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Security Council

Fifty-fifth year

Provisional

4161st meeting

Tuesday, 20 June 2000, 10.30 a.m.

New York

President:	Mr. Levitte	(France)
Members:	Argentina	Mr. Listre
	Bangladesh	Mr. Chowdhury
	Canada	Mr. Duval
	China	Mr. Shen Guofang
	Jamaica	Mr. Ward
	Malaysia	Mr. Hasmy
	Mali	Mr. Issouf Maiga
	Namibia	Mr. Andjaba
	Netherlands	Mr. van Walsum
	Russian Federation	Mr. Lavrov
	Tunisia	Mr. Jerandi
	Ukraine	Mr. Yel'chenko
	United Kingdom of Great Britain and Northern Ireland	Sir Jeremy Greenstock
	United States of America	Mr. Holbrooke

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

00-48960 (E)

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The meeting was called to order at 10.50 a.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

The President (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, and in the absence of objection, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Claude Jorda, 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.

I invite Judge Jorda to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them a letter dated 14 June 2000 from the Secretary-General and its enclosures, document S/2000/597.

Members of the Council also have before them photocopies of a letter dated 12 May 2000 from the 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, which will be issued as a document of the Security Council, and of a letter dated 14 June 2000 from the 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.

At this meeting, the Security Council will hear a briefing by Judge Claude Jorda, 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.

I now call on Judge Jorda.

Mr. Jorda (*spoke in French*): Mr. President, allow me first to express my gratitude for the honour you have bestowed on me by providing me with the opportunity to address the Council. I say this not just on my own behalf but also on behalf of all of the judges of the International Criminal Tribunal for the former Yugoslavia (ICTY), who appointed me to my post in November 1999. This is yet another indication of the Council's unflagging interest in our work.

Quite recently the Council received and heard the Prosecutor, Mrs. Del Ponte. She spoke of her concerns and of her criminal policy. Of course, her statement related mainly to her work. The Council will not be surprised, therefore, that shortly thereafter, the President of the ICTY has come here to speak in his capacity as a judge to share with the Council the judges' concerns about the functioning of the Tribunal. I will be presenting these concerns on the basis of a report we prepared, which I had the honour of filing with the Secretary-General on 12 May last. This is what I wish to brief the Council on.

Why are we seeking to improve, or even to reform, the ICTY? In the document presented in support of our proposals which was circulated to the Council, several answers to this question can be found. I will therefore limit my comments to emphasizing some of the most outstanding points.

What we are saying is that the time has come to put forward proposals designed to make our Tribunal more effective. In this respect, we are taking up the objectives of the Expert Group mandated by the Secretary-General to evaluate the effectiveness of the Tribunal's activities, pursuant to the General Assembly's resolution of 18 December 1998. As the Council is aware, that Group studied every aspect of the Tribunal's functioning for more than six months. The very significant and productive work of this Group gave rise to 46 particularly relevant recommendations, which have been of great benefit to the Tribunal. I can answer questions in this respect if the Council deems it

advisable. Indeed, many of these recommendations have already been implemented, or will soon be.

The Council may wonder why a further report is necessary or why new proposals are needed. It is because the perspective here is different, even complementary.

The analytical and reflective work done by the judges is primarily judicial and consists of the judges' views of their own activities. More than that, however, this is their first attempt to project themselves into the future using as a starting point a critical evaluation of their strictly judicial activity. Our report does not supplant that of the Expert Group but is, in some respects, a forward-looking extension of it.

The conclusion we have reached is that, on some points at least, the International Criminal Tribunal for the former Yugoslavia must be reformed. Reform is needed because the Tribunal is about to succeed in its mission or, to be more precise, the missions entrusted to it in 1993 by the Security Council.

Behind this apparent paradox are several facts that must be taken into account in order to assess the need for this historic instrument of international justice to move once and for all out of the age of official recognition to that of universal credibility, the only one that is truly of importance to anyone seeking real progress in the field of human rights.

More than six years after its establishment, has the Tribunal met these expectations? Has it achieved the missions entrusted to it?

If one attempts to move away from the scepticism that surrounded this institution's first steps, recalling that the Tribunal was set up at a time when the conflict was still raging and when the leaders, the main players in the conflict, were — and to some extent are still — the heads of their Governments, one can objectively conclude that the Tribunal has fulfilled many of the hopes placed in it.

But it is impossible to gloss over the difficulties encountered, which, in several respects, prevent me from feeling any kind of self-satisfaction. The opposite is true, I think. An unflinching review must be the starting point for suggesting ways to initiate reforms designed to transform a tentative success into a decisive and irreversible step in the progress of international humanitarian law.

Let me return to the responsibilities of the Tribunal. To judge those responsible for "ethnic cleansing", to render justice to the victims, to prevent recidivism and to work on ensuring that history is not rewritten by blind revisionism was, and is, the immense task entrusted in November 1993 to the 11 judges from the five continents who were elected by the General Assembly.

Let us be clear: the establishment of the Tribunal has not prevented recidivism. The fall of the Srebrenica enclave and, later, the hundreds of thousands of Albanians expelled from Kosovo are seared into the hearts of those who believe in the exemplary virtue of justice. Perhaps this weapon was not in and of itself sufficient, or perhaps it was too tentative, to succeed in driving away the deadly fumes of nationalism by threat alone.

Establishing the truth behind events and preventing all forms of revisionism have always been the underlying objectives of all international criminal justice systems, and in particular the system practised in The Hague. Much has been accomplished on that score. The atrocities committed and the plans that were their inspiration are no longer merely the subject of media accounts or of the descriptions of commissions of experts, which are always vulnerable to polemic. These events have entered into the realm of incontrovertible judicial evidence. Vukovar, Sarajevo, Srebrenica and so many other places where acts of cruelty took place have also become legal sites through the trials of the main persons accused who played the principal roles in what happened.

But prosecuting and trying those responsible is nevertheless the *raison d'être* of any criminal court. When it comes to an extraordinary type of justice, such as that rendered in The Hague, and because the most serious crimes committed against humanity are involved, that justice must also be especially exemplary. I think we would all agree on this. That justice must also conform to the highest standards of humanitarian international law in respect of both the victims and the accused. In short, it must move that law forward, a law that is constantly being reborn.

As regards the strictly judicial record, and in view of the background on which this institution was created, I believe one would need to be a partial or very partisan observer — and it is true that there are still many of those today — not to credit the Tribunal with

a certain amount of progress. I would like to recall here that — beginning with absolutely nothing, neither a body of judicial or procedural rules, no logistical capacities, no budget, facilities or accused persons — in six years the Tribunal has adopted a number of rules and directives, including the Rules of Procedure and Evidence, to which we shall return, the Detention Rules, and the directive on the assignment of defence counsel. It has set up its Detention Unit along with its Victims and Witnesses Section. The Tribunal has indicted 96 individuals — 36 of whom are currently in detention — rendered 16 judgements on the merits of cases and issued several hundred interlocutory decisions and orders of various sorts, including some on very important matters for which there was no international precedent. Above all, however, I believe it has demonstrated what is most essential: the fact that an international judicial institution is both feasible and operational.

Nonetheless, the time seems ripe to ask questions as to the Tribunal's future and to attempt to anticipate many of the difficulties that I have spoken about, and to which I shall return, which if not got under control and resolved may put at risk the accomplishment of its mission and compromise its very *raison d'être*. We feel that the time is now right. The Tribunal has reached a turning point in its history. Its very success, like many internal or peripheral factors, has led us to propose a number of measures to those who have the political responsibility for deciding what is to become of the Tribunal in the future, namely, the Security Council.

First, there are the evident and significant political changes in the Balkan region, changes that may even be said to be accelerating and whose impact must be measured. These are followed by other factors that must be considered, such as the increasingly assertive support of the international community; in response to our constant calls, it has ensured that we have ever-more active cooperation with regard to arrests, which are now increasing regularly. The Tribunal is, as a result, confronted with the matter of "quantitative" management, even though it cannot yield as regards the exemplary and "qualitative" character of its proceedings. But no matter how exemplary our trials seek to be, they have nevertheless become increasingly complex as judges deal with questions and problems for which no ready-made solutions exist in international criminal law.

The perspective of the Office of the Prosecutor should also be included. I would like to repeat that this body is completely independent of the judges, as it should be. Here I am referring to criminal policy, which we do not make, and which will be followed much more regularly in the months and years to come. Several dozen investigations are ongoing, which, when added to those already conducted and completed, will bring almost 200 accused persons to The Hague. Ms. Del Ponte confirmed this figure to the Council two weeks ago.

Is it conceivable that high-level political and military officials — whether they have surrendered or have been arrested — would spend long months in detention awaiting trials? Pre-trial detention has already become lengthy, which has given rise to disputes over requests for provisional release. As the Council knows, and I shall not go into detail, some of those requests have been granted by judges. It is paradoxical that such a situation should arise at a time when the Tribunal is pressing for the arrest of all those it has indicted.

Lastly, and not least important for both us and the Council, the place the Tribunal now occupies within the mechanism of international humanitarian law, especially in view of the establishment and implementation of the International Criminal Court, places a degree of responsibility on the Council and on us. In this regard, there is no question that much of what is being done in The Hague will serve, at best, as an example of what should be done and, at worst, as an example of what should not be done. By demonstrating that universal criminal justice is possible and feasible the Tribunal has in some respects assisted in the putting in place of a more permanent judicial organ. Still, this demonstration must continue until the end. A failure of the Tribunal for whatever reason would deal an extremely heavy blow to the future Court at the very moment that many States are on the verge of ratifying the treaty that established it.

It must be noted that the Tribunal's prospects are worrisome and that it is now necessary to anticipate what may happen. The workload of the Tribunal is currently so heavy that, if no remedy is found immediately, the institution's very credibility will be called into question. We owe the accused a trial that is of course fair, but also one that is expeditious. We owe expeditious trials to the victims and also to the international community, which has placed its faith in

us. It is true that although the need for expeditiousness is an excruciating problem for all advanced legal systems, the need in an international criminal justice system is even more critical, because crimes recede into the past and are increasingly removed from the commission of the criminal acts themselves. The collection of evidence is often in the hands of the States involved in the conflict or, as the Council is aware, even in the hands of other States involved in the interposition or peacekeeping forces. The diplomatic and political component inherent in an unprecedented judicial institution creates the major problems facing the Tribunal. These are all factors that do not contribute expeditiousness. They also explain why the procedural system, despite the many changes designed to accelerate matters, still leaves trials too much in the hands of the parties.

