United Nations S/PV.4999

Security Council

Fifty-ninth year

Provisional

4999th meeting

Tuesday, 29 June 2004, 10.30 a.m.

New York

President:	Mr. Baja	(Philippines)
Members:	Algeria	Mr. Baali
	Angola	Mr. Lucas
	Benin	Mr. Zinsou
	Brazil	Mr. Sardenberg
	Chile	Mr. Muñoz
	China	Mr. Cheng Jingye
	France	Mr. Duclos
	Germany	Mr. Pleuger
	Pakistan	Mr. Khalid
	Romania	Mr. Dumitru
	Russian Federation	Mr. Karev
	Spain	Mr. Yáñez-Barnuevo
	United Kingdom of Great Britain and Northern Ireland	Mr. Thomson
	United States of America	Mr. Rostow

Agenda

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

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

Letter dated 21 May 2004 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 addressed to the President of the Security Council (S/2004/420)

Letter dated 30 April 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other

04-40676 (E)

0440676

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 addressed to the President of the Security Council (S/2004/341)

The meeting was called to order at 10.30 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

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

Letter dated 21 May 2004 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 addressed to the President of the Security Council (S/2004/420)

Letter dated 30 April 2004 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 addressed to the President of the Security Council (S/2004/341)

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

There being no objection, it is so decided.

At the invitation of the President, the representatives of the aforementioned countries took the seats reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Theodor Meron, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

It is so decided.

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

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council decides to extend an invitation under rule 39 of its provisional rules of procedure to Judge Erik Møse, President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

It is so decided.

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

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Ms. Carla Del Ponte, Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

It is so decided.

I invite Prosecutor Del Ponte to take a seat at the Council table.

In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

It is so decided.

I invite Prosecutor Jallow 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 documents S/2004/420 and S/2004/341, which contain letters dated 21 May 2004 and 30 April 2004 from the President of the International Tribunal for the Former Yugoslavia and from the President of the International Criminal Tribunal for Rwanda, respectively.

At this meeting, the Security Council will hear briefings by the President and the Prosecutor of the International Tribunal for the Former Yugoslavia, as well as by the President and Prosecutor of the International Criminal Tribunal for Rwanda.

At the end of those briefings, I will give the floor to Council members who wish to make comments or ask questions.

As there is no list of speakers for Council members, I would like to invite them to indicate to the Secretariat if they wish to take the floor.

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

Judge Meron: It is a great honour for me once again to address the Council to present the first report of the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I am particularly pleased to address the Council during the Presidency of Ambassador Baja of the Philippines.

It is now slightly over eight months since I addressed the Council to deliver the Tribunal's annual report on 9 October 2003 under article 34 of the Statute of the Tribunal. In the meantime, the Council, through paragraph 6 of resolution 1534 (2004), asked the Tribunal to provide, by 31 May 2004 and every six months thereafter,

> "assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions ...".

I was very pleased to transmit my assessments and those of the Prosecutor to the Council on 21 May 2004, and I am honoured to be able to address the Council on the subject in person today.

It is now just over nine years since the first accused, Dusko Tadic, was transferred to the Tribunal on 24 April 1995. In that period, the Tribunal has tried 35 accused to final judgement in a total of 17 trials. Seventeen accused pleaded guilty and were sentenced during that period, most recently Milan Babic, who pleaded guilty in January 2004 and whose sentence was rendered this morning at The Hague.

A further eight accused are currently being tried in six separate cases before the Trial Chambers. Two of those cases are expected to conclude soon. The trial judgement in the case of *Brdanin* is being written and is expected to be rendered on 31 August of this year. Final submissions in the case of *Strugar* are expected to be made in September of this year, which could lead to the rendering of the judgement as early as October.

Accordingly, as of today, the Tribunal has either completed or is holding trials or, in the case of guilty pleas, sentencing proceedings involving 59 defendants. There are currently 33 accused in detention or on provisional release who are awaiting trial.

The Appeals Chamber, for its own part, has also been productive since it was first seized of an appellate matter in 1995. If we take appeals from the ICTY and

the ICTR together, the Appeals Chamber has decided 20 appeals from judgements rendered by Trial Chambers, including two in the first half of this year, together with 236 interlocutory appeals, 17 requests for review, and six contempt proceedings.

The Tribunal's current productivity is also very high. The Trial Chambers are now operating at maximum capacity, with six cases currently in trial or at the judgement-writing phase. The Appeals Chamber has heard six appeals from judgement since October 2003, and the judgements in those cases are currently being drafted. Three further appeal hearings are planned for this year. The number of appeals from judgement and interlocutory appeals before the Appeals Chamber more than doubled between May 2003 and May 2004.

The Judges of the Tribunal are committed to sustaining that level of productivity throughout the remainder of the life of the Tribunal. We are taking, or have taken, several additional steps that will help to ensure that the Tribunal's mandate is carried out within the completion strategy deadlines. These steps have been summarized in the assessments submitted to the Council; I do not propose to restate them in detail.

First, the Judges amended rule 28(A) of the rules of procedure and evidence to comply with the requirement of seniority in resolution 1534 (2004). Secondly, Trial Chambers continue to operate at full capacity, with six cases simultaneously in trial or at the judgement-writing stage; thirdly, the Appeals Chamber has made efforts to make interlocutory appeals more effective by allowing such appeals from both the ICTY and ICTR only if the Trial Chamber certifies that the appeal involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

Fourthly, the Appeals Chamber is reducing the length of its appeals judgements and limiting repetition by invoking its own accumulated jurisprudence on questions that have been previously resolved. And fifthly, the Working Group on Scheduling of Cases, which I established, continues to assist in forecasting the resources and measures needed to achieve the completion strategy and in ensuring that new cases are ready for trial whenever a pending case is concluded.

One additional measure was taken earlier this month that is therefore not reflected in my assessments dated 21 May. I refer to an amendment to rule 11 bis of the rules of procedure and evidence, which is the rule that authorizes a Trial Chamber, either *proprio motu* or upon a motion by the Prosecutor, to refer the case of an individual already indicted by the Tribunal to a competent national jurisdiction. The Judges of the Tribunal, by a unanimous vote, have amended that rule in two important ways.

The first amendment concerns the domestic jurisdictions to which cases involving indicted persons may be transferred. The rule formerly permitted a Trial Chamber to refer a case only to the State in which the accused was arrested or in whose territory the alleged crime was committed. The rule now contains a third option: referral to a State having jurisdiction and being willing and adequately prepared to accept such a case. That amendment expands the range of nations that could potentially receive cases from the Tribunal beyond States of the region. This is particularly important should some courts in the former Yugoslavia continue to suffer from deficiencies in their ability to conduct trials in accordance with fundamental fairness and due process.

The second change amends the criteria to be considered by the Trial Chamber in deciding whether to refer a case to a domestic jurisdiction. The rule now provides that the Trial Chamber may order a referral only after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out. That change makes explicit a requirement that was implicit in the prior version of the rule, and ensures that cases will not be referred to jurisdictions that do not observe the minimum guarantees of procedural fairness and international human rights. The rule 11 bis amendments also reflect similar initiatives taken in rule 11 bis of the ICTR.

As the Council recognized in resolutions 1503 (2003) and 1534 (2004), the ability to refer cases of intermediate and lower-rank accused to domestic jurisdictions, including the planned War Crimes Chamber within the State Court of Bosnia and Herzegovina, is an essential prerequisite to the fulfilment of the completion strategy. But the referral of cases depends on the presence of propitious conditions, many of which are outside the Tribunal's control. The most important condition is the presence of domestic institutions willing and prepared to try

cases involving allegations of serious violations of international humanitarian law in a manner that is credible, fair, and in accordance with international legal norms. Tribunals established by the United Nations can transfer cases only if they are assured that international standards are met, not only in terms of the conduct of trials, but also in terms of the condition of detention facilities and the treatment of detainees.

It has been reported that thought is being given to requesting a Trial Chamber to decide motions to transfer cases under rule 11 bis even before such conditions have been met, and thus before the accused can, in fact, be transferred to the custody of another State. I believe that it is not helpful to consider transferring a case before the national jurisdiction is truly capable of living up to international standards for trial and for detention. A decision by a Trial Chamber to remove an indictee from the Tribunal's docket in such circumstances could present serious human rights problems for the accused, who would then be in a state of "legal limbo". The accused would have left behind his day in court at The Hague but could not yet be transferred to the custody of national authorities. Any such initiatives, prematurely taken, could conflict with international norms of due process and human rights.

The Tribunal is committed to supporting the achievement of credible and fair war crimes trials in all States of the former Yugoslavia. As far as the War Crimes Chamber in Sarajevo is concerned, I am confident that it will fully meet international due process standards. I am very grateful to the members of the donor community that attended the donors' conference held at the Tribunal at The Hague on 30 October 2003. I am also grateful to the Security Council for recognizing, in resolution 1534 (2004), that further support for the Chamber is essential to its success. During my visit to Sarajevo last week, I held talks on this subject with the High Representative, Lord Ashdown, his Senior Deputy, Ambassador Fassier, and the President of the State Court of Bosnia and Herzegovina, Judge Raguz. I was informed that despite some delays in implementation, courtroom facilities will be available to begin trials in January 2005. However, with regard to detention facilities, which are essential for the transfer of accused from The Hague and thus for the holding of trials, the prospects are less reassuring. While the Office of the High Representative is pursuing various options to obtain temporary detention facilities meeting international standards, that will require the support of the international community.

