act upon most of the outstanding Tribunal arrest warrants" *(S/2003/829, p. 52)*.

We do not really understand why the Prosecutor seems to be saying that voluntary surrenders of the accused, followed by their transfer to the ICTY, are somehow of lesser value than arrests leading to the same transfers. We therefore find it necessary to point out that the voluntary surrenders are also the result of decisive efforts on the part of the authorities of Serbia and Montenegro to cooperate with the Tribunal, and lead to the same results as do the arrests of indictees. Hence, with all due respect, the transfer of a former President, a former head of State Security and several army officers should not be qualified as a mere "assisting with some voluntary surrenders".

Thirdly, with regard to access to witnesses and suspects, 130 individuals — including three former heads of State — were released of the obligation not to disclose State, military or official secrets in order to testify before the ICTY. Proceedings are under way to release a further nine individuals from the same requirement. The process will continue.

Fourthly, regarding requests for documentation, Serbia and Montenegro has, inter alia, handed over to the ICTY all existing transcripts from the Supreme Defence Council meetings; verbatim records from all closed sessions of the National Assembly of the Republic of Serbia; and 74 confidential documents of the Counter-Intelligence Service of the Yugoslav Army. Altogether, we have handed over to the Tribunal more than 7,000 classified documents since the beginning of 2001.

Permit me in this context once again to draw the attention of the Council to the mention in the report of the June 5 decision of the Trial Chamber pursuant to rule 54 *bis*, granting the prosecution's request for a binding order requiring Serbia and Montenegro to produce certain documents to the Tribunal in connection with the Milosevic case. Serbia and Montenegro complied with that request, which was related only to documents of the Supreme Defence Council. Unfortunately, however, the report failed to mention the 19 June decision of the Chamber relating to the same case, rejecting the prosecution's request for general access to State archives. Therefore, it was the Chamber itself — not our Government — that limited this kind of general access to the Prosecutor. Regardless, Serbia and Montenegro is continuing to search for modalities to facilitate the Tribunal's access to the State archives.

I should like to conclude by stating that Serbia and Montenegro stands ready to cooperate further with the ICTY. I agree with the Prosecutor that our cooperation with the ICTY is complex; it is so for many reasons. However, I cannot agree that our cooperation is not proactive. My Government is actively undertaking efforts in various areas of cooperation, as I indicated earlier. Whether the cooperation is full or not is a question of perception, much like the question of whether a glass is half full or half empty. I want to emphasize that, in the past three years, we have filled the glass significantly; we will continue to fill it until it is full. It is a process, and to complete it successfully, we also need constructive engagement and understanding on the part of the Tribunal, especially the Office of the Prosecutor.

The President: The next speaker inscribed on my list is the representative of Croatia. I invite him to take a seat at the Council table and to make his statement.

Mr. Drobnjak (Croatia): I should like to begin by re-emphasizing Croatia's full commitment to close and unrestricted cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). We recognize the far-reaching importance of the Tribunal's work and its significance for long-lasting post-war stability in South-Eastern Europe. As an early advocate of the Tribunal and its goals, Croatia continues to maintain a close and constant dialogue with the Office of the Prosecutor and the Tribunal. We commend the accomplishments of the Tribunal, but we reserve the right to state that, when it comes to ICTY efficiency and practice, sometimes there remains room for improvement.

Perception is often the only political reality that matters, regardless of facts and arguments. It is

therefore essential not to allow perception to prevail as the guiding framework for evaluation of the cooperation of the countries concerned with the ICTY and all the problems that might arise from it. Bearing in mind the high political importance and sensitivity of the issue, we must insist that any assessment regarding cooperation with the ICTY — regardless of the country involved or the political circumstances surrounding it — must be based on facts proved beyond a reasonable doubt.

One such fact is that Croatia has achieved full compliance with respect to the transfer of documents to the ICTY. That was recognized and confirmed by the Prosecutor during her recent visit to Zagreb. We can state with satisfaction that there are no outstanding issues between Croatia and the ICTY but one. With the exception of the so-called Gotovina case, Croatia has fulfilled all its obligations towards the Tribunal. The fact is that, in the Gotovina case, the indicted person remains at large. The Croatian Government keeps the Office of the Prosecutor updated regularly on the activities it has been undertaking to discover the indictee's whereabouts and to ensure his presence before the Tribunal. Consistent with the Rules of Procedure and Evidence of the Court, on 6 October this year, the Croatian Government submitted its third report pursuant to rule 59, describing the actions undertaken on the matter.