We must be clear. The prospective study that the Tribunal has just conducted shows that if nothing changes — either with regard to criminal policy, the rules of procedure or the Tribunal's format and organization — and that if, conversely, all the elements, especially the political ones, are moving towards an unavoidable increase in cases, then there is no doubt that the Tribunal's original 1993 four-year mandate, which was renewed in 1997 for an equal duration, will need to be extended not once, not twice, but at least three or four times. But from my point of view, this situation would penalize both the accused and the victims. International justice would not be any grander as a result.

What should be done then? What should be proposed? I did not come before the Council to offer only a diagnosis. Far from wanting to paint an overly dramatic picture, I believe that things should instead be properly considered. By that I mean that we must be aware that problems exist that are related to the very vitality of the institution and not to any type of possible debility. We are faced with a "growing pain" that we must control rather than letting it control us.

After having considered the entire range of possible solutions — at least those falling within their province, the non-political solutions — and after having analysed all the advantages and disadvantages, the judges unanimously supported a flexible, pragmatic solution that combines internal procedural, practical and organizational reforms and, of course, reforms that would reinforce the Chambers' trial capacity. I would like to generally describe what is proposed.

The idea is simple: the practice of an initially highly adversarial procedure has shown us that more initiative and manoeuvrability should be left to the judges, who in the final analysis are the sole custodians of the universal values that underpin the missions assigned to them. This trend, which began in 1998, relates first and foremost to the pre-trial phase, that phase between the initial appearance of the accused following his arrest and the beginning of the proceedings themselves. This phase was put under the control of a pre-trial judge, a Tribunal judge working in this capacity. In the plan presented to the Council, this phase, known as pre-trial case preparation, would be handled in part by professional legal experts, who themselves would be acting under the authority and control of the judges. I emphasize this point because I know it can raise some questions on the control and authority of judges.

This phase would make it possible to have an ongoing, fruitful dialogue with the parties, in order to give us a trial pruned of all its useless branches and focused on the real factual and legal issues. This pre-trial phase of the case would be — and this is not the least of its advantages — dealt with on a priority basis by the judges right after the accused's initial appearance. The accused would then see his case being dealt with immediately following his arrest, which is not always the case today because of the large workload of judges, whose time is almost completely taken up by hearings. The pre-trial phase would thus be conducted on an uninterrupted basis, free of the chronic bottlenecks in the Chambers.

However, the fluidity gained at the pre-trial phase is meaningful only if the many trials — that is, the many hearings — can be held as soon as they ready. This is the second aspect of the proposed reform, which, naturally, complements the first. In order to deal with the significant number of trials awaiting them — 61, I think — and without formally rejecting the creation of additional trial chambers along the lines of what was adopted at our request in 1997, the judges then also opted for a flexible model adaptable to the necessarily changing situations that the Tribunal has been facing and will continue to face.

The creation of a pool of Judges who would be called on as soon as a case was trial-ready, and only for that one trial, seemed to us a solution with merit in several respects. It would be best suited to the irregular pace of the indictments, arrests or even important

incidents that may affect the pre-trial phase. Since the *ad litem* judges would be called to The Hague for a specific case only, many more judges, and consequently many more States, would participate in the work of international justice.

The document that has been prepared shows the high level of productivity that can be expected from the proposed combined solution. In practical terms, the period of the mandate assigned to the Tribunal — at least insofar as the first-instance trials are concerned, and I will return to this later — could be shortened to terminate at the end of 2007, instead of 2016, a gain of 9 years; that is, half the time. We can therefore hope that at the time the International Criminal Court is set up, our International Criminal Tribunal will have completed its task at least in terms of first-instance trials. Of course, appeals would remain. That alone presents particular complex problems because it is attached to the appeals proceedings in the Rwanda Tribunal, judges from The Hague will take up the Rwanda appeals. In that regard, we support the idea of reinforcing the Appeals Chamber with two additional ad hoc judges, as recommended by the Expert Group. Let me add that the solution of resorting to *ad litem* Judges will be valid for the Appeals Chamber because by 2007 first-instance trials will have been concluded. I believe there are 14 Tribunal judges who could complete the cases under appeal.

The judges are aware that these proposals will not resolve all the questions. We also know that their implementation raises many questions. However, while the judges have exceeded their role to a certain extent, they have also presented their reflections on a set of outstanding questions, on which the judges are sometimes divided.

The statutory implications were also considered. In this respect, the plan appears to be overly focused on the Tribunal's productivity. It is true that that remains our highest priority. However, other aspects relating to the Tribunal's operation have not escaped our attention. Through two permanent working groups — the rules committee, presided over by the British Judge Richard May, and the judicial practices working group, presided over by the Portuguese Judge Almiro Rodrigues — the judges are constantly striving to improve the way they themselves operate, I can assure the Council.

I would, moreover, like to state that the proposed changes would require an amendment to the statute. I appreciate how difficult this would be, but an amendment was already made in 1997. I believe it is legitimate for an institution in existence for almost seven years to make adjustments requiring a legal basis, which amendments to the Rules of Procedure alone would not provide. Changes dealing with the establishment of *ad litem* judges could also be used to introduce into the statute several other modifications dealing, for example, with additional judges for the Appeals Chamber, as recommended by the Expert Group of which I spoke a moment ago; or with the important matter of compensation for persons unjustly detained or prosecuted; or with the suggestions made here by Ms. Del Ponte two weeks ago relating to compensation for victims funded by the seizure of the revenues of the convicted. Subject to the opinion of my colleagues, I fully support those suggestions.

Lastly, I would like to add that the document presented to is not a budgetary document. That is true. Such an analysis does not fall within the jurisdiction of the judges. Nonetheless, mindful of the financial burden represented by the Tribunal — $95.8 million per year — the Judges, I can assure the Council, have made their own proposals, always bearing in mind this important aspect of the proposed reform. In this respect, recourse to *ad litem* judges seems to be the least costly solution, when compared to the creation of additional Chambers with permanent judges.

Above all, however, given that our demonstration may not have been entirely conclusive, it appeared especially clear that this solution would make it possible, I recall, to set a reasonable expiration date for our work — at least in the first instance — and that, in budgetary terms, the time differential — permitting savings of almost 10 years of mandate time — when compared to any other solution and, a fortiori, when compared to the status quo — needed to be considered.

Concretely speaking, I would ask the Council to review all the problems linked to the operation of our Tribunal, which is also the Council's own. Not everything must be done immediately, but I believe that, at first, and after some time for reflection, perhaps in the framework of a working group — to which I would wish to participate on behalf of the Tribunal in whatever capacity would be most useful and timely — the Statute could be amended in order to introduce at least the principle of appointing *ad litem* judges, if not a number of such judges themselves. The mechanisms for selecting and assigning judges to cases present very

important problems which the judges themselves have discussed. Recourse to these judges would, of course, remain subordinated to the needs of the Tribunal.

I would conclude my rather lengthy briefing by saying that the judges are not unaware of the difficult and complex effort again being asked of the international community, and the Security Council in particular. They feel that everything which has been accomplished to date argues in their favour, so that the confidence placed in this unprecedented institution will be maintained. We can, of course, continue to make progress amongst ourselves and will continue to do so. However, one must not believe that justice, as rendered in The Hague — which, since 1993, has been bearing, together with Arusha, many of our hopes for the implementation of more permanent and universal justice — can be created and, especially, developed without a sustained effort on the part of one and all. I would quote the most recent observations of our institution, those of the Organization itself — as represented by the Expert Group, mandated in 1998 and reporting in November, just six months ago.

> "To the extent that there may have been expectations that the Tribunals could spring to life and, without going through seemingly slow and costly developmental stages, emulate the functioning of mature experienced prosecutorial and judicial organs in national jurisdictions in adhering to a high standard of due process, such expectations were chimerical." (S/2000/597, para. 264)

By establishing the Tribunal in 1993, the Security Council took an historic decision, one of the greatest challenges since Nuremberg, stating that crimes against humanity or genocide, conceived and committed by man in the name of racist and xenophobic theses, would not go unpunished. It redounds to the Council's honour that it said and did this.

By taking up this challenge, the judges at The Hague feel that, in their courtrooms, they have been able and are able, with impartiality — yes, impartiality — tenacity and conviction, to hear the cries of the victims and contribute in this way to ensuring that, in history's memory, the tragic events which occurred in this region are neither forgotten nor, what is more serious, distorted into a kind of revisionism which, as we know, represents a danger to democracies. On behalf of my colleagues, I ask the Council to allow us to continue and to complete this exalting task.

The President (spoke in French): I thank Judge Jorda for a briefing that was eloquent and characterized by great vision and clarity. He gave us specific proposals on how to improve the functioning of a Tribunal that our Council created in 1993. This Tribunal is an essential element of the return to peace in the former Yugoslavia, because we all know that there can be no peace without justice. The Tribunal, however, also represents considerable progress in international law and the universal conscience. Hence, the important of today's debate. The smooth functioning and effectiveness of the Tribunal are of concern to us. What we have to say will help it fulfil the important task that we entrusted to it.

I now call on members of the Council.

Mr. Lavrov (Russian Federation) (spoke in Russian): We thank Judge Jorda for introducing the report before us.

We welcome the efforts of the judges 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 (ICTY) to improve the functioning of that body of international criminal justice. We understand their frustration at the pace and methods of the functioning of the Tribunal. For our part, we, too, have serious reservations about the work of that international body.

When it established the Tribunal, the Security Council believed that the ICTY would make an important contribution to settling the crisis in Yugoslavia and that it would fulfil this task unburdened by political considerations. Unfortunately, however, we have seen political ambitions emerge in the activities of the Tribunal and a clear anti-Serb line has been adopted. Having predetermined for itself the main culprit in the Yugoslav tragedy, the Tribunal nevertheless often turns a blind eye to cases of non-compliance with the norms of international humanitarian law by other parties to the conflicts.

When it comes to reports of violations committed by the Federal Republic of Yugoslavia, the Tribunal immediately issues indictments and gets down to work, as, for example, in the case of the situation in Kosovo. However, if questions arise — for instance, concerning

the actions of the North Atlantic Treaty Organization (NATO) — the Tribunal, even in the face of such obvious facts as the deaths of innocent civilians, the destruction by air strike of civilian targets, finds no grounds for launching an investigation. We are appalled by the Tribunal's failure to act in response to ongoing ethnic cleansing against Serbs and other national minorities in Kosovo.