At the moment, there are still doubts that credible war crimes trials can take place in the domestic jurisdictions of Croatia or Serbia and Montenegro.

With regard to Croatia, the European Commission recently concluded that a single standard of criminal responsibility is not yet applied equally to all accused charged with war crimes before Croatian courts. The Mission to Croatia of the Organization for Security and Cooperation in Europe (OSCE), which has monitored several war crimes trials in Croatian courts throughout 2002, 2003 and the early months of 2004, reported that there are still significant concerns about the capacity and impartiality of parts of the Croatian judiciary. In a report dated 22 June 2004, the OSCE mission to Croatia reported that its observations through trial monitoring "suggest that there is a considerable lack of impartiality among parts of the judiciary". A second report issued the same day stated that "the national origin of defendants and possibly even more importantly that of victims continued to affect war crime proceedings in 2003".

However, let me emphasize that the overall cooperation of Croatia with the Tribunal has improved significantly. Although the failure to arrest the fugitive Ante Gotovina is still a matter of grave concern, I view the progress that has been made in Croatia's relationship with the Tribunal with great satisfaction. As I stated to the Rapporteur Group for Democratic Stability of the Committee of Ministers of the Council of Europe on 7 May 2004,

> "Croatian authorities have recognized the need to enhance the capabilities of their national judiciary for purposes of handling cases which may be referred to its courts by the Tribunal."

The European Commission has similarly recognized that the Croatian authorities appear determined to improve conditions for prosecution of alleged war criminals in domestic courts. The OSCE Mission to Croatia likewise reported "improving conditions for the conduct of domestic war crime trials" and noted "growing recognition among the public of the importance of even-handed prosecution of war crimes". The OSCE Mission also stated that

> "there is no reason to believe that the Croatian judiciary would not be able to handle a limited

number of cases in a fair and efficient way, particularly if assigned to those judges and prosecutors who have already received special training and resources".

On that front, the Tribunal has been engaged in several expertise-sharing initiatives with Croatian authorities with a view to preparing the national judicial system for the referral of cases from the ICTY.

Therefore, while progress is still needed, there is cause for optimism with regard to the potential transfer of cases to certain courts in Croatia that have received — or will have received — special training and resources for the trial of war crimes cases.

The likelihood of referring cases to the courts of Serbia and Montenegro is diminished by the poor record of cooperation between that State and the Tribunal in recent months. The Government of Serbia and Montenegro appears to have taken little or no action with regard to four high-ranking fugitives who were indicted by the Tribunal last fall and have remained at large for over six months. The Government has also failed to respond to requests by our Registrar for explanation of its default in arresting individuals subject to Tribunal arrest warrants.

Moreover, as indicated in my letter to the President of the Security Council of 4 May (S/2004/353) and the Prosecutor's report dated 29 April, contained in the annex to that letter, the Government of Serbia and Montenegro has failed to cooperate with the Tribunal in several other important ways.

The OSCE Mission to Serbia and Montenegro, which monitored several war crimes proceedings before domestic courts throughout 2003, concluded that the national judiciary lacks the full capacity to conduct war crimes trials in accordance with universally recognized standards.

Nevertheless, the Tribunal remains committed to assisting the Government of Serbia and Montenegro in laying the groundwork for fair and effective war crimes trials in the courts of Serbia and Montenegro. The Tribunal recently hosted a visit, organized by the United Nations Development Programme, by seven judges of the newly established Department for War Crimes at the Belgrade District Court, designed to transfer knowledge and experience from Tribunal personnel to the members of the Court.

In addition to the requirement of a fair trial, rule 11 bis continues to require the Trial Chamber to consider the gravity of the crimes alleged and the level of responsibility of the accused before referring a case to a national jurisdiction. Those requirements reflect the Security Council's sensible distinction, expressed in resolutions 1503 (2003) and 1534 (2004), between the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal, who are to be tried at The Hague, and the accused of intermediate and lower rank, who are potential candidates for trial in the former Yugoslavia or in other competent national jurisdictions. That approach of the Council is principled and faithful to the established mission of the Tribunal as it has been historically understood.

There may be a temptation, in the light of the completion strategy deadlines, to consider the referral of cases involving even high-level accused to national jurisdictions. Much as I am committed to the goals of the completion strategy, I have serious reservations about the potential referral of cases involving senior indictees for trial in the courts of the former Yugoslavia. The entire rationale for the establishment of our Tribunal was to ensure trials for those most responsible for the heinous acts of savagery committed during the Yugoslav conflict. I do not see a rationale for distinguishing between some senior accused and other senior accused, as opposed to the Council's eminently rational distinction between senior accused and accused of intermediate or lower rank. I am concerned that selecting some senior accused for trial in domestic jurisdictions would inevitably raise questions regarding equality of treatment and the fairness of trials.

Furthermore, trials of senior accused in the former Yugoslavia would place tremendous stress on the still-fragile socio-political environment there. Questions would also be raised by victims, who routinely insist that the most senior accused be tried at The Hague. There would also be serious problems of witness protection, which are already a concern in the courts of the former Yugoslavia but would be exacerbated in the trial of a high-level defendant. When I discussed that matter with senior officials during my visit to Sarajevo last week, I was told that the national judicial system and the prosecutorial authorities are currently not able to accommodate trials of senior Tribunal indictees.

We must be careful to ensure that our dedication to completing the Tribunal's mandate on time does not detract from the Tribunal's basic purposes, which are to administer justice even-handedly and to contribute to the restoration and maintenance of peace in the region. To depart from the Tribunal's mission to try those most responsible for alleged violations of international humanitarian law risks undermining the Security Council's decision to establish the Tribunal and does a disservice to the cause of international justice. A rigid and mechanistic pursuit of the completion strategy should be avoided, as it would lead to the espousal of trials that fall short of the guarantees of international human rights of which the United Nations is — and should be — protective and proud.

I would now like to discuss the current prognosis with regard to the completion strategy and additional measures to be taken to enable the Tribunal to meet its deadlines.

When I last addressed the Council, in October, I stated that the Tribunal would be able to complete the trials of all individuals then in the custody of the Tribunal or on provisional release within the 2008 deadline. The estimate at the time was also that it might be possible to try two high-priority fugitives — Radovan Karadzic and Ratko Mladic — within the 2008 deadline, provided they were tried together and brought into custody in 2005. However, it was estimated that an additional year beyond the end of 2008 would be needed to try all indictees who were still at large as of October 2003.

Since my last address to the Council, three new indictments have been submitted and unsealed, and a fourth previously submitted indictment has been unsealed. One of those indictments has resulted in a guilty plea, while another concerns four high-level Serbian officials who are still at large. The remaining two indictments, however, have resulted in the arrival of eight senior accused at The Hague. At present, 33 accused in 17 cases are in the Tribunal's custody or on provisional release.

I am pleased to report that the Tribunal is still in a position to try all of the accused currently in custody or on provisional release before the end of 2008, including the eight new accused who recently arrived at The Hague. It may also be possible to try the fugitive Ante Gotovina within that period, provided he is transferred to The Hague before 2006 and tried together with two other co-accused.

There would be capacity to hold additional trials if persons currently in custody or on provisional release decide to plead guilty or are referred to domestic jurisdictions for trials under rule 11 bis. Since rule 11 bis referrals can be ordered by a Trial Chamber only after consideration of the facts of each particular case, it is not appropriate for me to offer predictions as to how many cases are likely to be so referred. However, as an example, if five cases of persons currently in custody or on provisional release are referred to national jurisdictions, it should be possible to hold an additional major — I emphasize major — trial before the end of 2008.

However, if any additional senior-level accused — whether they are already indicted fugitives or newly indicted accused — surrender to or are transferred to the Tribunal, it may not be possible to hold separate trials of those individuals within the 2008 deadline. Currently, there are eight indictments outstanding that have not resulted in an arrest or surrender. Those indictments involve 18 accused, including Karadzic and Mladic. My understanding is that the Prosecutor, Ms. Carla Del Ponte, may submit up to six additional indictments involving 11 suspects. It is therefore possible that additional senior-level accused — who, under existing Security Council guidelines, would not be suitable candidates for referral to national jurisdictions for trial — will arrive at the Tribunal in the future. Such arrivals would make completion of all trial work by the end of 2008 impossible, although there may be some relief to the docket through guilty pleas or referrals to national jurisdictions.

All of those predictions are necessarily tentative. It is possible that several cases might be deemed appropriate for transfer to domestic jurisdictions or that several high-level accused will choose to plead guilty. Absent such outcomes, however, the Tribunal will not be able to accommodate any additional trials beyond those of the accused who are currently in custody or on provisional release within the deadlines of the completion strategy.

I now wish to turn to the most important measures that, I believe, need to be taken in order to enable the Tribunal to maintain and improve upon its current level of productivity. Three measures deserve

special mention: staffing, election of judges and cooperation by Member States.

The completion strategy poses a particular staffing challenge — namely, that the Tribunal must ensure that it can work at full speed until the very end of its existence. The recruitment and retention of qualified and highly motivated staff are essential yet very difficult, given that other institutions can offer more senior positions and longer-term career opportunities. That problem has been exacerbated by arrears in payment of assessments by Member States, which led the Secretariat to impose a recruitment freeze on the Tribunal in May 2004.