Notwithstanding the importance of resolution 1503 (2003) for the timely closure of ICTY operations and the successful completion of its work, and fully respecting the substance of the resolution, we feel disappointed at connotations stemming from its operative paragraph 2 or any consequent attempt to put in equal context the name of the retired Croatian General Ante Gotovina with those of Radovan Karadzic and Ratko Mladic. The Tribunal certainly remains the place where the innocence or guilt of any and every indicted person must be determined. And, although technically it might be in conformity with the law — all three of them have been indicted by the Tribunal — putting their names in the same sentence hardly represents an act of historic justice.

I am authorized to state that the Croatian Government remains determined to take all measures required within its own borders for prosecuting perpetrators of all crimes insomuch as they are within the reach of its judicial system. In addition, the Croatian Government calls upon all States to share any information that might facilitate the successful completion of this case. But Croatia cannot act outside its sovereign territory. Arrests in ICTY cases are the shared responsibility of the international community. In that connection, the case of Radovan Karadzic in particular comes to mind.

Resolution 1503 (2003) endorsed a plausible exit strategy for the Tribunal, and Croatia joins others in support for the envisaged timetable for the completion of the ICTY's work. Respecting the benchmarks — starting with the completion of all investigation by the end of 2004 and a transparent determination of the final number of new indictments by that date — not only is a question of the effective administration of justice, but also will make not a small contribution to the streamlining of the confidence-building and stabilization process in the region aimed at new challenges and perspectives. The final advance along that road will be marked by the day when ICTY indictees disappear from the front pages of the local print media and are replaced by those who are at the forefront of rapid economic development and full integration into the European Union.

Strengthening national legal systems, which figures prominently in resolution 1503 (2003), also contributes significantly to the Tribunal's completion strategy. The Croatian judiciary has independently initiated a number of proceedings against the perpetrators of war crimes in Croatia. We are ready to continue to cooperate closely with the ICTY in conducting such trials. Under existing Croatian legislation, ICTY representatives are entitled to follow the proceedings and to have access to Court files, while evidentiary material obtained by the ICTY can be used directly in domestic trials. A readiness for broader, transparent international monitoring of war crimes trials has been indicated. We are pleased that the report notes the positive trends in cooperation between the Office of the Prosecutor and the Office of the State Attorney of Croatia with regard to prosecution before national courts.

Finally, while once again emphasizing Croatia's determination to continue its cooperation with the ICTY, I should like to make an observation that goes beyond the legalistic framework and the strict letter of law. For the countries in the region, the accurate historical and political record established through the Tribunal's jurisprudence is no less important than the legal record and the very punishment of perpetrators.

In the part of the world under ICTY jurisdiction, "law" and "justice" are two similar, but not entirely equal, words. What is in strict accordance with the law is not necessarily always just. The Tribunal must administer the law and make all the guilty pay for their crimes. But the Tribunal's final record for history must, above all, be just, so that all those — people and countries alike — who suffered so much can find in it eternal solace and not grounds for new controversies or discontent. We are confident that, in the very end, both law and justice will be served well.

The President: Before proceeding to give the floor again to the judges and the prosecutors, I would just like to note that a number of the questions I heard during the course of our discussion this afternoon were either slightly repetitive in nature or variants of the same theme. I hope in considering your replies that you would try to group them together and answer them in as succinct and summary a form as you feel comfortable with.

With those brief preliminary comments, I shall now give the floor to Judge Meron to respond to the comments and questions raised.

Judge Meron: I shall try to be brief, and it is indeed my intention to group questions together. Let me start briefly by expressing my gratitude to the members of the Council for their interest in the subject that is so important to all of us — international justice in the former Yugoslavia. I find your questions important and will try to answer them briefly and as well as I can.

The first question I will address was asked by the Ambassador of Germany regarding the prospect for transfer or devolution of cases — going beyond the Sarajevo Chamber, which we discussed yesterday and today — in other words, to Belgrade and Zagreb.