With respect to the judicial activities of the Tribunal, we cannot fail to recall that, when the statute of the body was being drafted, it was assumed that the ICTY would strictly apply only existing norms of international humanitarian law. The statute says nothing about the right of the ICTY to create any new law. In practice, however, an entirely different picture has emerged. In recent years, the Tribunal has repeatedly tinkered with the norms and rules of international humanitarian law to suit its own purposes and interpreted them at it own convenience. Moreover, exploiting the lack of any real control by the international community over the elaboration of the rules of procedure and evidence, the Tribunal has introduced into these documents some very legally dubious practices, such as handing down sealed indictments and submitting them to international organs.

Also wrong was the 1996 decision taken by the Tribunal, behind the Security Council's back, to conclude a memorandum of understanding with NATO, which virtually sanctioned the special operation by the NATO contingent in Bosnia and Herzegovina, whose purpose was to track down indictees. This runs counter to the mandate of the Stabilization Force in Bosnia. Let me recall that the memorandum remains secret and has yet to be submitted to members of the Security Council.

In our view, then, the ICTY is not helping, as it should, to normalize the political process in the former Yugoslavia. Moreover, the Tribunal's activities have had a destructive impact on the process of reaching a settlement in the Balkans. This situation cannot fail to be of concern to us. In our view, the Security Council needs to engage in a thorough, careful consideration of this matter.

We are convinced, for example, that the Tribunal's Rules of Procedure and Evidence, as well, of course, as the amendments made to them, should be approved by the Security Council. Moreover, the activities of the Tribunal should be brought into conformity with the resolutions of the Security Council. If we do not do this in the near future, the Tribunal will no longer be viewed as an impartial organ handing down fair international justice.

With regard specifically to the proposals contained in the report of the President of the ICTY, Judge Claude Jorda, these are controversial in many respects; we do not think they have been the object of sufficient work. It is our understanding that there is a lack of unanimity on these proposals among the judges of the Tribunal as well. It is noteworthy that two years ago the Security Council, at the Tribunal's request, increased the number of judges. At that time, Ms. Gabrielle Kirk McDonald justified the creation of an additional trial chamber by assuring the Council that it would significantly speed up the Tribunal's discharge of its mandate. But that measure has yielded virtually no results.

Judge Jorda's report includes the rather discouraging conclusion that, if those against whom indictments have already been issued and those now under investigation were brought to justice, the Tribunal would require 15 to 20 years to deal with all cases. That forecast, of course, makes us think hard about whether so long a time is advisable for the functioning of what is supposed to be an ad hoc body.

The solution being proposed to resolve this situation — the appointment of *ad litem* judges — needs careful analysis. At first glance, it does not inspire particular optimism in us. Very careful study is required also of the financial implications of the proposed innovations.

Thus, while we are certainly prepared to consider the judges' proposals, we think it is important to conduct a wide-ranging, thorough analysis not only of those proposals but also of other views on how to enhance the effectiveness of the work of the ICTY, in particular the ideas set out in the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, contained in document S/2000/597, along with ideas to be found in other available documents.

If it is necessary to change the statute of the Tribunal, as the President of the ICTY proposes in his report, the question must be approached in a

comprehensive fashion on the basis of a comprehensive analysis of the work of the Tribunal and bearing in mind the need to redress the well-known deficiencies in that work. That is the position we shall adopt when we consider the proposals regarding organizing the work of experts in the Security Council to discuss possible amendment of the statute of the ICTY.

We reaffirm that Russia will support the activities of the Tribunal on the condition that these are strictly in keeping with the mandate adopted by the Security Council for that body.

Mr. Ward (Jamaica): My delegation thanks Judge Claude Jorda for his report and for his briefing.

The International Criminal Tribunal for the Former Yugoslavia is an organ of the international community, empowered to dispense justice on its behalf. It is imperative that the Tribunal receive the unequivocal support of the international community so that the message is clear to those who have engaged in egregious criminal acts against humanity that they will not escape with impunity. That message must be understood by all.

In that regard, we must ensure that the system of justice we have established operates under procedures that are fair and impartial. The Tribunal has been criticized in the past for long pre-trial delays after an indictee has been taken into custody. We recognize that some of those delays may be directly related to dilatory tactics employed by defence counsel. However, we are also aware that the problems in the system identified by Judge Jorda bear most of the responsibility for the delays. As Judge Jorda is fully aware, justice delayed is justice denied.

We hold to the view that justice must be swift and certain. We also recognize that pre-trial release, though a viable option for national courts, is not a practical approach for an international criminal tribunal. The reasons are obvious and do not need elaboration.

In that regard, my delegation believes that full consideration of the report and recommendations presented by Judge Jorda is timely and appropriate. The changes in the Rules of Procedure and Evidence that have been adopted so far by the Tribunal will undoubtedly help improve the efficiency of the Tribunal and move the trial process forward. We recognize, however, that these changes in the Rules of Procedure and Evidence, which must evolve over time and with experience, will not be enough to achieve the desired result. Expansion of the capacity of the Tribunal at the pre-trial, trial chamber and appeals chamber levels requires urgent attention.

In that regard, we believe the recommendations that Judge Jorda has presented to us with regard to the appointment of the *ad litem* judges deserve our consideration. This proposed expansion in the capacity of the Trial Chambers, coupled with the recommendation for legal officers delegated to perform pre-trial functions, should improve the Tribunal's efficiency in its dispensation of justice.

As Judge Jorda has explained, these two changes in the Tribunal will allow for additional Trial Chambers, with the obvious desired result. The period from arrest to trial will be reduced significantly. Both changes are, therefore, of equal importance.

My delegation has been concerned about the structure of the Appeals Chamber, in particular the fact that the judges of the Trial Chamber have this dual responsibility. We believe this creates a situation in which the Appeals Chamber may find it difficult to operate with impartiality and might be tainted by the trial process. The appeals process should be fair and impartial and should be above reproach. In this regard, the recommendation to establish a permanent Appeals Chamber, insulated from the trial process, is worthy of our support.

The recommendation to appoint two judges from the International Criminal Tribunal for Rwanda to the Appeals Chamber also should be given serious consideration.

The recommendations that we revisit the statute of the Tribunal to improve the Tribunal's efficiency must be seriously considered by the Security Council. We will have an opportunity to evaluate the changes that have been recommended, and my delegation looks forward to participating in this process, while taking into consideration the views of the international community, and also bearing in mind the mandate of the Tribunal.

Mr. Holbrooke (United States of America): I wish to thank you, Mr. President, for holding this important meeting today. Let me join everyone else in welcoming Judge Jorda to the Security Council.

Judge Jorda, I would like to thank you for your presentation. I apologize for being unable to hear all of

it, but I will read it carefully. I already have the highlights, and I want to begin by expressing my Government's strong support for your efforts and to take note of the fact that, like our President for the month of June, you come from France, and I am therefore doubly delighted to be bracketed between two such distinguished representatives of the international community and of the Government of France.

At the outset, I would like to talk about four things: your work in general, and the Balkans, Rwanda and Sierra Leone specifically, because these issues embrace a core goal of the United States, which is to find every means possible to bring to justice people who might sometimes escape the law if it is left only to domestic purposes. So important is this issue in the eyes of my Government that Secretary of State Albright has created a special position simply for this issue, filled by my friend and old colleague, David Sheffer, who has come up from Washington again today to join us at the Council for the second time in two weeks. He is seated behind me to my right, and I welcome him back to the Security Council again today.

The United States remains committed to bringing to justice those responsible for war crimes in the former Yugoslavia. Creating these Tribunals for the former Yugoslavia and Rwanda is an historic achievement. Perhaps they were not perfect in every respect, because they were setting new precedents at every stage, but they are historic, and they must succeed. Our Government is committed to that. Any criticisms we may make — in terms of operations, management, budgets, processes — must be understood at all times within the context of the fact that this is criticism from friends, designed to improve operations.

The objectives of the Dayton Peace Agreement, now almost five years old, cannot be fulfilled until the people responsible for these crimes are in the jurisdiction of the war crimes Tribunal and prosecuted. I am delighted that Mr. Krajisnik is now in The Hague, and I await the day when Mr. Karadzic, Mr. Miladic and others will be delivered to The Hague. I also want to point out in the clearest possible terms that long-term peace and stability in the Balkans will not be possible as long as the current leadership in Belgrade is in power. Those people who have been indicted also should be brought to justice.

My Government welcomes Judge Jorda's proposals on ways to streamline the Tribunal's operations in order to reduce the current backlog and improve the efficiency of the Court. This is vitally important. Much of the criticism that has been directed at the Tribunal's operations has validity. Let us not shrink from the truth, even when it is critical, because we must deal with the problems in order to make the process work. In particular, we support his two principal recommendations, on the delegation of pre-trial management responsibilities and the designation of *ad litem* judges to increase trial capacity.

Above all, we must ensure that any reforms reinforce rather than distract from the core mandate of the Council. Our task is to strengthen the Tribunal's ability to bring criminals to justice. We would oppose any changes that would weaken the Tribunal's capacity to do the important job set before it. We must ensure that our efforts to streamline the Tribunal do not in any way complicate the ability of the Prosecutor to apprehend those at large.

President Jorda, while I know that your primary responsibility in addressing us today is to discuss your work in the former Yugoslavia, your presence here reminds us of the important role that justice and reconciliation play in peace processes around the world. Nowhere is this need greater than in Sierra Leone.

Mr. President, with your permission, I would like to address that issue, because it is directly related to the subject that we are here to talk about today. As we have discussed in this Council before, no mistake should be made about our Government's attitude towards the leaders of the Revolutionary United Front (RUF), who have created this terrible tragedy in Sierra Leone. We do not believe that Sierra Leone can have a peaceful and stable future until they are brought to justice. In recent weeks, and in recent days, I have had talks with many members of the Council, members of the Secretariat and Carla del Ponte about this important issue. We take note of the fact that, according to well-confirmed press reports, President Kabbah has already addressed communications to the Secretary-General on this issue and that he has asked for the extension of some international war crimes umbrella to cover the people about whom we are talking, the leaders of the RUF.