The current financial shortfall in contributions from Member States has resulted in an unacceptable and disruptive effect on the work of the Tribunal. Unless we are able to replace staff members who occupy critical posts that are necessary to the conduct of cases, we will be forced to delay, suspend or stop trials. That would be disastrous in terms of the Tribunal's ability to remain on track with respect to the completion strategy, and it would convey the wrong message to the international community, especially the region of the former Yugoslavia. A lack of adequate funds for the Tribunal to conduct its trials would be taken as a lack of commitment on the part of the international community to the rule of law and to international justice.

The Security Council established the Tribunal with a view to ending impunity and to bringing alleged criminals to justice. Our work is now imperilled. I appeal to the Council, as the policy-making organ that decided that international justice and the rule of law must be upheld and that some of the worst crimes since the Second World War should not be allowed to go unpunished, to examine this situation and take whatever measures are necessary for us to continue our work and accomplish the goals of the completion strategy.

The international community cannot, on the one hand, expect the Tribunal to complete its work in an efficient and effective manner while, on the other hand, withholding the resources necessary to ensure that the Tribunal is able to function. Indeed, the inability to recruit qualified personnel — even to replace staff members who leave — is a serious threat not only to the completion strategy but to the very ability of the Tribunal to continue its daily work. Should the arrears and the freeze continue, it is only a question of time before serious slowdowns occur. In a court of law, where defendants have the right to their day in court and to a speedy trial, such resource-driven delays are unacceptable.

I therefore appeal to all Member States that owe outstanding amounts — and especially to the Governments which are responsible for the bulk of the arrears — to heed the repeated calls of the Secretary-General for immediate payment of these assessments. Payments by smaller contributors are equally important: although the amounts involved in most cases are so low as to be virtually painless for the Governments concerned, they add up significantly. Their non-payment sends a distressing signal of indifference by the membership towards international justice. I have personally approached Governments urging them to make payment and will appear together with my colleague and friend President Møse before members of the General Assembly's Fifth and Sixth Committees in a meeting kindly organized by the Government of the Netherlands, which is our host country. If payment is not made promptly, and if the freeze therefore continues in place, suspensions in cases will likely become inevitable.

The second point concerns the election of permanent judges of the Tribunal. I have previously raised with the Council, both through a letter dated 13 January 2004 (S/2004/53, annex) and through additional documents submitted to the Council's informal working group on the ICTY and ICTR, that disruption of the work of the Tribunal would be unavoidable if, as past practice indicates, some judges were not re-elected to the new mandate beginning on 17 November 2005. The Security Council has not taken any action on this matter, and I respect its prerogatives. I hope that disruptions in the work of the Tribunal can be avoided, as they would if all currently sitting judges were re-elected; but such an outcome, of course, cannot be guaranteed.

Given that it appears that the judicial election will take place, it is important that it be scheduled in a way that will minimize any effect on the Tribunal's work. On 17 June, I met with the Secretary-General and, at the unanimous request of the judges of the Tribunal, requested that he consider that the election be held in mid-November 2004 rather than in March 2005 as prior practice would indicate. The advantage of bringing the election forward to a date one year before

the beginning of the new mandate is that it would enable the assignment of longer cases to panels of judges who have been re-elected for the new mandate, thus reducing the danger of disruption of a case. I am happy to report that the Secretary-General has accepted that suggestion and will send out letters to Governments in July inviting nominations. I call on Governments to submit their nominations as soon as practicable, taking into account, to the extent possible, the stability of the Tribunal.

I also remind the Council that the mandate of all ad litem judges at the Tribunal will expire on 11 June 2005. Since ad litem judges cannot be re-elected under the present Statute, the Council will have to take some action to address the situation. I will discuss this matter further with the Secretary-General and the Security Council in the autumn.

The final point that deserves mention in the category of measures yet to be taken in furtherance of the completion strategy is improved cooperation by Member States. The failure of the States of the former Yugoslavia to arrest and transfer Radovan Karadzic, Ratko Mladic and Ante Gotovina to the Tribunal is a major impediment to the successful completion of the Tribunal's mandate. As I have stated to the Council before, the Tribunal's mission cannot be said to be complete until those three fugitives have been tried before the Tribunal. Mechanical pursuit of the completion strategy must not lead to impunity for those accused.

I view the completion strategy as entirely compatible with the Security Council's aim in setting up the Tribunal in the first place: it is a practical manifestation of the international community's commitment to delivering justice credibly and effectively to the region, thereby contributing to reconciliation. I am concerned, however, that the completion strategy has led to the view that the Tribunal now has a fixed termination date and therefore no longer needs the support of the international community. It certainly appears that some in the former Yugoslavia think that, by hiding from arrest, they can wait out the Tribunal until it goes away.

The completion strategy rests on the assumption that the Tribunal will continue to receive the financial and political support of Member States that is needed to carry out its work. It does not matter how productive or efficient the Tribunal becomes if it cannot recruit and retain staff, if judges sitting on lengthy trials must be replaced, or if many senior accused remain at large. No amount of structural reform or hard work on the part of the Tribunal will solve those problems. Rather, the international community must reaffirm its commitment to the Tribunal's work and to the elimination of impunity for violations of humanitarian law by removing those obstacles from the Tribunal's path. The completion strategy will not become a reality if Member States start to back away from the Tribunal.

The Security Council's establishment of the Tribunal recognized the important contribution that the recognition of individual criminal responsibility plays in the preservation of peace and recognized the need for a mechanism for the trial and punishment of serious violations of international humanitarian law. That initiative has borne fruit not just through the Tribunal's holding of fair and transparent war crimes trials in its own cases, but also through the legacy of procedural and substantive jurisprudence that is already providing guidance to the ICTR and to the Special Court for Sierra Leone, and that will no doubt likewise guide the International Criminal Court and future national war crimes trials. I urge the members of the Council to continue their support for the Tribunal and to ensure that the Tribunal is given the means necessary to fulfil its promise and its full potential. In return, the Tribunal will continue to take all available steps to carry out its work in a timely and effective manner so that persons alleged to have committed the most serious crimes known to humanity are called to account.

The President: I thank Judge Theodor Meron for his kind words addressed to the presidency. I shall now give the floor to Judge Eric Møse, President of the International Criminal Tribunal for Rwanda.

Mr. Møse: It is a pleasure to address the distinguished members of the Security Council and to present my assessment of the progress made towards the implementation of the completion strategy of the International Criminal Tribunal for Rwanda (ICTR), as envisaged by resolution 1534 (2004). An updated version of our strategy was already submitted to the President of the Security Council on 30 April 2004, and I am now pleased to provide some oral explanations, Sir, under your distinguished presidency.

My intervention today can be summarized up in three points. The first is that the ICTR is on schedule.

The second is that measures have been taken to comply with the deadlines in resolution 1503 (2003). The third is that, based on the information presently available, there is every reason to believe that the trials will be completed by the 2008 deadline.

On my first point, that the ICTR is on schedule, a priority at the commencement of the third mandate in May 2003 was to render judgements in four cases where trials had been completed. I am referring to the Media case, the Kajelijeli case, the Kamuhanda case and the Cyangugu case. Members will recall that in the completion strategy that I introduced on 9 October 2003 (S/PV.4838), we envisaged that by the end of 2003 or early 2004 the ICTR would have completed 15 judgements involving 21 accused. That promise was kept. Consequently, the four judges whose terms of office were extended by resolution 1482 (2003) have all left the Tribunal.

Another important aim early in the third mandate has been to start new trials. Four trials involving 10 accused started between July 2003 and November 2003. The Gacumbitsi case commenced on 29 July 2003 and concluded with judgement on 17 June 2004. Trial in the Ndindabahizi case started on 1 September 2003 and judgement will be rendered very soon. In other words, two judgements, each involving one accused, are already the result of the activities undertaken at the commencement of the third mandate, and they were both completed in less than one year. Furthermore, the two so-called Government cases, each involving four accused, commenced on 3 November and 27 November 2003, respectively.

New trials are starting in 2004. We have already started the Muhimana case, which commenced on 29 March 2004, and the prosecution has presented its case in that trial. The defence case will commence on 16 August 2004. Judgement in that case is expected by the end of this year. Two other single-accused cases will start in August and September this year. They will be followed by the commencement in September of the Military II case, involving four accused. The Military II case is the last big trial at the ICTR. That implies that by the end of 2004, the number of persons whose trials have been completed or are in progress will have reached 48, just as envisaged in our completion strategy.

Turning now to my second point, regarding the measures adopted to ensure progress, it is obvious that the most important development since we last met in this room has been the increase in the number of ad litem judges that can sit at any one time from four to nine. I would like to express my sincere thanks to the Security Council for having adopted resolution 1512 (2003) so rapidly after our meeting on 9 October 2003. That reform has significantly increased the efficiency and the flexibility of the ICTR.

Let me give one example. The arrival of the fifth ad litem judge made it possible to start one trial, ensure the continuation of another trial, where the judge had fallen ill, and schedule the third trial. In other words, one additional ad litem judge had a direct impact on three trials. New additional ad litem judges will sit on trials commencing in August and September this year. For instance, in the Military II case, the bench will be composed of one permanent judge and two ad litem judges.

Single-accused cases are, of course, much more complicated at the international level than at the national level. But at the ICTR we now have considerable experience in handling them in an efficient way. Recent examples are the Niyitegeka, Gacumbitsi, Ndindabahizi and Muhimana trials, where the prosecution presented its evidence in four weeks, followed by a similar period for the defence after a break. The number of days required to hear all witnesses in single-accused cases has steadily decreased, as mentioned in paragraph 21 of our completion strategy. The fastest was the Ndindabahizi trial, where all witnesses, both prosecution and defence witnesses, were heard in 27 trial days. Additional time is then required for the parties to present their written and oral submissions and for the Chamber to write its judgement.