Let me start by saying that I, and I believe very many of my colleagues who are judges, believe that war crimes trials have the greatest resonance when they take place close to the area where crimes have been committed, close to the places of residence of the victims. That is certainly something all of us would like to encourage. But, as the Ambassador of Germany pointed out, there are conditions for this devolution or transfer. Basically, we must be satisfied that the courts in a particular area or State conform fully to international due process and human rights. We will not cooperate with the transfer of cases to jurisdictions which might be tainted by ethnic, religious or national bias. But I believe that we are moving forward on all of those requirements in the States concerned.

Let me now say specifically a few words about Belgrade. As I have already pointed out, I myself visited the venue of the new Special Chamber in Belgrade. I believe that Chamber will have quite a few candidates for trials who are in the territory of Serbia. I do not believe that they will lack work; they are already beginning.

I believe the Prosecutor has given us today some extremely useful information on page 2 of her statement, where she speaks of the cases of 62 suspects whom the ICTY does not intend to indict and who presumably would never be transferred to The Hague. Those cases are intended for investigation and prosecution in the various States of the former Yugoslavia. As you see, she gives us facts and figures on those transfers that I find very useful.

As far as I know, Zagreb does not have a special chamber, but in Croatia there has been quite significant development of a law on war crimes. The absence of a special chamber should not lead us to conclude that devolution or transfer would not be possible in appropriate circumstances.

One thing which must be made clear, as the Prosecutor has, I believe, correctly pointed out, is that people who are covered by the existing indictments that she and I referred to are the senior cases. Those are cases of such seniority that they would not be appropriate for transfer to local jurisdictions. Those cases would create too many pressures on the local social and political environment. However, having said that, I would like to reassure the Council that we are keeping this question under constant review.

As the situation in the former Yugoslavia becomes more normalized, we will be — and I am sure the Prosecutor will agree with what I am saying — reviewing our figures and data and perhaps identifying, in due course, additional candidates for transfer.

The representative of Russia asked a related question about our work in encouraging further development of judicial systems in the area in order to allow for additional transfers. I would like to assure him that we are working on that very seriously and consistently.

The ICTY is only one of the international institutions involved in legal assistance to the countries of the area. For example, when Serbia and Montenegro recently adopted its war crimes code, it was aided very significantly by the Organization for Security and Cooperation in Europe (OSCE) and by the International Bar Association. We in the Tribunal have been sending regularly to States in the area our comments about how to improve their proposed drafts, and we will continue to do so.

The delegate of France asked whether we have established specific mechanisms to follow implementation of the completion strategy on a regular basis. I would like to assure him that we are very much aware of the need to go that way, and indeed we have already established a number of committees whose principle obligation is to deal with this question. Those committees include bodies charged with the short-term and long-term planning of cases and also long-term forecasts of how quickly, and with what difficulties, we will move forward in implementing our policy of completion strategy.

Moreover, bodies that we already have, such as the Rules Committee and the Coordination Committee — which, as you know, brings together the President, the Registrar and the Prosecutor — deal with these questions on a daily basis. There is practically no day when I do not meet with my staff to look at the results of those Committees and try to resolve immediate problems that have arisen. I regard this as my personal responsibility and not only the responsibility of the institution. We will continue working very hard on this.

The United Kingdom delegate asked me to clarify a statement I made regarding a certain matter between the Council and the Prosecutor. He referred specifically to the Council's expectation in its resolution 1503 (2003) that the Prosecutor would complete all investigations by the end of 2004 by concentrating on the prosecution and trial of the most senior leaders suspected. That is a directive that the Council gave to the Tribunal and, more specifically in this case, to the Prosecutor.

Those directions are the Council's directives; hence it is the responsibility of the Council and of the Prosecutor to interpret them in good faith. The interpretation of these directives is not, according to resolution 1503 (2003), an appropriate judicial function. That is why I said that this is a matter between the Prosecutor and the Security Council.

But let me add one word here. It is entirely appropriate for the Security Council to define such broad goals and directives. I must say that it would not be appropriate for the Council to go into great detail in such directives, because such directives should not encroach upon on the prosecutorial independence of the Prosecutor. In other words, broad guidelines, yes; specific guidelines that encroach on her prosecutorial independence, no.