We look forward to hearing the expert views of the Secretary-General and of the experts in the Legal Division on how to proceed. Some form of extension of

the international war crimes umbrella to cover these odious people must be undertaken. The actual details, as we have heard in this Council from Mr. Zacklin, who I see is with us today, are something that we need to learn more about. I look forward to hearing a serious, sustained discussion of the options before us. My Government would like to do whatever is to be done swiftly and efficiently. Creating a new tribunal probably would not fulfil that criteria, as Mr. Zacklin himself has indicated previously, but some form of international umbrella, as suggested by the President of Sierra Leone and as proposed by many other people here. This is something that I believe must be looked at very positively and with a view towards action at the earliest possible opportunity.

I want to also note with very high approval that when the Lomé Agreement was signed last year the Secretary-General of the United Nations noted in a reservation, as the Secretary-General's representative witnessed the Agreement, that Lomé could not be considered an obstacle to the prosecution of those charged with fundamental violations of international humanitarian law. That was an important and far-sighted reservation set down by the Secretary-General and his staff in the Office of Legal Affairs. I commend them for their foresight, and I take note of that reservation with the highest approval from my Government.

Our Government is committed to the rapid creation of a vigorous internationally backed mechanism, or the extension of existing mechanisms, to address these grave acts of inhumanity. We look forward to hearing the views of the Secretariat, the views of Judge Jorda and Carla Del Ponte, and those of other members of the Security Council. We look forward to working in partnership with the Government of Sierra Leone to move forward in this direction.

Finally, let me turn to the question of Rwanda. This Tribunal has obviously moved more slowly than any of us are satisfied with, but it has moved, and although we are concerned about some inefficiencies in it — inefficiencies that we have addressed and will continue to address directly with the people responsible — I want to reaffirm our Government's support for it.

Mr. President, I thank you for calling a meeting on this issue of immense importance. You will recall from our previous work in regard to ending the war in Bosnia that France and the United States never wavered in their support of the war crimes Tribunal, and that without that Tribunal the Dayton Peace Agreement would not have been possible in its present form. I am deeply concerned at attacks on it that have been uttered here today by other delegations. While specific criticisms are always welcome, the charges of bias are not only not proven, they are not accurate. The countries uttering these criticisms were full participants in the Dayton process. They agreed to what was being done, and I do not think that the criticisms are justified, valid or productive.

Again, Mr. President, thank you very much for the opportunity to address you and Judge Jorda. I welcome him, on behalf of our country, to this great Chamber to share his views.

Mr. van Walsum (Netherlands): My delegation is grateful to Judge Jorda for his briefing, for his report on the operation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and, most of all, for his inspiring leadership as President of that institution.

The negotiations on the establishment of the International Criminal Court have shown time and again that the example of the two Tribunals — the one on the former Yugoslavia and the other on Rwanda — is crucial for the establishment and further development of individual criminal responsibility for universal crimes.

We appreciate the careful attention the Tribunal has paid to the report of the Expert Group, which has conducted a review of the effective operation and functioning of the ICTY and the International Criminal Tribunal for Rwanda, and we note that it has subscribed to several of its recommendations.

At this time, my delegation will not go into the selected measures that could be taken to improve the Tribunal's operation. Most of these, obviously, are to be welcomed, but some require further reflection on our part.

We are aware that Judge Jorda's report, presented on behalf of the judges of the Tribunal, is before the Security Council on account of its mix of potential diplomatic, legal, administrative and financial implications. I believe we can all agree that the effect of the increasing number of indictments and arrests on the average trial length should be our greatest concern.

The report is right in making mention of the ever-greater expectations of the international community. The Tribunal has undoubtedly proved itself, but the international community seems to have suspended its judgment until the most senior officials are arrested and brought before the Tribunal. By then the problems described in the report must be solved.

The report rightly points out that it is difficult to imagine the senior political and military leaders of the countries involved in the conflict spending many months on remand before their trials can begin.

All the same, Judge Jorda has warned us not to dramatize the problem, but he has also stated that the Tribunal has reached a turning point in its history. It is, of course, largely a matter of disposition and attitude whether one would describe a turning point as dramatic, but let us agree that the matter is of the utmost importance.

During the almost seven years of its operational existence, the Tribunal has managed to form itself into a fully operational judicial instrument. It has already demonstrated that universal criminal justice is possible and feasible, and in this respect it has played a crucial role in the inception and establishment of the International Criminal Court.

But we are not there yet. We should not underestimate the importance of this suspended judgment on the part of the international community. The belief that universal criminal justice is possible and feasible is taking hold, but it continues to face scepticism and disbelief. This disbelief is also reflected in some statements heard in the Security Council.

It is for that reason that the example offered by the Tribunal, to quote the report, “must be exemplary to the very end”. That is why, without going into the detailed recommendations at this time, my delegation will actively participate in the work of the legal experts with a view to finding adequate solutions to the problems facing the Tribunal.

Mr. Duval (Canada): I would like to thank all of the judges of the International Criminal Tribunal for the former Yugoslavia (ICTY) for their report on the operation of the Tribunal, and thank especially President Claude Jorda for meeting with us today to discuss the recommendations set out in that report.

The work of the two Tribunals is extremely important to end impunity for those who have perpetrated the most heinous crimes. That is the mandate which the Security Council entrusted to these two institutions when they were created. It is therefore incumbent upon us — the members of the Security Council — to do all in our power to support the Tribunals, without politicizing their work and undermining the authority and legitimacy critical to the fulfilment of their mandates.

Canada categorically rejects claims that the work of the ICTY is biased or in contradiction with the mandate that the Council has entrusted to it. These are claims simply not substantiated by facts.

My delegation is committed to working constructively with all Council members to improve the effectiveness of the Tribunals. For the thousands of victims of the conflicts in the former Yugoslavia and Rwanda, the wheels of justice are turning too slowly. We must find ways to expedite the work of both Tribunals, recognizing, of course, the imperatives of impartiality and respect for the rights of the accused. Canada recognizes that international justice is expensive. However, we are appreciative of the implicit recognition in the reports that financial resources are not unlimited and that the Tribunals must therefore explore cost-effective options to achieve their mandates.

We also welcome and completely endorse the remarks of Judge Jorda as to the importance of the work of the Tribunal in the ongoing efforts to establish a permanent body, the International Criminal Court. That work is occurring here even as we speak.

With respect to the report of the ICTY introduced by Judge Jorda, it is an extremely useful start in our efforts to achieve the objective of more efficient international justice. As a preliminary reaction, Canada generally supports the contents of the report. In particular, we are interested in the two-pronged approach recommended by the judges: first, partially delegating certain pre-trial management tasks to senior legal officers, and secondly, creating a pool of *ad litem* judges.

The delegation of certain pre-trial tasks could indeed shorten the length of proceedings, and the designation of *ad litem* judges could allow more cases to be heard simultaneously. It is an important observation, we believe, that *ad litem* judges would need to be properly integrated into the system, and it would be valuable to include some former judges of the

Tribunals for Rwanda and Yugoslavia in that pool to ensure consistency with the jurisprudence and practice of the Tribunals.

These recommendations bear further examination. Canada would support the French proposal to establish a Security Council working group of experts to examine the contents of the report expeditiously and to develop recommendations for changes to the ICTY statute as appropriate.

In addition to the examination of this report by Security Council members, it is important to consult with others, including States that have made significant contributions to the operation of the Tribunal. Also, it will be important for the General Assembly to examine certain aspects of the report — for example, those recommendations that have financial implications.

I would like to conclude my statement this morning by asking two questions of Judge Jorda. First, could he provide us with more details of the judges' vision of how the pool of *ad litem* judges would work? And secondly, many of the recommendations in the report of the Expert Group would improve the efficiency of the ICTY. Can you, Judge Jorda, provide information on the steps already being taken by the different organs of the Tribunal to implement these recommendations?

Sir Jeremy Greenstock (United Kingdom): We very warmly welcome the presence of Judge Jorda here today. We have begun to study his report with great interest and regard his speech to us this morning as containing a good deal of extra material which we want to study and take careful account of.

The United Kingdom, as he and the whole court know, is very strongly committed to the work of both the Yugoslav and Rwandan courts. We regard them as effective and impartial, and we remain consistently eager to ensure that they are able to undertake their important task as efficiently as possible.

The success of the court so far is a tribute to the work of everybody involved in it, but of course that success has itself led to an increased workload of trials —what Judge Jorda has called this morning the management of quantity while preserving the quality of the court. It is very important to consolidate the Tribunal's achievements in the development of international humanitarian law, and their contribution towards the restoration of international peace and security more generally, by ensuring that indictees are brought to trial quickly. That applies both to prompt arrest and to surrender to the Tribunal, and, once in custody, to minimum delay in bringing cases to court.

We are very pleased that the Tribunals are taking these issues so seriously, and in particular that efforts are already being made by the judges to act on the recommendations of the Expert Group — for instance, by streamlining pre-trial procedures and expediting hearings. We look forward to seeing what difference in practice these improvements might make.

We welcome Judge Jorda's initiative in analysing the work of the Tribunal and the possible future demands on it. The proposals on how to manage that workload represent an important contribution. As Judge Jorda knows, the speed of trials has been an issue of concern to the United Kingdom for some time, and we appreciate the degree of flexibility that he has now built into the proposals.

The Judge has assessed, we think rightly, that certain options in the paper are not appropriate. The immediate Balkan region, for instance, is not yet a suitable site for trials because of reasons of political stability and safety. We are not in favour of setting up a second tribunal. The issue remains how best to make the Yugoslav Tribunal work effectively.

We are not yet in a position to offer substantive reaction to the recommendations, and will not be until the implications — especially the financial ones — are clearer. Further detailed discussion will then be necessary, in which the United Kingdom will participate actively. But we think that, in particular, as others have noted before me, two key elements of the proposals need to be looked at in detail.

The first is how, in practice, the increased use of senior legal officers in the pre-trial process would increase the efficiency and pace of the pre-trial phase. We would like to discuss in more detail the thinking behind that idea, as compared with a single judge's pre-trial responsibilities under the present system. The second is, if an increased number of judges is required, whether permanent or *ad litem* judges would be of most benefit to the Tribunal. We understand that the judges have considered both options, but we would want to look carefully at the advantages and disadvantages of opting for an *ad litem* system.

The United Kingdom is of the view that the option of an additional trial chamber deserves consideration, though the cost implications have to be studied.