The main challenge for the ICTR now is to ensure progress in the five multi-accused cases. They involve a total number of 22 accused. I am referring to the Butare trial, with six accused, and the Military I and Military II trials, as well as to the Government I and II trials, each involving four accused. This leads me to an important point. In our planning, we are giving priority to the steady progress of the large trials. Visible results of this strategy can be seen in the Butare and Military I cases. In both trials, the prosecution case is approaching its end. It is important to complete the large trials as soon as possible in order to devote our time fully to the remaining single-accused cases.

With several trials — multi-accused and single-accused — and only three courtrooms, the Chambers must to some extent sit in morning and afternoon shifts. This shift system works well, but each shift is somewhat shorter than a full day in the courtroom. In order to increase our judicial output even more, we have looked into the possibility of constructing a fourth courtroom. This is mentioned in paragraph 52 of our completion strategy.

I am very pleased to report that one Government recently decided to fund the construction costs for such a courtroom. The availability of a fourth courtroom will increase our efficiency and flexibility further. It will make it easier for us to ensure the right balance between the steady progress of the big trials and the slotting in of the single accused cases.

I should also mention that we have encountered a couple of unforeseen problems. For instance, a judge in the Government II case had to retire because of health problems. Fortunately, the trial case could continue with a substitute judge after limited interruption, and it is now proceeding well. A problem in the Government I trial is now being addressed. I mention these examples simply to illustrate the complexity of our task and to provide a full picture of the situation.

Our completion strategy lists a number of legislative and practical measures adopted in order to speed up trials. I will not repeat them here, but I would stress in particular the importance of the Trial Committee. Composed of representatives from Chambers, the Prosecution and the Registry, its main purpose is to ensure that cases are trial ready on schedule. The establishment of the Committee, combined with long-term planning, is one of the reasons why we have been able to start so many trials in record time.

Rule 11 bis concerning transfer has been amended in a similar way, as described by Judge Meron. We did that in April. Thus, cases will not be transferred to jurisdictions that do not obtain minimum guarantees of procedural fairness and international human rights. So far, there are no applications for transfer before any Chamber.

Regarding my third and last point — the deadlines set by resolution 1503 (2003) — we can already draw some conclusions. First, by 2005 and 2006, we will have completed all cases involving the 27 accused on trial in 2004. This will, as already mentioned, bring us to 48 accused, who all held leadership positions in 1994.

The question is then how many additional accused the ICTR can deal with by 2008. In our completion strategy, we have indicated an estimate of 65 to 70 persons, based on the information presently available. This number will include 10 of the 15 detainees presently awaiting trial in Arusha, whereas the Prosecutor intends to transfer the other five to national jurisdictions. Of the 17 indictees at large, the Prosecutor will try to bring 13 to justice in Arusha and seek the transfer of four accused. As regards the 16 suspects at large, they could, as a maximum number, potentially be tried at the ICTR. It is clear, however, that the trials in Arusha will involve fewer than those 29 persons at large. Some of them will be dead, whereas others may never be arrested. The Prosecutor will concentrate on those bearing the greatest responsibility and transfer cases involving intermediate- and lower-rank accused to national jurisdictions, in conformity with resolution 1534 (2004). This is dealt with in our completion strategy and I know that it will be further developed by the Prosecutor today. I will therefore not enter into details here. Let me simply stress that both of us agree that the deadline set by resolution 1503 (2003) will be respected, provided that we have the necessary resources.

This brings me to an important point. I am aware that budgetary issues are not the responsibility of the Security Council, but the fact that some States have not paid their contributions to the ICTR could threaten our completion strategy. The present freeze in recruitment may have serious consequences for all branches of the Tribunal. I therefore want to draw this to the attention of the members of the Security Council. The ICTR has increased its efficiency significantly. It would not make sense to prevent us from fulfilling our task.

I should also stress the need for continued cooperation from all States. I am pleased to report that witnesses have continued to come from Rwanda since our 9 October meeting last year. The ICTR certainly appreciates that and all other assistance provided by the Rwandan authorities.

Let me finally mention that our completion strategy and my present statement concentrate on the deadline for trials. It is premature at this stage to go into the issue of the 2010 deadline for the appeals.

I have deliberately kept this address brief, but hope to have conveyed the message that the ICTR is working efficiently and in full conformity with resolutions 1503 (2003) and 1534 (2004). Let me add this: It may be difficult, visiting New York, to convey the full picture of all we are achieving in Arusha. The ICTR would certainly be pleased if the Security Council decided, for instance, that its Working Group were to pay a visit to Arusha in order to get the full picture of what we are achieving there. I look forward to the exchange of views with the members of the Security Council.

The President: I thank Judge Erik Møse for his kind words addressed to the presidency.

I now give the floor to Ms. Carla Del Ponte, Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

Ms. Del Ponte: It is a great honour for me, too, to address once again the Council to present new developments at the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the key challenges that the Office of the Prosecutor faces in the implementation of the completion strategy.

On 21 May 2004, President Theodor Meron transmitted to the Council an assessment of the progress made by the Tribunal in the implementation of its mandate and of its completion strategy. As one of the organs of the Tribunal, the Office of the Prosecutor contributed and reported its continued efforts to fully and in a timely manner implement the completion strategy that we defined in 2002 and that was subsequently approved by the Council, notably in resolution 1503 (2003).

The Tribunal's completion strategy relies on three major dates, the first concerning the conclusion of all new investigations by the end of this year, 2004. This date thus entirely relies on the activities and efforts of the Prosecutor and her Office. I am therefore pleased to report that this first major milestone will be reached as planned. By the end of this year, the investigation of our outstanding targets will be complete and the last of our new indictments will be presented. In furtherance of my commitment to completing these investigations, we have spared no effort in streamlining the investigations and focusing them on only the most senior leaders responsible for the worst and gravest crimes.

Since my written assessment, two indictments were confirmed. One of them will be presented in a sealed form to the relevant authorities very soon. The other indicts a Croatian general for crimes committed in 1993 against Serb civilians in the so-called Medak pocket. It is our intention to request that this case be referred to Croatia.

Not all of our inquiries resulted in indictments. We continually reviewed the strength of the evidence in each case. In January 2004, I decided that the investigations concerning seven targets would be suspended, not indicted before the Tribunal, and eventually referred to domestic local prosecutors in the former Yugoslavia. Investigations concerning two more high-level suspects were discontinued after their deaths. Furthermore, we decided not to continue the investigations concerning two other targets, due to insufficient evidence. As a consequence, we are completing six remaining investigations involving a maximum of 11 targets. On this basis, a maximum of six new indictments could be prepared before the end of 2004 for submission, first to the Bureau for review of the seniority of the suspects, and then to the judges for confirmation. These indictments could result in a maximum of four new trials only, given the possibility of joining some of the indictments.

With this major achievement — the completion of all new investigations in sight — we are now in a better position to plan the rest of our activities. The Tribunal knows exactly how many cases will have to be tried. We remain at the disposal of the President and the judges to schedule the remaining trials. The next completion dates foreseen by the strategy to achieve the Tribunal's mandate are 2008 and 2010. All trials should be completed by 2008 and all appeals should be reviewed by 2010. The Office of the Prosecutor remains strongly committed to meeting those two objectives. However, unlike the conduct of investigations — over which the Prosecutor has a large measure of control — the main responsibility for the scheduling, administration and conduct of trials and appeals extends well beyond the Prosecutor. Although my Office will continue to take all possible measures to further streamline our trial and appeals activities — notably by strictly limiting the number of charges and prosecution witnesses — we must stress that we do not control a number of factors, such as the timely arrest of

fugitives, the appearance of witnesses and the emergence of crucial evidence, as we rely on States to obtain these.

As far as the Office of the Prosecutor is concerned, a number of measures have already been taken to improve the efficiency of the prosecution in the preparation and presentation of cases. They include significant procedural and technological improvements, and have been detailed in the written assessment submitted to the Council. Great savings of court time have been achieved by guilty pleas, obtained through the active involvement of my Office. We remain open to exploring with the defence the possibility of accused persons pleading guilty to all or some of the charges against them. However, ultimately the Office of the Prosecutor can only comply with the Chambers' instructions on scheduling cases, and obviously has no control over the swift conduct of the defence case or the writing of judgements. Nevertheless, we are actively collaborating with the President, the Chambers and the Registry to update the trial calendars for the coming years.

The completion strategy is twofold. First, the International Tribunal must try those bearing the gravest responsibility for the crimes, including the high-profile fugitives, and thus complete its activities in a swift and efficient, yet fair and impartial, manner. Secondly, the domestic jurisdictions of the territories of the former Yugoslavia must be reformed and equipped to complete the work of the International Tribunal and take over the remaining cases.

The written assessment submitted to the Council highlights three types of cases identified to be transferred to domestic courts. The first category concerns ICTY indicted cases that could be transferred pursuant to rule 11 bis of the rules of procedure. In strict adherence to the guidelines provided by resolutions 1503 (2003) and 1534 (2004), 12 cases, concerning 22 accused, have been identified for possible transfer to domestic jurisdictions, subject to the judges' approval. All those concerned held low- and mid-level positions in their respective hierarchies, and were predominantly indicted in the early days of the Tribunal.