Having finished with the specific questions, there is only one concluding point I would like to make, and I apologize if I have forgotten some questions. Several representatives, and especially the representatives of Cameroon and, in a way, of Guinea, asked questions that have a bearing upon our strategy for eventually concluding our work. The only thing I would like to say about that today is that we have started to study various structural factors that will be required — and about which we will one day brief the Security Council — in order, one day, to change the shape of the Tribunal by, for example, finishing our trials and perhaps establishing another appeals chamber, as there will be an accumulation of appeals. Those are the sorts of long-term issues that I feel it is our responsibility as judges to start thinking about and, eventually, share our ideas and material with the Council.

The President: I thank Judge Meron for his participation in our meeting today and for the clarifications he has just provided.

I now give the floor to Judge Møse to respond to any comments or questions made of him.

Judge Møse: I would first like to take up the question raised by the Ambassador of Germany relating to the 40 cases to be transferred to national jurisdictions. It is of course too early now to know exactly how many of those cases will eventually end up in any particular country, for instance, Rwanda. That is a question that will have to be addressed by the Prosecutor after a review of the cases he just referred to. What we can say now in terms of the Tribunal as a whole is that the Chambers have not yet been seized with any requests under rule 11 *bis* to transfer any case to any national jurisdiction. That is where we are now. Only when we know the possibilities explored by the Office of the Prosecutor, and when that Office makes a request and the process is started, will we be able to

fully answer that question. Should any such cases end up in Rwanda, then I certainly would agree that there will be a need for the international community to assist and to ensure that there is sufficient infrastructure in place and resources available to ensure the necessary guarantees at the domestic level.

I should now like to turn to the issue raised by the French Ambassador. I agree with the analysis by President Meron in that regard. Of course, "completion strategy" is an ambiguous term, because there is the completion strategy of the Prosecutor, on the one hand — namely, regarding the number of indictments to be brought to the Tribunal — and, on the other hand, there is the completion strategy of the Tribunal as a whole. The Tribunal as a whole is dependent on the numbers proposed by the Prosecutor. But each of the three branches of the Tribunals must analyse, and now internalize, the significance of the completion strategy. In other words, the techniques employed will be the overall responsibility of the presidency, then overall responsibility within the Coordination Council. Thirdly, there will be an ongoing internal assessment within each of the three branches regarding how each is actually performing and progressing with its completion strategy. As a short-term measure, we will certainly involve the new trials committee, which has already contributed to ensuring a steady flow of cases. There may be other committees involved as well, but that is where we are now.

Many representatives asked for a more detailed completion strategy, and I certainly agree with them. But it is difficult to provide details at this stage. Only when we know the exact numbers we are talking about, after the current revision and review of files, will we be able to return to the Council. That will be an ongoing process. There may be a review of the 22 detainees mentioned by the Prosecutor, as well as of the 16 indictees and the 26 suspects at large. But as soon as that is clarified — and, again, I think that the words of the Prosecutor were encouraging — we will come back to the Council with revised provisions and projections.

If we get the nine ad litem judges, will we fulfil the task? That question is linked to the previous one. In life it is impossible to give guarantees, especially when it comes to international criminal justice. Again, we will come back to this issue when we have a detailed strategy. But what we can say is that only with the nine ad litem judges will it be possible to achieve what we have to achieve. Without them we will not succeed. That is certain.

There was a reference to regular exchanges or meetings between international institutions and courts. That is an interesting idea, and it has been tested in the past. For instance, there was a meeting between the ICTY and the ICTR three years ago in London, which was followed by a meeting in Dublin two years ago. There may be other such meetings. The problem is that when one takes time to exchange views, then one loses time for sitting in trials. That is, therefore, a difficult balancing process. But we are aware of that possibility and will consider it carefully.

I think that brings me to the end of the questions raised regarding the overall responsibility of the Tribunal. Let me simply thank all delegates for their very interesting and fruitful observations and comments. They will certainly be taken home to Arusha and made known to our colleagues. Let me also say that I noted with pleasure the statement made by the delegation of Rwanda to the effect that Rwanda supports our work and that it fully intends to cooperate.