The effect of these proposals on the other organs of the Tribunal, including the staffing implications, will need to be looked at in detail. One issue for the judges which is not covered in the report is the impact of increased efficiency at the pre-trial and trial stages of the Appeals Chamber. We note that the judges agreed with the recommendation of the Expert Group for two new judges to join the Appeals Chamber from the Rwanda Tribunal, and we would be grateful for Judge Jorda's views on whether further measures at the appeals level also need to be considered.

We are very grateful to have this discussion this morning under your leadership, Mr. President. We welcome Judge Jorda's presence here and look forward, as I said, to further detailed discussion.

Mr. Chowdhury (Bangladesh): We appreciate the comprehensive briefing by Judge Claude Jorda on the work of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY). We find his presentation very engaging and full of substantive elements which need the Council's close attention.

Bangladesh strongly believes that the ICTY, along with the Tribunal for Rwanda, have a historic responsibility to perform. Therefore every effort should be made to enable the two Tribunals to be credible and functional in the best possible way. We also believe that the performance of these Tribunals will have a serious implication for the proposed International Criminal Court.

We commend the improvements made in the work of the ICTY since it was established. We also note that work is under way to address areas where further improvement is needed. We agree with the view that the time is right to examine the future of the ICTY. The reform proposals presented by President Jorda and the recommendations of the Expert Group, constituted by the Secretary-General upon the request of the General Assembly in resolutions 53/212 and 53/213, are relevant and important in designing improved practices and procedures of the International Tribunals. The prospective plan, as presented by President Jorda on behalf of the entire bench of ICTY judges, has presented very focused reform proposals and recommendations. These, particularly the proposal for *ad litem* judges and the Appeals Chamber, should get a positive nod from this Council. The comments of the Secretary-General and the observations of the Prosecutor on the recommendations of the Expert Group are valuable additions. The Council will look into all these documents.

I would like, at this point, to highlight the following four aspects for consideration. First, we attach importance to the need to ensure justice without delay. President Jorda has presented this aspect most strikingly in his statement. The enormous magnitude of the task and the need for prompt and effective delivery of justice has necessitated that the Tribunal should have adequate capabilities. We should look favourably at recommendations 20 and 21, on the increase in the number of judges and legal assistance personnel. We would like to emphasize that resources should be commensurate with responsibilities.

Secondly, we support the recommendation of the Expert Group that the indictees having a major responsibility be brought to justice in the first place, rather than minor perpetrators. We are seriously concerned that some major political and military figures have remained at large. The Council should consider ways and means to secure their surrender or arrest for trial. The humanitarian laws will certainly be better protected if individuals in the higher chain of command are brought to justice.

Thirdly, the outreach programmes of the Tribunals to develop public information programmes in the former Yugoslavia and elsewhere throughout the world regarding the work and objectives should be strengthened. We agree with the Prosecutor that a most effective form of outreach would be the hearing of ICTY proceedings in the former Yugoslavia.

Fourthly, we need to firm up the process for taking our decisions on the ICTY reform proposals and on the recommendations of the Expert Group in the Council. In order to consider these, we would support the formation of an informal working group, which, within a stipulated time period of, for example, three months, would submit its recommendations for approval by the Council.

Finally, this meeting has afforded us an opportunity to discuss the future of the ICTY. We hope

that we will have similar occasions to discuss the Rwanda Tribunal in the near future.

Mr. Shen Guofang (China) (*spoke in Chinese*): I wish to thank Judge Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) for his report and his briefing. The Chinese Government believes that the independence and impartiality of the ICTY, as an organ of international criminal justice, are extremely important. The Tribunal should not be affected by international politics and other factors; yet it has become a political tool. The authority of the ICTY can be ensured only through its independence and impartiality. Only in this way can the work of the ICTY withstand the test of history.

In this regard, there are many areas of the ICTY that need to be improved, which is one of the problems facing the ICTY. We hope that the ICTY will become a real, independent and impartial organ of international justice; it is not one now because it is affected too much by politics. Some representatives just gave examples that I will not repeat. I believe my criticism is constructive. I hope that the ICTY will work towards becoming more independent and impartial.

Of course, we know that the ICTY faces other problems, as was mentioned by Judge Jorda. It faces a lack of trial capacity, which seriously constrains the trial process. In order to ensure the rights of the accused to a speedy and fair trial, it is necessary to consider taking appropriate measures to speed up the trial process. We are very gratified by the assessment report submitted by the Expert Group appointed by the Secretary-General. This report provides a detailed analysis of the operations of the ICTY and the International Criminal Tribunal for Rwanda, and includes specific recommendations and measures that warrant our further serious consideration.

In his report and briefing, Judge Jorda made reference to the establishment of the pool of *ad litem* judges in order to address unforeseen trial needs. This is a very interesting idea that might be helpful in expediting the trial process. Adding *ad litem* judges requires amendments to the statute. It also involves many important legal and technical details and resources. The Security Council cannot make hasty decisions on this. Time is needed by all sides to further study the opinion of the Expert Group and the report submitted by President Jorda on behalf of the judges and the Tribunal in order to find a definitive solution, taking all factors into account. We are willing to consider any measure that will help the Tribunal administer justice and expedite the trial process.

In considering the option of adding *ad litem* judges, we believe that equitable geographic distribution and balance among the world's major legal systems should be considered. The proper way to select the *ad litem* judges is by election by the General Assembly. As for the cost of *ad litem* judges, various options should be seriously considered on the basis of the opinion of the Expert Group. Furthermore, there should be equal opportunity in selecting *ad litem* judges to participate in trial work.

As for the streamlining of the pre-trial process, we have noted that the Tribunal has been carrying out appropriate amendments and adjustments to its Rules of Procedure and Evidence, in accordance with the opinion of the Expert Group.

However, in carrying out any amendment, the Tribunal should strictly abide by its statute and the resolutions of the Security Council. As for the pre-trial stages, practical administrative work can be handled by the Trial Chambers' senior legal officers, under strict and clear mandate, while the Trial Chambers closely monitor them in this regard. Efficiency should not be achieved at the expense of the strict conduct of the trial procedure and the fairness of the trial.

In conclusion, please allow me to express my thanks again to Judge Jorda, the President of the International Criminal Tribunal for the Former Yugoslavia, for his work.

Mr. Yel'chenko (Ukraine): I would like to welcome Judge Jorda, the 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 (ICTY), to the Council and to thank him for his comprehensive briefing. We found his comments very interesting and useful, as are the proposals contained in the report on possible ways and means of improving the operation of the Tribunal and streamlining its working procedures.

Previous discussions in the Council on the work of the ICTY, including the most recent briefing of the Tribunal's Prosecutor, undoubtedly underscored the important role the ICTY plays in meting out justice and

healing the wounds caused by the human tragedy that shook the former Yugoslavia and continues there. No less important is the Tribunal's role in the process of reconciliation and restoring peace in the region. It is therefore imperative for that judicial institution to maintain the highest standards of impartiality and to remain free of any political considerations in its activities, although, as we can see, that is most difficult to achieve. It is from this perspective that any proposed measures to expedite and rationalize its proceedings should be looked at in the first instance.

We recognize the huge workload facing the Tribunal. Of course, the need for changes is obvious. Based on the perspective that the Tribunal will complete its task by the year 2016, I should simply like to ask a rhetorical question: Could one have imagined that the Nuremberg tribunal would end its work in 1968, 23 years after its creation?

The questions raised in the report are rather complex and, apart from the proposals to introduce a new category of *ad litem* judges and to delegate a large part of pre-trial work to senior legal officers, include such issues as the long-term plan of the Tribunal's activities, the length of its mandate and its future relations with the International Criminal Court. My delegation welcomes this forward-looking analysis undertaken by the Tribunal and supports a thorough, action-oriented examination of all these issues by the Security Council in an appropriate agreed format. The potential financial implications should, of course, be examined too.

While looking forward to that review, I would like to indicate one issue of concern to my delegation: the absence of judges from Eastern Europe in the Tribunal. While this question, as of now, remains in the hands of the General Assembly, we think that this situation should be addressed. Can anyone imagine the Rwanda Tribunal without African judges? The non-election of the only Eastern European candidate to the ICTY last year was indeed disappointing. A wide representation of judges from all regional groups in the Tribunal, as in the case of practically all United Nations organs, including the International Criminal Tribunal for Rwanda — is important for the effectiveness and credibility of that body. We believe that this issue should be taken into account when considering the proposed changes in the Tribunal's statute.

Another important aspect that is worth mentioning in the context of the report before us is that, when considering ways to improve the operation of ICTY, the Security Council should in no way create the impression that the similar problems now facing the International Tribunal for Rwanda are less important or pressing. I think that the changes contemplated for ICTY would be difficult to approve without adopting the same approach to the problem of the workload of the Rwanda Tribunal, and these two issues should be considered in conjunction.

Finally, I would like to mention yet another matter that we consider to be an important part of the effective operation of the Tribunal, which is the need for a wider dissemination of information regarding the activities of the Tribunal and its role in establishing the rule of law and promoting reconciliation in the Balkans. We welcome the launch last fall of an outreach programme with a focus on countries of the former Yugoslavia. At the same time, we would like to encourage the Tribunal to broaden the activities of that programme to other countries of the region and to make it more public-oriented.

Mr. Listre (Argentina) (*spoke in Spanish*): Through you, Sir, I should like to thank the 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 (ICTY), Judge Claude Jorda. His briefing reveals the challenges that must be met in order to improve the Tribunal's functioning.

When the International Criminal Tribunal for the Former Yugoslavia was established, international experience in that field was rather scant. The lack of precedents required its institutions, rules and practices to adopt innovative solutions relating to the customary procedures of international courts.

While the novelty of the establishment of the Tribunal made it necessary to amend rules of procedure and evidence on various occasions, we believe that the Tribunal is doing excellent work that has made it a vanguard institution and a very valuable benchmark for the international community. Its wealth of experience has been put to good use by the International Criminal Court. Those who have worked to secure the prestige that the Tribunal enjoys today — in essence, the judges — deserve our highest recognition.

We have considered the report of the Expert Group in document A/54/634, submitted to the Security Council by the Secretary-General on 15 June. We have also considered document A/54/850, which contains the opinions of the Tribunals for Rwanda and Yugoslavia on the 46 recommendations made by the Expert Group, as well as last month's report of the President of the International Criminal Tribunal for the Former Yugoslavia.