The transfer of mid- and low-level cases to domestic jurisdictions would free court resources for senior accused leaders. Efforts have yet to be invested in the establishment of domestic jurisdictions capable of trying war criminals. The support of the international community, including regional organizations, such as the Organization for Security and Cooperation in Europe, is of paramount importance in this process.

For the time being, following the guidelines set by the Security Council, I do not actively consider the possibility of transferring any high-level cases. However, the Council must be aware that, even if the Chambers consider positively all 12 requests to which I referred earlier, this may not be enough to meet the 2008 deadline. We will continue to do our utmost to meet this target date.

The Council should also take into account that the completion strategy may be resented by the victims, mainly because their trust in domestic courts is very limited. Following my recent visit to Bosnia and Herzegovina, I received letters from victims' associations expressing their grave concern and even disagreement in connection with the completion strategy. They asked me to pass along those letters to the members of the Council, which I would like to do.

Allow me to focus now on the three key challenges that must be met to ensure that the ICTY mandate is properly and successfully achieved. These challenges are the arrest of fugitives; our finances; and issues of States' cooperation.

The first key challenge is the failure of the relevant authorities, in particular in the Republika Srpska in Bosnia and Herzegovina and in Serbia and Montenegro, to arrest or obtain the surrender — voluntarily or through coercive measures — of those 20 indicted who are still at large. That figure does not include two accused whose indictments and arrest warrants are sealed.

The failure to obtain the arrest of fugitives has a number of consequences for the completion strategy. It prevents the Tribunal from joining cases that could be tried together. It therefore obliges us to conduct separate trials on the same crime base, which leads to substantial losses of court time. For instance, had Radovan Karadzic been arrested early this year, it would have been possible to join his trial with the trial of Krajisnik, another former senior member of the Bosnian Serb leadership currently being tried. In that particular case, we most likely lost the equivalent of one courtroom for well over a year. Our ability to envisage other joinders is limited not only by the

difficulties faced in ensuring timely surrender, but also by the size of the courtrooms, which would make it difficult to conduct trials with more than six or seven accused.

The failure to arrest or surrender fugitives seriously affects the strategic planning of the prosecution. Indeed, we face the dilemma of choosing either to focus on the accused already in the custody of the Tribunal or to plan for the trial of such senior accused as Karadzic, Mladic, Gotovina and others who may unfortunately remain at large. An unintended consequence of the completion strategy is that fugitives and their protective networks are trying to buy time until 2008 in the hope of evading justice, as they believe that the deadline for them to be tried in The Hague will soon expire. In this context, a statement that the ICTY will remain open as long as necessary to ensure that the fugitives mentioned in Security Council resolutions 1503 (2003) and 1534 (2004) are tried would serve the interest of justice.

A second problem for the completion strategy is the dire budgetary and financial situation of the Tribunal in general and of my Office in particular. We have been badly hit by the deferred consideration of the 2005 budget for the investigative support for trials and appeals.

Consequently, we have been unable since the beginning of this year to extend the contracts of the staff who will provide investigative support to trials and appeals beyond 31 December 2004. Moreover, the cash-flow crisis that emerged this spring, leading to a temporary freeze on new recruitment imposed by the Secretariat, prevents us from recruiting, and even from replacing, essential personnel who leave the Tribunal. And, as other international judicial institutions are expanding, notably in The Hague, the ICTY is losing staff at an alarming rate. The combined effect of those factors has had a considerable impact on morale, making it, in turn, even more difficult to retain experienced staff.

These financial restrictions directly affect the completion strategy, as the scarcity of investigative resources will inevitably slow down the preparation and conduct of trials. Because that untenable situation is directly influencing the completion of our mandate, we urge the Council to support us in our efforts to solve this very serious problem.

The third main challenge encountered by the ICTY remains the issue of the full cooperation of all States. The cooperation of the States of the former Yugoslavia is not only a legal obligation; it is also of vital importance for a successful completion strategy. Beyond the arrest of indicted criminals, States have the obligation to grant access to witnesses and documents. The written assessment on the status of cooperation provided by the countries of the former Yugoslavia remains up to date.

The Croatian authorities are, at this point in time, fully cooperating with my Office. That cooperation must continue, and I expect Croatia to locate and transfer Gotovina to The Hague as soon as possible — hopefully, prior to my next appearance before the Council.

Since December, the authorities of Serbia and Montenegro have provided almost no cooperation, and that country has become a safe haven for fugitives. At least 15 accused who are at large, including Ratko Mladic, spend most of their time there. According to information recently obtained, fugitives who were believed to reside in Republika Srpska have moved across the border. Now I am even reluctant to pass on any information concerning the fugitives to the Serbian authorities, because the last time I gave precise information regarding a high-level fugitive charged with the Srebrenica genocide, I was told by the Serbian authorities that, due to the political circumstances, it was not opportune to arrest him. I have learned that he has since disappeared.

There has been no progress either in other areas in which the cooperation of Serbia and Montenegro is being sought. A few waivers allowing witnesses to testify before the ICTY were granted in the past month, but they concern mainly defence witnesses, and not prosecution witnesses. Well over 50 requests for waivers are still outstanding. Several statements were made by high-level officials to the effect that that cooperation would restart after the presidential election, which took place on 13 and 27 June. We will therefore be able to assess very soon whether these authorities are serious or simply buying time. In the absence of a significant number of transfers of fugitives in the weeks to come, I will have to conclude that Serbia and Montenegro continues to be unwilling to abide by its international legal obligations.

The support of the international community as a whole and of all States Members of the United Nations remains crucial in securing the cooperation of the States of the former Yugoslavia. Also, certain international institutions, such as the Stabilization Force (SFOR) in Bosnia and Herzegovina, have an important role to play in the arrest and transfer of fugitives. The last time a fugitive was arrested in Bosnia and Herzegovina by SFOR was in July 2002. I hope that the new arrangements regarding the future of international forces in that country will be more effective in the search for, and arrest of, indicted criminals.

As Prosecutor, my only recourse, in the case of a State's failure to comply with its obligations, is to report it to the President of the ICTY, who, in turn, can bring it to the attention of the Security Council. On 4 May 2004, a report concerning the consistent failure by Serbia and Montenegro to comply with its legal obligations was forwarded by President Meron to the Council. We urge the Council to act and to put an end to this pattern of non-cooperation. If this situation is allowed to continue, it will endanger the completion strategy as well as the legacy of the Tribunal.

The message of the victims of the worst crimes known to humankind remains constant, regardless of their community of origin. Their concern is to see that justice is done, not simply because they wish to see the criminals punished, but also because they understand that the achievement of stability and peace in their countries depends on the judicial process. As we approach the 10-year commemoration of both the Srebrenica genocide and the signing of the Dayton Agreement, we simultaneously approach another anniversary: Radovan Karadzic and Ratko Mladic have been at large for almost 10 years. How long will it be tolerated that these leaders are escaping justice? How long will it be tolerated that they are making a mockery of both justice and the repeated commitment of the Security Council to have them arrested and tried?

Please allow me to stress once again how important the Council's support is for the success of the Tribunal. The factors that have a real influence on the completion strategy of the ICTY are threefold: the financial needs of the Tribunal, the timely arrest of the fugitives, and the support needed to establish credible domestic jurisdictions. All three are beyond the Tribunal's control, but they can and must be addressed by the international community.

When it established the Tribunal in 1993, the Council proved its commitment to justice and the rule of law. In resolution 808 (1993), it stressed its determination to put an end to the widespread crimes occurring within the territory of the former Yugoslavia, including reports of mass killings and the practice of ethnic cleansing, and to bring to justice the persons most responsible for those crimes. Eleven years later, thanks to all the efforts made by the international community to halt those crimes and redress them judicially, these objectives have almost been achieved. It is perhaps ironic that, just when the ICTY is gaining momentum and reaching cruising speed, so much time is being spent discussing its end. But the completion of the mandate is now within reach, and we can see the final years ahead of us. This period should not become simply an "end-game", with an abrupt closing, regardless of whether or not the top leaders are apprehended and tried before the ICTY. That would negate all the efforts that have been devoted to the process and all the results already obtained.

I join President Meron in urging the members of the Council to continue their support for the Tribunal and to ensure that it is given the means necessary to fulfil its promise and its full potential.

I thank you for your attention and for your continued support.

The President: I thank Ms. Carla Del Ponte, Prosecutor of the ICTY, for her briefing.

I give the floor to Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Court for Rwanda.

Mr. Jallow: Mr. President, may I thank you and members of the Council for the honour you have bestowed on me and on my colleagues in inviting us to brief you on the state of our work.

When I last addressed the Security Council, in October 2003 (S/PV.4838), I undertook to carry out a review of the case load of the Tribunal with a view to identifying what should be concentrated on and what, in my view, could be accomplished within the time frames set by the completion strategy. I also undertook to consider what measures were to be applied to the rest of the workload.

The Council now has before it a revised version of the International Criminal Tribunal for Rwanda (ICTR) completion strategy with the assessment

required under Security Council resolution 1534 (2004) (S/2004/341). That revised strategy and assessment is an outcome of the review undertaken by the Office of the Prosecutor and consultations among all organs of the Tribunal.

I wish to report that the Office of the Prosecutor has reviewed the caseload and has identified which cases it considers can and should be proceeded with at the Tribunal and which should be transferred to national jurisdictions. We have reviewed and identified strategies within the Office whose implementation, we believe, will enhance our capacity to respond more effectively to the challenge of completion. We have also adopted a completion strategy action plan setting out the critical measures that need to be taken internally at the ICTR, in particular in the Office of the Prosecutor, in order to implement the completion strategy and the time frames for doing so. A monitoring mechanism has also been put in place to oversee the implementation of the action plan. The strategy is not a static one. It will continue to be reviewed and adjusted in the light of new and changing circumstances. It is necessary that the strategy retain some flexibility in that respect.