The President: I thank Judge Møse for his participation and for the clarifications he has just provided.

I now give the floor to Prosecutor Del Ponte to respond to any comments or questions.

Ms. Del Ponte (*spoke in French*): I shall be very brief, as President Meron has already answered almost all the questions. I should just like to touch upon two issues.

First, I believe that the Security Council's attention to our activities is very important. I would ask the Council to continue its attention to the work of the Tribunal and the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, as this is a very delicate moment. Therefore the success of our completion strategy will depend upon the support that the Council extends to our work.

Secondly, as for the possibility of States' assuming cases, I shall not go into detail. I simply wish to note the importance of States' being able to take on such cases, because on the day when the local judicial authorities in Serbia and Montenegro, Croatia and Bosnia and Herzegovina are in a position to judge and try accused persons of any ethnic group, that is when

we shall be able to say that reconciliation has been achieved in those countries.

We are very far from that, but the beginnings are promising. Prosecutorial specialists in war crimes have been appointed and are currently drafting laws. We are already cooperating with these prosecutors, who have come to us. We assist them in their work and cooperate usefully with them. We also support their investigations, because it is important in those countries that cases and, above all, investigations be undertaken with the utmost respect for equity.

I believe that next year we will be able to be more specific. The transfer of cases will begin only in 2005. When we complete our investigations, we will be able to begin those transfers and be more specific next year. I can say, however, that the beginnings have been very positive and we are following them up.

The President: I shall now give the floor to Prosecutor Jallow to respond to any comments or questions.

Mr. Jallow: I will respond briefly to three comments.

First, I turn to the concern of the Ambassador of Germany in relation to the 40 cases. The President of the International Criminal Tribunal for Rwanda has already made some clarification in that respect, but I should like to say that these are only earmarked for transfer; none of them has yet been transferred, and not all of them are earmarked for transfer to Rwanda. Some are earmarked for transfer to other jurisdictions. We have yet to finalize the list. We have to review the cases and determine whether there is, in fact, a possibility of success if these cases are transferred and prosecuted.

We also have to work out, of course, the terms and conditions for the transfer. We have to be satisfied that the countries or the jurisdictions to which the cases might go are capable of providing fair trials, in accordance with the standards that have been set by the United Nations, which have to be satisfied. If there is a lack of capacity, that issue could be addressed by the Security Council or by the United Nations itself in coming to the assistance of the State and providing support for its judiciary in order for it to be able to undertake the prosecution of these cases.

I think, as has been rightly noted, that one of the important legacies of this sort of practice is that capacity has to be built in the countries or regions where these events occurred. Some capacity has to be built up in the judiciaries and other institutions for them to be able to deal with such incidents when they occur. That is a primary concern of the Court I am coming from — the Special Court for Sierra Leone — where we are very much concerned with developing the capacity of the Sierra Leonean national judicial system to respond to these cases and to deal with them expeditiously. That will be the process we will go through for handling the cases.

The Ambassador of Mexico raised questions concerning the Rwandan Patriotic Front (RPF). Among the 26 targets for investigation, there are some members of the RPF. That is as much as I can explain to the Ambassador of Mexico. Secondly, I assure the Council that our mandate is to prosecute those persons who bear the greatest responsibility for whatever may have occurred. The decisions of the Prosecutor are taken on the basis of the evidence and of the law. I wish to assure my colleague on that point.

With regard to the issue raised by the representative of China as to whether the combination of the completion strategy and early transfer would lead to a completion of the cases by the target dates, as the President has said, the judicial process is not easily predictable. We have to resort to a combination of strategies. What is clear is that, if we do not have additional ad litem judges, we cannot even start prosecution of the cases which are already ready for trial. If we do combine the strategy of transfer to national jurisdictions with a strategy of increasing the number of ad litem judges and also resorting to other measures, I am optimistic that we could meet the targets which have been set by the Security Council.

Other than that, I should like to thank the Council for its interest in and its support for our work.

The President: There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

I take this opportunity, on behalf of the Security Council, once again to thank Judge Meron, Judge Møse, Prosecutor Del Ponte and Prosecutor Jallow for taking the time to brief the Council today.

The meeting rose at 6.50 p.m.