These documents closely analyse the experience of the International Criminal Tribunal for the Former Yugoslavia over the course of more than five years of work and make specific recommendations. They demonstrate the various challenges that the Tribunal is confronting, arising, *inter alia*, from the workload and the shortfall in human resources and time required for trial preparation and the prosecution of indictees, resulting in lengthy periods of detention without trial.

It is our understanding that the analysis in such documents must be carefully considered by the Security Council. We support the idea put forward by the President of the Council that a group of experts be established to assess the various recommendations and to make a proposal. We agree that the broadest and most transparent dissemination of information must be ensured in the process so that all States Members of the United Nations, which will be financing the measures, may be familiar with its development.

The report submitted by President Jorda last May assesses the various options and makes the choices that the judges consider to be most appropriate. These basically consist in appointing a pool of 12 *ad litem* judges, delegating certain competencies to senior officers of the Trial Chambers during the pre-trial period and adding two judges to those of the Appeals Chamber, who would come from the Rwanda Tribunal.

My delegation can concur with those recommendations, but wishes briefly to mention a few points. We think that, despite the great merit of the recommendations made by the judges of the International Criminal Tribunal for the Former Yugoslavia, a Security Council group of experts should assess all proposals that have been made, rejecting none of them out of hand.

We consider that the appointment of *ad litem* judges in addition to the permanent judges is a very good option; because of its flexibility, it is used in many national systems. But if it is decided to appoint *ad litem* judges, we consider that guarantees regarding a trial defence and being tried before the competent judge suggest that these should be chosen by election rather than by appointment by the Secretary-General, especially as these would not be substitutes, but true judges with full judicial powers. If such a decision is taken, we should also review the limitations on their powers set out in the proposed article 13 ter of the statute.

Mr. Jerandi (Tunisia) (*spoke in French*): I wish first to thank the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Judge Claude Jorda, for his clear briefing and for the useful information he provided to members of the Security Council on the important subject of the International Criminal Tribunal for the Former Yugoslavia.

We have carefully examined the report and the recommendations of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. We have also taken note of the proposals offered by the judges of the ICTY, which relate to the situation and the future prospects of the Tribunal. We have some preliminary comments in that connection.

We consider that the practical problems and difficulties described so clearly by the Expert Group and by the members of the Tribunal deserve consideration. Procedural constraints and difficulties relating to reducing the duration of trials are acute questions. We consider that the judges' plan to improve the functioning of the Tribunal should be studied in depth by the competent bodies. Here, we support the French proposal to establish an informal Security Council working group which would receive contributions by States Members of the United Nations in the context of a discussion of ways to enhance the effectiveness of the International Tribunal.

Let me stress the link between justice and reconciliation. Members will agree that this is of great importance for the future of the Balkans region and for peaceful coexistence among all communities.

Mr. Hasmy (Malaysia): My delegation too would like to thank you, Mr. President, for scheduling this meeting of the Security Council to hear a briefing by Judge Claude Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

We welcome the presence of Judge Jorda in the Council Chamber, and we thank him for his comprehensive and enlightening briefing on the work of the Tribunal and, particularly, on the various proposals relating to the future operation of the Tribunal.

We agree that it is timely for the Council to take stock of the work of the Tribunal, and are therefore grateful for the in-depth analysis of the work of the Tribunal presented to the Council; I am confident that it will facilitate the Council's arriving at appropriate decisions on the various proposals and recommendations presented to it.

While we are gratified that the Tribunal has now become a fully operational international criminal court, we are nevertheless concerned at the long delays faced by the Tribunal. We therefore welcome this in-depth consideration of the work of the Tribunal, and look forward to participating actively in the Council's decision-making process on this issue. We appreciate the extensive nature of the proposals, which are all intended to ensure the effective functioning of the Tribunal. We are particularly grateful for the pros-and-cons analysis to which each proposal is subjected, which clearly will help Council members to make the right decisions.

Clearly, because of their many implications, the proposals will have to be closely examined by Council members. We welcome your proposal, Mr. President, that a Security Council expert group be set up to assist Council members in their consideration of the solutions recommended in part III of the report submitted by Judge Jorda. With respect to the consideration of those recommendations, my delegation is in favour of a simplified and pragmatic approach that will lead to expediting the trial process but that will not sacrifice, or compromise on, its quality. We are prepared to support any approach that will ensure that justice is done.

The meting out of justice to persons who have been indicted for war crimes, genocide and other crimes against humanity is vitally important for the international community, not just for the sake of affirming our common humanity and civilizational values, but also because of the pragmatic political need to correct past wrongs through the legal process, thereby contributing concretely to the healing and reconciliation process. This is particularly imperative in respect of the Balkan region, whose peoples were traumatized by the upheavals of the recent past in the wake of the genocidal policies of the Belgrade regime.

Notwithstanding those heinous policies and crimes, the Tribunal must be commended for the high professionalism of its conduct and for the fact that persons are indicted and put on trial as individuals, not as nationals of a particular State. We are confident that the Tribunal and all of its officers will continue to be guided by the principle of strict impartiality. It should not be unduly perturbed by unfair and unjustified criticisms levelled against it. The reason why many of the indictees come from a particular ethnic group is obvious to anyone who has followed developments in the Balkans; it is no mystery.

My delegation will not pronounce itself on the various proposals at this stage. Suffice it to say that we find that many of them have a lot of merit and that they deserve the serious attention and consideration of the Council. We are particularly attracted to the proposals relating to *ad litem* judges, to the creation of an additional trial chamber and to partially delegated pre-trial management. We will look at them in the context of all their implications, particularly the legal and financial implications. We will be constructive in our approach.

Mr. Andjaba (Namibia): We too are grateful to Judge Jorda, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), for his useful briefing and for the report on the Tribunal. That report contains specific proposals and measures to improve the operation of the Tribunal. I would like also to thank the entire bench of judges of the ICTY for the service they continue to render to the international community, the service which is especially valued and cherished by the children of the region who lost their brothers and sisters, their mothers and fathers during the war in the former Yugoslavia.

Indeed, the report meticulously provides us with a comprehensive review of the work of the ICTY in terms of what has been done, what needs to be done and how to go about doing it.

It is useful, therefore, to indicate that my delegation is studying the report with keen interest, not only as it relates to the former Yugoslavia but also because of the resonance it has on the International Criminal Tribunal on Rwanda (ICTR).

On balance, we wish to express our appreciation that the Tribunal has demonstrated its determination to take aboard the recommendations by the Group of Experts. We do believe that in spite of the problems borne in the application of new institutions, both Tribunals have passed the test of time as viable instruments for dispensing justice in exemplary fashion.

In this context, Namibia hopes that the Hague and Arusha processes will stand out as exemplary mechanisms from which sufficient lessons can be drawn for the future International Criminal Court.

Having said that, let me pose the following questions. The first one concerns the ICTR. We understand that the report on the Tribunal is in the pipeline, but, all things being equal, what are the similarities and complementarities, if any, between the two Tribunals? The second question is predicated on the assumption that you, Mr. President, operate in the realm of political affairs; and if that is true, which I believe it is, how do you handle political pressure from Member States and people like me? How do you ensure the independence and the impartiality of the Tribunal? Thirdly and lastly, in your personal opinion, will these mechanisms bail us out on the future of the International Criminal Court?

Finally, Mr. President, we look forward to the report of the ICTR. My delegation expresses its readiness to work with the other members of the Council, as well as the entire United Nations membership, in an informal working group to study the recommendations and proposals of the judges with regard to improving the working methods and practices of both Tribunals.

The President (*spoke in French*): I thank the Permanent Representative of Namibia for the questions he asked.

Speaking in my national capacity, allow me to say, Mr. President, how delighted we are to welcome you here during the French presidency of the Security Council. You preside over a Tribunal that certainly deserves praise rather than criticism.

The month of June is marked in many ways by the theme of international justice. We know that the preparatory commission for the International Criminal Court is to adopt some important texts before 30 June, including the Court's rules of procedure. As far as France is concerned, on 9 June it was my honour to deposit France's instrument of ratification to the Rome Statute. The Security Council held its first public meeting of the month of 2 June to hear the Prosecutor of the two International Tribunals, Mrs. Carla del Ponte. Furthermore, in recent days the Council has received several proposals to strengthen the capacity of the two International Tribunals to do their jobs. These were proposals prepared by the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) that you have explained to us, Mr. President. We have also received proposals prepared by the judges of the International Criminal Tribunal for Rwanda (ICTR). Lastly, the Secretary-General has also given us an important report of the Group of Experts to evaluate the effectiveness of the activities and the operation of the two International Tribunals, requested by the General Assembly, as well as comments on it made by the Tribunals.

This, indeed, is a wealth of material for our discussions. The delegation of France is determined to contribute to a rigorous examination of all of these ideas and recommendations. This is why we have suggested to Council members that an informal working group be established to carry out this examination and submit its conclusions to the Council in the near future. We are confident that this group will be able to get to work very soon.

For now, I wish to describe to you the spirit in which the French delegation tackles this debate. When it established the International Tribunals, the Security Council demonstrated its conviction that it was possible to reconcile the needs of independent justice with the needs of a penal policy reflective of the parameters of peace, democracy and international reconciliation. In order to merge these needs, it is essential constantly to work towards greater effectiveness in the procedures of the Tribunals.

The time-frame of international justice cannot be compared to that of domestic judicial systems. Delays and prolonged procedures which are accepted at the domestic level do more harm to international trials. We already know that public opinion and the States concerned in the former Yugoslavia, as in Rwanda, have sometimes challenged the legitimacy of the international Tribunals. The impact of their work for States, for the public and for the victims depends largely on the speed of the procedures.

We have no illusions here. The question of how long it takes for justice to be done is not merely a question of legal technique. It is truly a political issue. If justice is delayed, peace is also delayed. How can we hope for a speedy return to peace in the regions concerned if the procedures of the International Tribunals drag on for 15 years or more? To find an answer to this question, several areas deserve our attention, and I merely wish to mention three of them.

First is the number of judges. This number was already increased through the creation of a third chamber for each of the two Tribunals two years ago. We know that this number cannot be increased indefinitely. By way of comparison, we must be mindful of the fact that there will be only 18 judges in the International Criminal Court, whereas for the ICTY there are 14 judges, who have a limited area of geographical competence. There are nine judges for the Rwanda Tribunal.

The creation of *ad litem* judges, proposed by the judges of the ICTY, is one avenue that should be explored. It does give rise to some questions relating to the status of these judges, their number and the method of electing them. We are prepared to discuss these questions in an open spirit.