In our review we were guided by the Security Council's call to concentrate on those persons holding leadership positions: "the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the ... Tribunal" (*resolution 1534 (2004), para. 5*). In this context, we have been guided by a number of factors, which have been set out in the completion strategy report before the Council. President Møse has briefed the Council on the cases that have been completed at the Tribunal.

With regard to the remaining 21 detainees currently on trial at the ICTR, the prosecution expects to close its case in the trial of 10 of them by the end of 2004: those accused in the Butare case and the Military I case. We have just finished the prosecution phase in the case of one accused and have completed trial in two other cases. Judgement has been delivered in one of them, and judgement is expected in respect of the second. Early next year, we hope to be able to close the prosecution's case in relation to at least four other accused persons. The prosecution is ready to commence the trials of six other accused this year.

Of the l6 accused persons remaining in detention, we propose to transfer at least five of them to Rwanda for trial within national jurisdiction, subject to the provision of satisfactory arrangements and assurances. We will then make trial-ready the cases of the remaining detainees by the middle of 2005. So, by the middle of 2005, the cases of all those who are currently in detention will have commenced. Some will have been transferred, the rest will be on trial.

With regard to transfers, we propose to transfer to national jurisdictions the cases of at least four of the indicted fugitives who continue to elude us.

On the basis of the criteria of our review, to which I referred earlier, we have also reduced the number of targets for investigation from the original 26 to 16. Investigations of those 16 targets will be concluded by the end of the year.

With regard to the allegations against members of the Rwandan Patriotic Front, my Office is now evaluating the evidence that has been gathered so far with a view to determining whether there is a sufficient basis for prosecution, against whom and for what offences.

I have also been engaged in discussions with the Rwandan Government on this matter, specifically with respect to what options are available for dealing with any cases that may arise from any such evaluation. We do so in the context of the concurrent jurisdiction enjoyed by the Tribunal and Rwanda with respect to those cases, while having due regard, of course, for the primacy of the Tribunal, which is guaranteed by the Statute of our court. I shall be reporting to the Council on progress in that respect.

I expect that the number of accused to be tried by the Tribunal, excluding those already in detention — in other words our additional workload from now onwards — will be a maximum of 29 persons. It may well be — and I expect it will be — below that figure, making allowances for difficulties in apprehension, the death of some accused, and so on. As well, the outcome will largely depend on the state of the evidence after the conclusion of investigations and our success in apprehending those at large.

There is another category of suspects who are at large and not yet indicted or apprehended but whose cases are under investigation and whom we propose to transfer to national jurisdictions. That category has only marginally increased, from 40 to 41 cases. Even here, it is possible that in those cases in which the

evidence establishes a prima facie case by the end of this year, we may simultaneously seek confirmation of an indictment, have the Chambers issue an arrest warrant and obtain an order for transfer of the file to a national jurisdiction. Thus, when the suspect is eventually apprehended, he can stand trial in the national jurisdiction named in the transfer order.

Much work remains to be done. The number of accused who remain to be prosecuted at the Tribunal between now and the end of 2008 — which is the deadline for the conclusion of trials at first instance — is actually greater than the number of accused whose cases have been disposed of since the inception of the Tribunal.

Meeting the challenge requires new strategies. In the Office of the Prosecutor and, generally, within the Tribunal, we took time off to collectively review our working methods and consider what new measures need to be applied to deal with this workload. Clarifying the target and determining our workload — in other words, determining our completion strategy — was the first of two critical issues to be addressed. The second issue — the measures required to successfully implement that strategy — also needed to be addressed.

In that context, we have reviewed all the key areas of our work. We have reviewed investigations, indictments, the pre-trial process, the trial process and the appeals process. We did so with a view to devising a plan susceptible of action and to fostering teamwork and collaboration among management, investigators, the evidence and trial sections and other organs of the Tribunal. We have looked for ways to streamline processes, eliminate duplication, improve coordination and generally improve our focus and efficiency in the prosecution of cases.

As a result, our prosecution policy will focus on a number of issues. First, single accused, rather than multiple accused trials, will be the norm unless it is absolutely necessary to do otherwise. Secondly, we will draft indictments with fewer charges, charges that can be proved. Thirdly, we will reduce the number of witnesses, selecting them on the basis of the minimum number required to prove the charges. Fourthly, we will ensure that, upon confirmation of an indictment, the Office of the Prosecutor is ready to proceed with the case. As soon as we submit an indictment and have it confirmed, we will be ready to proceed with the case in order to avoid delay. We will also focus on improved coordination among trial teams and improved support to those teams with respect to witness management, et cetera. We will continue to be open to plea bargaining with accused persons. Finally, we will strive to improve the capacity of the Office of the Prosecutor for storage, retrieval, analysis, dissemination and use of evidence. We are convinced that all those measures will help us to meet the challenge of dealing successfully with the existing and anticipated workloads.

A number of items in the action plan require specific reference. As required by the Council, we expect to close investigations on new indictments by the end of 2004. By the end of October 2005, it is proposed that we complete the review of the evidence and the filing and confirmation of any new indictments, in accordance with the new indictment policy. As I have already indicated, we plan to prepare for trial the remaining detainees — with the exception of those whose cases are to be transferred to national jurisdictions for prosecution — by mid-2005.

The transfer of cases is an important component of the completion strategy, and we remain firmly committed to it. We plan to commence immediately the preparation of those files that are scheduled for transfer or transmission, and we hope to conclude that process by the middle of 2005. An ad hoc committee on transfer of cases, which had been set up internally at the Tribunal to advise us on the strategy and conditions for the transfer of cases, submitted its report and recommendations in April and May 2004. As a follow-up, a draft agreement on transfer of cases is now being prepared by the Office of the Prosecutor as a basis for negotiations with interested countries. A questionnaire prepared by the committee has also been circulated to a number of countries.

It is our intention that the second half of this year should see discussions with Rwanda and with other countries for the conclusion of agreements on the transfer of cases. So far, we have identified Rwanda and seven other national jurisdictions as potential recipients of cases, subject to further negotiations with the authorities concerned. In the case of Rwanda, a mission fielded this year by the Registrar recently concluded an inspection of prison facilities in that country as a prelude to considering the negotiation and conclusion of a prisoner transfer agreement. Accused persons who are transferred to Rwanda for trial will,

upon conviction, have to serve their sentences in that country.

At its last plenary meeting in Arusha, in April 2004, the Tribunal amended its rules of procedure in order to empower it to transfer to a national jurisdiction for trial an indictee who was not in its custody. Previously, it could transfer only indictees who were in its custody, thus leaving indictees at large both unapprehended and not subject to transfer. The rule change means, in effect, that the Tribunal cannot make transfer orders with respect to fugitives that can be implemented, even when the fugitive is apprehended after the closure of the Tribunal. Additionally, the rule change increases the range of countries to which transfer can be effected to include any country that is willing and able to accept and prosecute the accused. That is so even if such a country is neither the arresting State nor the State in which the offence was committed.

In some instances, the prospects for transfer are dependent on the capacity of the recipient State — particularly the capacity of its judiciary. While we remain optimistic about concluding a transfer agreement with Rwanda and with other countries, in the case of Rwanda there is a need to expeditiously address resource issues to enhance the national judicial capacity to deal with these cases. It is urgent that we complete and equip a courtroom for the purpose of holding trials in Kigali, Rwanda. At the Office of the Prosecutor, we have proposed — as a way of enhancing the capacity of the prosecuting authority in Rwanda — accepting a number of such Rwandan officials for attachment and training in our Office, in anticipation of transfers to that jurisdiction. There may well be other needs. In accordance with the relevant resolutions of the Council, the international community should provide the necessary resource support to countries that agree to take cases from the ICTR. Many of them, of course, will not conclude agreements to take cases unless they receive assurances as to the availability of such support.

Fifteen of the indicted fugitives remain at large. Many of them are located in the eastern part of the Democratic Republic of Congo, and efforts to apprehend and transfer them to the seat of the Tribunal have had little success so far. The likes of Felicien Kabuga and others continue to elude our efforts, and since October 2003 only two fugitives have been arrested. With the cooperation of the Dutch authorities, Ephrem Setako — who is indicted on charges of genocide — was arrested in the Netherlands in February 2004, and he is now facing judicial proceedings there for his transfer to the Tribunal. In May 2004, Yusuf Munyakazi — also indicted on charges of genocide, as well as crimes against humanity — was arrested in the Democratic Republic of the Congo with the cooperation of the authorities, the Government of the United States of America, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the ICTR's tracking team. He has already been transferred to the Tribunal, where he has made his initial appearance.

Those two successes are an indication of the potential — and indeed the necessity — for international support and cooperation and of the positive results they can bring to the international criminal justice system. We owe the authorities concerned a debt of gratitude. We will continue to be relentless in our pursuit of the accused persons, wherever they may be, with the intention of their apprehension and their transfer to the Tribunal or to a national jurisdiction for prosecution. To let them escape would be to encourage impunity to prevail; neither the Tribunal nor the international community can afford to do so. To that end, it is crucial that the Tribunal be able to retain an effective and adequately resourced tracking unit, even beyond 2004. The unit is responsible for gathering intelligence on the whereabouts and activities of those fugitives and on their precise locations, and for providing support to national law-enforcement authorities to effect their arrests.

Over and above that, the Tribunal requires the collaboration of the States in which the fugitives are located in order to effect their apprehension. Without such cooperation, the tracking programme will be at great risk. I propose to hold consultations later in the year with a number of Governments within whose territories some of the fugitives are residing, according to our indications.

As a consequence of the creation of a separate Office of Prosecutor for the ICTR by the Security Council in 2003, we have had to develop our own Appeals Unit, since the one that had previously served the two Tribunals has been split. The two Tribunals, however, continue to share a common Appeals Chamber. Of the 12 positions provided for the Appeals

Unit of the Office of the Prosecutor, six have been filled so far, with the recruitment of a Senior Appeals Counsel as head of the Unit. The recruitment of six others is at an advanced stage.

However, the workload of the Unit — and necessarily of the Appeals Chamber itself — will be building up significantly as more cases come down the line for trial or are concluded at trial. Hence, the capacity of the Appeals Unit of the Office of the Prosecutor will need to be enhanced beyond the current level to deal effectively with that increased workload. We expect to do so through a process of staff redeployment, initially from the Investigation Section in 2005 and subsequently from the Prosecution Section as the number of cases on trial begins to decline, perhaps by 2006.

With the anticipated increase in the number of accused standing trial in the years ahead, it is imperative that the capacity of the Office of the Prosecutor — particularly with regard to recruiting prosecuting staff — be improved significantly. Our efforts have been concentrating on the recruitment of staff with demonstrated practical experience in criminal prosecution. The policy of recruitment is being aggressively implemented, with many of the posts in the immediate Office of the Prosecutor and in the Prosecution Section having been filled. Many others, however, remain to be recruited.

Although investigations into new indictments are to be completed by the end of 2004 — and we are committed to that deadline — it is necessary for me to state that the Tribunal will require investigators in ever-declining numbers until the conclusion of appeals in 2010. The Investigation Section is not expected to close down at the end of 2004; it was in any case already under-resourced, with many vacancies in its establishment. Already, the Section has been hit by a number of departures of some experienced staff: in anticipation of the completion deadlines, they have departed to other opportunities which are perceived to offer greater security.

From 2005, the Section will be concentrating on non-conventional investigations. The preparation of new cases for trial from 2005 onwards will require investigative support in the selection and proofing of witnesses, to be undertaken in conjunction with the trial teams; trials that are in progress require investigative support in response to unforeseeable courtroom demands and the need to investigate specific defences, such as alibis, which are raised by the defence or to ascertain the antecedents of defence witnesses, the particulars of whom are disclosed only at the close of the case for the prosecution; circumstances may require the production of or a response to fresh evidence introduced at the appeal stage; et cetera: all those factors confirm that some level of investigative support of varying degrees will need to be retained at the Tribunal until its closure in 2010.

The issue of resources — particularly manpower and equipment — is crucial to a successful and proper completion of our mandate. Although the General Assembly has urged that the Tribunals should be provided with the resources necessary to conclude their mandates effectively within the completion strategy time frame, there has been a freeze on new recruitment, with approval being sought on a case-by-case basis, as a result of delays in the payment of contributions by Member States. It goes without saying that trials cannot proceed optimally unless there is adequate manpower to carry out the core activity of the Tribunal: the prosecution of cases. That includes prosecuting attorneys, appeals attorneys and staff in the immediate Office of the Prosecutor. It is necessary for the progress of the trials that there be no interruption in the recruitment of such staff in the Office of the Prosecutor. Budgetary constraints are now also impeding the deployment of missions of trial attorneys and investigators to support the ongoing trials and to prepare new cases.

All our plans and benchmarks are premised on having in place a full complement of prosecuting staff in the Office of the Prosecutor with adequate budgetary support to cover activities such as the fielding of missions, the hiring of consultants and experts, et cetera. In the absence of such capacity and support, the attainment of the benchmarks of the completion strategy will be in great jeopardy.

The discharge of the Tribunal’s mandate depends to a large extent on the level of international cooperation it receives. The state and level of cooperation with Rwanda generally, and with particular reference to the availability of witnesses and other evidence, continues to be satisfactory. I have been going frequently to Rwanda for consultations with Government officials and with non-governmental organizations, such as victims and survivors

associations, and to oversee the Investigations Division in Kigali. The Deputy Prosecutor and some other senior prosecuting staff have similarly been visiting the office in Kigali. Also, a mechanism has been put in place for liaison between the Office of the Prosecutor and the Government of Rwanda in relation to all requests for cooperation and assistance. It seems to be working fairly well.

Beyond that, however, we will continue to require assistance in respect of the tracking and apprehension of suspects and accused persons, in the acceptance by States of cases for prosecution within their national jurisdictions and in the relocation and protection of witnesses who face grave security risks as a result of their collaboration with the Tribunal. Above all, we require support in the provision by States of the tools — that is, the resources, both human and material — that are so necessary for the Tribunal to finish its task properly and on time.

The President: I thank Mr. Jallow, the Prosecutor of the International Criminal Tribunal for Rwanda, for his briefing.

Mr. Duclos (France) (*spoke in French*): My delegation thanks the Presidents and the Prosecutors of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda for their reports, transmitted to the Council in May in documents S/2004/420 and S/2004/341 respectively, and for the useful supplementary information they have provided today on the status of the implementation of their completion strategies.

From the outset, France supported the idea of completion strategies for the two Tribunals, as initially proposed by their respective Presidents. The objective is both legitimate and necessary: no one wants the work of those two ad hoc courts to continue indefinitely. That would be in the interest neither of the Tribunals nor of the proper administration of justice. At the same time, the completion strategies of the two Tribunals should not and will not be interpreted as setting cut-off dates for investigations, judgements or appeals. Our core principle must remain that of ensuring that the main persons responsible for the most serious crimes committed in the former Yugoslavia and during the genocide in Rwanda are brought to justice and punished for their crimes. We must therefore join the need to eliminate impunity with the need to preserve the intended role of the Tribunals as ad hoc, not standing, courts.

Here, France welcomes the various concrete measures already adopted by the Tribunals, as described in their respective reports, with a view to implementing their completion strategies. It goes without saying, of course, that such internal measures must be adopted and implemented with full respect for the competencies of the various organs of the Tribunals and for the independence of their Prosecutors, as stipulated in the Statutes of the Tribunals. My country is firmly committed to that principle and recalled it at the time of the Council's adoption of resolution 1534 (2004).

When necessary, the Council too must make a contribution, as it did, for instance, with respect to the appointment of ad litem judges and to the recent expansion of their competencies.

But such praiseworthy and vital internal measures alone are not enough to attain the goal. Nothing would be worse than avoiding the issue and forgetting that the exit strategy which the Council first formulated and endorsed in resolution 1503 (2003) can be successful only if the whole international community is fully mobilized and takes the relevant action. Members of the United Nations must honour their financial commitments to the Tribunals, which at present, as the Secretary-General has once again reiterated, is far from the case. In fact, we cannot ask the Tribunals to do anything more to implement their completion strategies without also providing the financial resources that they have been promised and on which they have every right to count.

Above all, all States — first and foremost Rwanda and the States of the former Yugoslavia — must cooperate actively and in good faith with the Tribunals. I would recall that such cooperation is obligatory under the Tribunal Statutes, which were adopted through Security Council resolutions under Chapter VII of the Charter. It is a matter of particular concern that the Tribunals are enjoying only partially or not at all the cooperation of all the States most directly concerned, whether with respect to the arrest and transfer to The Hague or Arusha of accused persons who remain at large or with respect to access to witnesses and the provision of documents. The lack of cooperation brought to the Security Council's attention, particularly with regard to Serbia and

Montenegro, the Republika Srpska and Rwanda, must come to an end, and it is up to the Security Council to recall and ensure respect for, if necessary, the obligation to cooperate. That is particularly necessary because such lack of cooperation can only impede and delay the implementation of the completion strategies of the two Tribunals. Can one conceive that the dates contained in that plan — for the conclusion of investigations by 2004, of judgements by 2008 and of appeals by 2010 — can be reasonably maintained without the arrest and the transfer of suspects at large, particularly Mr. Karadzic, Mr. Mladic, Mr. Gotovina and Mr. Kabuga? It is clear to my delegation that the answer to that question can only be negative.

In that context, it is important that the competent national jurisdictions be able to judge, under conditions respectful of international standards of justice, the cases relating to the mid- or low-ranking suspects that will be transferred to them by the two Tribunals. It must be noted that that objective, which is an integral part of the completion strategy of the work of the two Tribunals, is far from being achieved and can be achieved only if the States involved and the international community become increasingly mobilized to enable relocation of these cases as soon as possible. The establishment of the special War Crimes Chamber within the State Court of Bosnia and Herzegovina is a positive step.

As emphasized by the statements just made by the Presidents and Prosecutors of the two Tribunals, the various prerequisites are far from being met at this time. Much remains to be done in order to meet those objectives within the context of the envisaged timetable.

In conclusion, I should like to ask the authorities of the two Tribunals exactly how and when they think it will be possible to relocate, under proper conditions, some cases to competent national jurisdictions and what criteria will be followed. I would also like to thank the Prosecutor of the International Criminal Tribunal for Rwanda for the clarifications he has given on investigations and cases directly involving former members of the Rwanda Patriotic Army. From what he has said, I have understood that those investigations are not among the ones to be thrown out, which my delegation welcomes. Rather, they are the focus of a specific assessment that will not be subject to the deadline to conclude investigations by the end of 2004. It will be important that the Security Council be kept informed of developments relating to these inquiries and their assessment.