The judges for the ICTR believe that expanding the staff in the Appeals Chamber should be a priority. This is where the main bottlenecks seem to lie. The proposal that you supported seeks to create two additional posts for judges within the ICTR in order to replace those that will be required to serve in the single Appeals Chamber of the two Tribunals. This solution would have the advantage of being easily quantifiable, and it would mean that the two Tribunals would enjoy equal status.

The second area that we deem to be important relates to the powers of the judges and to the strengthening of the pre-trial phase. It is important that judges have the necessary authority to conduct the debates, and the experts put forward by the Secretary-General have stressed this very point. They recommend better oversight by judges of procedures, in particular an expansion of the functions of pre-trial judges. This idea, we believe, deserves consideration.

I would recall, by the way, that the Statute of the International Criminal Court grants important prerogatives to judges, both during the pre-trial phase and during the actual trial. That Statute also creates a pre-trial Chamber which is an outstanding example of a synthesis of legal traditions. The negotiators have clearly tried to remedy the main procedural defects in the International Tribunals. This reflects the way the Rules of Procedure and Evidence have evolved in the two Tribunals, and these have been repeatedly amended to give the judges better oversight over trials and to prevent these from lasting too long.

The third area relates to participation by the victims. The Statutes of the Tribunals contain only articles on the protection of victims and on the return of their property. The Statute of the International Criminal Court, on the other hand, contains specific provisions that give victims the right to participate in the proceedings, set up a system for the protection of threatened or traumatized witnesses, and, above all, create machinery to compensate them. Victims can transmit information to the Prosecutor in order to open proceedings, and also are entitled to be informed of how a trial is going and to speak in an autonomous capacity during a trial.

It is probably not possible to guarantee perfect conformity between the provisions of the International Criminal Court on victims, which are very well developed, and the Statutes of the Tribunals. The Prosecutor of the Tribunals has, however, drawn our attention to this subject, and we must revisit it.

In conclusion, we must bear in mind the fact that States have the primary responsibility for combating the most serious crimes. Our objective is not to deprive States, even those that are just emerging from a conflict, of the possibility of doing the work of justice and recollection which is necessary for national reconciliation. Here I am thinking of Cambodia and perhaps also of Sierra Leone.

The Security Council took a decision to create ad hoc courts in cases where the States concerned were either unable or unwilling to prosecute criminals. We have the responsibility to help guarantee the effective functioning of this international system of justice that we have created. We must also keep in mind the idea of the reform and strengthening of national judicial systems, which one day will have to take over.

Finally, we must never consider that the existence of the International Criminal Tribunals makes it possible for the Security Council to abdicate its primary responsibilities for the maintenance of peace. Criminal justice is a powerful instrument for the

punishment and the prevention of atrocities. But it is up to us primarily, right here in this very Chamber, to promote political solutions to current conflicts, which increasingly are complex ones whose internal aspects are dominant. Justice is a necessary dimension, but it is only one dimension of the complex comprehensive settlements that we need to work out.

I now resume my functions as President of the Security Council.

I call on Judge Jorda to respond to the many comments made and questions raised.

Mr. Jorda (*spoke in French*): Let me for a brief moment speak to you directly, Sir — not in your capacity as President — to express my satisfaction at hearing France conclude this very rich exchange of views by stating that it is here that political issues are settled, not in The Hague or in Arusha.

I shall nonetheless attempt to respond to those questions relating to criminal policy, because the representative of the Russian Federation touched upon them, as did, more indirectly, the representative of China and, in a more general manner, other speakers.

Secondly, I shall group together a number of comments. I apologize beforehand to speakers who had wished to enrich this debate — to which I have attempted to contribute the comments of my colleagues — in case I am not able to respond to all of their comments.

Thirdly, let me comment on the establishment of a working group, which I think has been agreed to unanimously around the table. Although, of course, I do not have to express a view, because it is not my place to do so, let me say that personally I believe it can only work to our advantage. The reason is that many aspects of the proposals, as representatives have indicated, definitely require deeper reflection. You, Mr. President, mentioned several of these aspects with respect to the concrete proposals I had the honour to put forward.

I do not wish to take up too much time, but, having made those three preliminary comments, let me attempt to cluster my responses concerning the political issue, which I think was raised by several delegations, in particular by the representative of Russia. I should like perhaps to offer certain clarifications regarding the *ad litem* judges and the pre-trial proceedings. This may seem to be a more technical issue, but it does require clarifications beyond those that the Council's working group is to provide. I think also that the recommendations submitted by the Expert Group to the Council require a certain amount of clarification — and here I am thinking of the statement made by the representative of Canada. I shall spare the Council the list of 46 recommendations, but I will provide an overview.

I think that there is a fourth issue that includes Rwanda and the Appeals Chamber, which was of interest to several delegations. Finally, concerning the working group, perhaps I could ask the Council one or two questions, if the President does not deem it too impertinent.

The political issue has come up again and again since the establishment of the Tribunal, when it was said that it was a political tool. Consider the nature of an international tribunal that theoretically is established by a political body. However, the issue of this Tribunal's having been set up by a political body has been put to rest by its decisions, in particular - and here I would recall what was mentioned by the Ambassador of Russia - with respect to the Tadic affair.

I think that it can be acknowledged around this table that there are two bodies in the Tribunal that work independently. There is the Prosecutor, who is independent, organizes his own work and, above all, has an opportunity to prosecute. As I understand it, prosecutors in all countries have the opportunity to prosecute. I even have the impression that this is currently the case in Russia.

Then the impartiality of judges, I think, is something that should not be called into question because — let me recall it here — the numerous indictments made by the Tribunal on political questions also go through a judge. I will refer later to sealed indictments.

In order to give the Council a more specific answer — and without interfering with the policy that Ms. Del Ponte described to the Council — I would simply say that it is true that figures speak eloquently. It is also true that of the 68 current indictments, 45 are of persons of Serb origin. But I would also like to say to the representatives who touched on this question that it has never been written anywhere into the rules of procedure nor into the statute that the atrocities were committed in equal proportion throughout the territories in which they occurred. Nor was the number

of accused persons ever to be automatically the same in the three groups.

But I would especially like to point out something that serves as a response to a question asked of Ms. Del Ponte by the Council, namely, the problem of the North Atlantic Treaty Organization (NATO) vis-à-vis a report she herself made public a few days ago, specifically on 13 June. I would say that prosecution is one thing — and I was a prosecutor for a very long time during my career — but it is evidence that guides prosecution. A prosecutor cannot undertake a prosecution unless he has evidence. But in an international jurisdiction evidence is not made available by national investigators, police or police inspectors. It is provided through the cooperation of States. In this connection, we must note that the countries that complain the most about the partiality of the Tribunal — and I am thinking especially of the Federal Republic of Yugoslavia — are the weakest when it comes to cooperation.

For example, I can tell the Council that of the current 28 fugitives, 27 are of Serb origin. Moreover, of the 27 of Serb origin, 22 were accused without sealed indictments. I will refer later to the issue of sealed indictments. If 22 Serbs were not indicted under sealed indictment, then that demonstrates that the International Criminal Tribunal at some point had to deal with serious matters relating to coercion and the carrying out its decisions. I would emphasize that nothing in the statute or the regulations prohibits the use of sealed indictments, provided they are, like other indictments, confirmed by a judge. In other words, the Prosecutor must not only initiate the giving of evidence that would lead a judge to agree to an indictment — and that applies to all indictments — but he must, above all, show that it is useful to keep the indictment secret. I do not wish to go further into details because there are other questions to be addressed.

Let me touch upon the issue of *ad litem* judges and their status from the perspective of the conditions of their service and their costs. These questions have been raised. With regard to costs and the status of the judges, this is something that is obviously within the domain of the working group that the Council will set up. Moreover, the Council itself, and we judges, have tried to move forward the thinking process on this issue. In this regard, someone — I do not remember who — said that the judges were not unanimous. That is not true. The judges are unanimous on the principle of using *ad litem* judges. In fact, as the Council has seen from the document that has been distributed to it, in the course of a whole day of meetings almost half of the judges agreed on some very important points.

I think the working group will be addressing many of those points, including the matter of elections or nominations and the drawbacks and advantages of the two methods. Appointment is faster. I would also point out that it is also legitimate. It exists in other international jurisdictions, where ad hoc judges are appointed. It even exists in the Criminal Tribunal for the Former Yugoslavia itself. When a judge dies or stands down he is replaced through appointment by the Secretary-General, upon the advice of the Presidents of the General Assembly and the Security Council. This has occurred at least five times since 1993 including, I must say, in my own case.

The question of costs will also be a subject under the purview of the working group. We did not want to go into a very detailed cost analysis. But we nevertheless thought that the matter of cost depends on the number of *ad litem* judges that are employed, which would also depend upon the formula chosen. In this regard, the opinion of judges is divided. I will point out that a slight majority — and, at any rate, thinking on this is evolving at The Hague — felt there should be a mix of permanent judges and *ad litem* judges. I mention this so that it may add to the Council's examination of the issue. In other words, when a three-judge Chamber has concluded with its work, it can then break up and then one or two permanent judges could be paired with an *ad litem* judge to respond together to questions related to the training of the *ad litem* judges and their ability to deal with the various very specific areas of international humanitarian law and jurisprudence that may come up. I think that in this way training would occur in a very natural way, perhaps even better than in the past.

But we also do not hide the fact that whenever new judges are appointed or elected, those judges arrive at a court that is in the midst of activity; nor that new judges are obliged to become engaged immediately in trials. I am thinking in particular of the three latest judges, who joined the Tribunal in 1997. They did not have the luck — or the bad luck — that I had in the same situation in 1993, of arriving in a court where there were, as I mentioned earlier, no accused persons, a situation which is currently completely different.

The question of preparations for hearing — a problem that I believe the representatives of France and the United Kingdom have both touched upon — is one that makes it possible for me to express our thoughts. As the statute sets out in article 65 and others, preparations for hearing at the International Criminal Tribunal have nothing to do with the pre-trial chamber and do not deprive the judge of any of his jurisdictional functions. As a jurist I salute the establishment of a pre-trial chamber in the future permanent court, but especially for the efficiency it will bring to that court. If I recall correctly, the pre-trial Chamber will have numerous jurisdictional powers. In particular, it will be able to exercise control over indictments and make decisions on rules, petitions, inquiries and so on. For those who have practised law in countries on the continent, the pre-trial Chamber established in the Rome Statute is a jurisdictional chamber similar to an indicting chamber. The same is not the case in preparations for hearing.

Preparations for hearing are a judicial and administrative mechanism aimed at speeding up trials. I will even go so far as to say that I believe that the future Court will need to put in place a pre-trial mechanism. Trial preparation activities focus directly on preparing cases.

I would like to point out that our Rules of Evidence and Procedure currently give trial preparation judges certain jurisdictional powers but place them under the control of the chamber to which he belongs. Those powers have never been, and will never, be delegated to the judges. One could ask, what use is that? Well, it is useful in many ways because, as things stand now, a chamber is assigned about four cases. Currently, Chambers 1, 2 and 3 of the Tribunal have four cases each. There are now four trials under way at The Hague. But each Chamber also has three other cases, so I would say that trial preparation activities are carried out every day. The parties must be convened every day. Motions have to be reviewed every day. Attempts must be made daily to reach agreement and to determine who the witnesses are that the parties plan to call. This is the kind of work that I refer to as human costs, and that kind of work means that the trial preparation judge, who would be a trained professional having from 15 to 20 years of professional experience, would be a contribution to the Chamber in the form of support to the judge in carrying out trial preparation activities. We do not wish to take away any jurisdictional powers, to the extent that whenever a dispute or contentious point arises, a trial preparation judge must report them to his chamber.

I think that the Council's working group will work on this question, but it seems to me that there is really no danger, and there will be even less danger once this question has been dealt with. I remind members that we are a Tribunal most of whose current members are from common law systems. I can tell the Council that this matter has been taken up. This trial preparation phase was conceived before 1998 and institutionalized in 1998, and it has just been improved following the recommendations of the Expert Group; the judges all agree and recognize that the preparatory phase must be suitably carried out if a trial is to be carefully studied and based on the real legal and factual aspects of the case.

I would like to refer to the Expert Group. I do not wish to go into excessive detail, but let me say that the Expert Group concluded its work in the period of November-December 1999. It took a long time to have it translated into the various languages. On 30 March I signed a response, on behalf of my colleagues, relating to the recommendations of the Expert Group. In response to the speaker who said that there should be another expert group — there is the informal working group established by the President — but I do not think that a new expert group needs to be established. The Expert Group, mandated by a General Assembly resolution of 18 December 1998, analysed the Tribunal, the entire range of its operations. To our great satisfaction, the Expert Group did not have any major criticism of our institution.

In response to the representative of Canada, there are 46 recommendations stemming from the Expert Group's work. Of those 46 recommendations, I can state — and provide the proof if there is enough time — that all those relating to expediting trials were anticipated by the Tribunal. They were even acknowledged by the Expert Group as being judicious. They were all immediately implemented. The main ones are those relating to the contamination of judges, which is a very complex matter when there are only 14 judges, or really 9, since 5 are in the Appeals Chamber. But a recommendation was made, and we immediately put that into our Rules of Procedure and Evidence. We have recast the trial preparation procedure. We have also reduced the number of excessive petitions, and

most judges of the Tribunal are trying to cut back oral petitions.

I do not wish to take up too much time, but to the Ambassador of Canada I will say that I am prepared to write a letter to give clarification on the number of provisions. One or two were not acknowledged by the Tribunal judges, those that are excessively authoritative or peremptory provisions — the Deputy Registrar will correct me if I am wrong — on remuneration of the defence counsel. It is a very delicate matter. The Expert Group faces a considerable problem, which is that the overall system does not lead to expeditiousness, but to slowness. When positions are polarized, the parties do not think about the cost that this represents in terms of investigative resources for the prosecution or for the defence. It is a very delicate issue. The Expert Group has made a proposal, and we have submitted it to the standing committee on amendments to the Rules of Procedure and Evidence. I will not conceal the fact that opinions are divided to such an extent that I have decided to put this matter on the agenda of our next plenary meeting, on 13 and 14 July.

I wish to address the next-to-last point, which is Rwanda and the Appeals Chamber. I have not talked about Rwanda. I am not the President of the Rwanda Tribunal. I do not think the President of that Tribunal would have been happy had I done so. But we did take up the Rwanda question in a way that concerns me very directly, as President of the Appeals Chamber. It is true that we met in plenary meeting, since we form part of the Rwanda Chamber. Ambassador Scheffers will remember that in February we convened a plenary meeting of the judges of Rwanda and The Hague with the five judges of the Appeals Chamber. We felt unanimously that the proposal of the Expert Group that two more judges should be added to the Chamber would be the best remedy, or one of the best remedies, to deal with the considerable caseload. I will give an idea of the considerable caseload. The Rwanda Appeals Chamber has 15 or 16 interlocutory appeals and 6 substantive appeals relating to very highly placed leaders in the country. The ICTY has fewer interlocutory appeals, because we have a better system of selecting appeals, but there are 6 or 7 substantive appeals. Obviously, the caseload is very heavy, since they are the same five judges.

There are many problems in the Appeals Chamber, relating to the number of cases and more important matters that the recommendations of the Expert Group could help us resolve. It is a problem of stabilizing the so-called Appeals Chamber. Our Appeals Chamber is not stable as far as its composition is concerned. It is not worthy — and I say this publicly — of a great international system of justice. Please be assured that this is not intentional. We have a problem of contamination in cases related to historical and political matters. Justice and politics eventually merge. Unless all those accused of a given act are arrested at the same time, the trials begin one after the other, and after a time, since they are dealing with the same context and the same criminal area, the judges have to recuse themselves or are called upon by the parties to recuse themselves. So there is an increasing number of judges who are contaminated. This is a considerable problem for the Appeals Chamber.

I will give another example. I am the President of the Appeals Chamber. After I was elected on 16 November, I was almost immediately contaminated vis-à-vis all the ICTY cases because I had participated in those cases at different levels. I had to ask another judge to be the fifth judge in the Appeals Chamber.

The problem is the normative role of the Appeals Chamber. If we are to expedite procedure, we must have jurisprudence available in the Appeals Chamber — for example on the idea of internal or international armed conflict. Something of this sort should be carefully defined by the Appeals Chamber. But the changing composition of the Chamber — not to mention our Tribunal's legibility, which, I agree, is not very good — means it cannot always agree on its normative role. That is why we think the proposal of the Expert Group is a judicious one. We also find it judicious from another point of view: how, at the dawn of the third millennium, can we say that the Rwanda Tribunal cannot participate, in one way or another, in appeals as long as the judges are not contaminated? Therefore, I think the proposal for two additional judges is a reasonable one.

Regarding whether *ad litem* judges should be used, there is flexibility in that solution. If the principle of *ad litem* judges is included in the statute, then the principle may have to be followed even in the Appeals Chamber. But I do not think so, because if *ad litem* judges make a meaningful contribution, if the mandate of the Tribunal concludes in 2007, then I think the current 14 judges would be able to finish the cases before them without reinforcements.

I am not sure if I have answered everyone. I am sorry if I have spoken at length.

Let me conclude on the working group. I support the Tribunal in that initiative, which I think would be the most productive one. We need the Council. I think the Council knows that. It established the Tribunal. We have become increasingly clear, legible. I say this for those who may have made critical remarks about our Tribunal.

Let me digress here. Those who criticize the Tribunal should come to The Hague and hear the cries of the victims who are turning to us. They should go to the universities to study how the immense body of jurisprudence that we have developed at the Tribunals in The Hague and Arusha has opened up an entire scientific universe of progress in the evolution of international humanitarian law. I had yet another demonstration of this yesterday morning when I spoke before the preparatory committee for the rules of procedure.

Yes, we do need the Security Council. I am not asking merely for more and more money. That is not what I am saying. What I am saying is that we could perhaps use some additional funds, but on the condition that they be included in a forward-looking plan. We cannot implement never-ending reform. It is easy for judges to ask for an additional Chamber, as we did in 1997, but of course we had reasons then to act that way. Today, however, I cannot come to the Security Council for an additional Chamber without offering some forward-looking context for these three additional judges, only to return two years hence to say that it is not enough and that we want yet another Chamber. That is not my vision of my role as President. I believe that the work of the Security Council's informal group should be forward-looking; that, I believe, is how progress can be made.

In conclusion, let me make two points. As to the timetable, I believe that it should be quite tight, because any change in the statute takes time. Members of the Council know that better than I do. Moreover, these amendments must be coordinated with the budgetary schedule, which is very heavy. There must be a degree of harmonization in that regard. Let me recall that there is another factor that will have an impact, but that should prompt us to get down to work quickly: 2001 is an election year for judges. Judges involved in a trial who are not re-elected by the General Assembly or who wish to stand down and leave the Tribunal must conclude their trials. That is what happened in 1997. That must be taken into account when costs are being assessed.

That is why I wish to offer this modest bit of information. I believe that the idea of the *ad litem* judges is that they would get involved before the election of judges in 2001, whose terms of office will come to an end in November. I wonder whether I shall have to come to ask the Security Council, as I did in 1997, to anticipate those elections. Why? The Chambers are working full time. In February, Chamber I, for instance, will have concluded two trials and started a third. Those judges will have to remain at the expense, worthy as it is, of the Tribunal. That is why I would say that the timetable of several months which the Council is setting for itself to consider and, I hope, validate our proposals is a good thing.

Lastly, I would like to risk saying that we should be very grateful if the Security Council were to consult us on technical matters as it progresses in its work. The history of the Tribunal has frequently been marked by texts or decisions, the consequences of which have not always been carefully considered by the various parties.

I apologize to some speakers for not having responded to their questions. I wish to thank all those who have offered their unreserved support not to me, but to the Tribunal. I shall convey it to my colleagues. I emphasize that I am very much alive to all the constructive criticism that has been expressed in this very beautiful and prestigious Chamber.

The President (*spoke in French*): I thank Judge Jorda for giving us specific, well-reasoned and enthusiastic answers to the various questions that have been asked of him. We have taken good note of his suggestion concerning the pace of work of the working group that will now certainly be established by the Security Council. We have also taken due note of his suggestion that the informal working group keep in contact with his Tribunal. As Judge Jorda suggested, I am sure that we will have the honour and pleasure of welcoming him back here once again. I certainly hope so.

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

Security Council will, of course, remain seized of the matter.

The meeting rose at 1.30 p.m.