Mr. Muñoz (*spoke in Spanish*): We welcome the presence in the Council of the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

The report of the President of the International Criminal Tribunal for the Former Yugoslavia, Mr. Theodor Meron, to the Council, which was prepared in accordance with resolution 1534 (2004), contains a detailed account of the progress made in the implementation of the completion strategy. The report indicates progress in the initial judgements and appeals.

We agree that this Tribunal, as the report indicates, is sending a strong message of responsibility and accountability to the former Yugoslavia and to the entire international community. The completion strategy requires that the War Crimes Chamber in Bosnia and Herzegovina be established as soon as possible, as envisaged in resolution 1503 (2003). We believe it is crucial to ensure appearance before the International Criminal Tribunal for the Former Yugoslavia by Radovan Karadzic, Ratko Mladic and Mr. Ante Gotovina, as called for in Security Council resolutions.

We are alarmed that, as the report indicates, it is not very probable that the Tribunal will be able to judge other fugitives or new suspects within the deadline established in the completion strategy. In that connection, a key element is the cooperation of the States of the former Yugoslavia.

On the other hand, my delegation appreciates the comprehensive presentation of Mr. Eric Møse, President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994. The briefing gives us an updated and revised version of the Tribunal’s completion strategy, in keeping with the provisions of Security Council resolutions 1503 (2003) and 1534 (2004).

The delegation of Chile also notes the intention of the Tribunal Prosecutor to focus its efforts on those persons who formerly held leadership positions and who, according to the Prosecutor, bear the greatest responsibility for the crimes committed in 1994. The preceding will make it possible to conclude the investigations by the end of this year, at the latest, in keeping with the provisions of resolution 1534 (2004).

Chile wishes to reiterate its support for the completion strategies of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, endorsed by the Council, to conclude investigations by the end of this year, to conclude judgements by the end of 2008 and to conclude its entire workload by 2010.

Finally, we believe that the work of these Tribunals, apart from its own merits, constitutes a forceful warning to violators of human rights, regarding violations that could turn into humanitarian tragedies today or perhaps tomorrow. At the same time, we reiterate our firm conviction that those responsible for such crimes cannot continue in impunity.

Mr. Thomson (United Kingdom): I wanted to warmly thank President Meron, President Møse, Ms. Del Ponte and Mr. Jallow for their reports and presentations today and to welcome them here to the Council. I will not try to cover my country's entire approach to the two Tribunals, but will just focus on a limited number of points, if I may.

I will turn first to the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY), where we welcome the Tribunal's efforts in the past year to increase the efficiency of ICTY proceedings. Those efforts are clearly reaping dividends, but we recognize, and we have heard this morning, that there are still obstacles to achievement of the completion strategy. One of them, of course, is the financial situation, on which President Meron has spoken eloquently. We have to continue to press all States to pay their dues if we are going to enable the Tribunal to fulfil the purpose for which it is set up. The international community really does face a choice. The ICTY, without adequate funding, will struggle to complete its work effectively and it will do so over a much longer and, probably, more costly time frame than envisaged; or it can be enabled to continue working towards its completion strategy, which envisages a swifter ending and a more effective completion of the mandate.

A second obstacle is the ICTY's concerns to avoid undue delays over the election and re-election of judges. We welcome the President's efforts to deal with these problems. He has flagged those for us. My delegation believes that we should give some consideration to allowing trial judges who are not re-elected to complete their cases where those cases are over six months old. I would welcome President Meron's views on that.

A third question that is important for the completion strategy and its timetable is that of the transfer of cases to the region. We welcome the Prosecutor's plans to conduct a further review of cases in 2005, but I do want to underline our view that the key indictees — Mladic, Karadzic and Gotovina — have to be tried at the ICTY. I note also and take account of President Meron's more general point about the distinction between senior and less senior indictees.

A fourth and really important area for timely progress on the completion strategy is the delivery of at-large indictees to The Hague. This is really key to making efficient use of trial time. The United Kingdom is determined to maintain appropriate pressure on all countries to meet their obligations to cooperate with the Tribunal, assisting in the apprehension of fugitives and providing access to documents. We welcome Croatia's step change in cooperation with the ICTY. We think it important that Croatia continue to cooperate fully and, in particular, take steps to locate and transfer to The Hague fugitive indictee Ante Gotovina.

Bosnia's failure to cooperate fully with the ICTY, as we have heard this morning, represents, we think, a fundamental obstacle to Bosnia's Euro-Atlantic relations, so we call on the Republika Srpska authorities to demonstrate a credible and sustained effort to track down and transfer all fugitive indictees, in particular Radovan Karadzic, to The Hague. We fully support Lord Ashdown in his efforts to ensure that Bosnia and Herzegovina makes the changes necessary to be able to meet its ICTY obligations.

Turning to Serbia and Montenegro, we expect that Mr. Tadic's election will now enable the Government to take action to meet its international obligations, for cooperation is certainly a requirement, not an option. Continuing non-compliance will

frustrate any aspirations of Serbia and Montenegro to closer integration with Euro-Atlantic structures. We think that continuing hesitation is unacceptable. Claims of ignorance about the whereabouts of indictees are not sufficient. It is Serbia and Montenegro's duty to assist in their arrest and extradition to The Hague.

Turning to the work of the International Criminal Tribunal for Rwanda (ICTR), I should like to applaud the approach which puts the completion strategy at the centre of the overall management of the Tribunal. We welcome the evidence of shared responsibility throughout the Tribunal's organs for the overall work of the Tribunal, including the completion strategy, and we are encouraged that the ICTR appears likely to meet its completion strategy. Here, we welcome the trend towards shorter trials, which is helped by the innovative measures that President Møse has introduced. All, of course, will not be plain sailing. Budget arrears are one possible threat to the ICTR's completion strategy and we will explore with Security Council colleagues, among others, how to encourage States to pay their dues.

I want to note and agree with Prosecutor Jallow's belief that it is important to explore the possibility of transferring cases to African countries where certain suspects are now detained. Perhaps he could comment on whether he will be advising on the conditions necessary to allow that to happen. We assume, of course, that the majority of cases to be transferred will go to Rwandan jurisdiction. To conclude, I would be interested to hear the Tribunal's thinking on how that might best be assisted.

Mr. Baali (Algeria) (*spoke in French*): I should like to thank the Presidents and the Prosecutors of the International Criminal Tribunals for the Former Yugoslavia and Rwanda for their excellent briefings and for the highly commendable service they render daily to international justice and to our common cause of combating impunity.

Algeria attaches great importance to the two Tribunals' accomplishing the missions assigned them by the international community and implementing the objectives of the completion strategy. We welcome the progress made since our Council adopted resolution 1534 (2004) on 26 March. At the same time, the strategy approved by the Security Council seems already to be encountering several difficulties that could jeopardize the 2010 deadline for the completion of the proceedings. Reports to the Council and the briefings made this morning shed ample light on the nature of those difficulties and on the means for overcoming them.

From the outset, the financial and administrative dimension has been one of the most significant obstacles before the Tribunals. Indeed, the lack of staff, the inability to retain qualified staff, and the hiring freeze brought on by a lack of resources resulting from member States' non-payment of their contributions could seriously impede the Tribunals' work and compromise their ability to conclude the business before them. A solution must therefore be found to that problem as soon as possible. In that regard, the States concerned must promptly meet their financial obligations.

Moreover, we feel that the completion strategy could be facilitated if the intermediate- or lower-rank accused were referred to competent national jurisdictions. We therefore welcome the establishment of the War Crimes Chamber in Bosnia and Herzegovina and hope that it will be operational early in 2005. When conditions allow, we would also welcome the transfer of the cases of some detainees to the competent Rwandan jurisdictions. We further believe that the full and complete cooperation of all member States with the Tribunals in providing access to essential documents and in apprehending and bringing to justice all of the accused is necessary to the implementation of their mandates and objectives.

The Security Council must not and cannot remain impassive when the authority of the Tribunals and its own credibility are damaged by any State's failure to cooperate. It must — and it has the means to do so — provide full support to the Tribunals in a resolute and effective manner so that criminals who are still at large, such as Mr. Karadzic and Mr. Mladic, can be arrested and justice finally done.

The other challenge facing the Tribunals has to do with the expiration, on 6 November 2005, of the current mandate of the permanent judges and, on 11 June 2005, of that of the ad litem judges, at a time when it appears that the trials may continue beyond those dates, which could compromise the completion strategies. We believe that particular attention must be accorded to that question.

Mr. Sardenberg (Brazil): I would like to thank the high-level judicial authorities who addressed the

Security Council this morning and early this afternoon for their valuable presentations. Both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are part of a large effort to ensure that those most responsible for the most heinous crimes answer to them in public trials that meet the highest standards of international justice and due process.

As a member of the Security Council at the time, Brazil voted in favour of resolutions 827 (1993) and 955 (1994), which created the ICTY and the ICTR, respectively. We stressed, on those occasions, our preference for the creation of a permanent tribunal competent to judge potential perpetrators of genocide, war crimes and other serious violations against international humanitarian law in an independent manner. Thus we thought to respond to possible allegations that such tribunals were selective.

The Security Council has before it the challenge of adapting the inherent limitations of ad hoc judicial arrangements to the principle of due process and the rights of both victims and accused, as well as the overall objective of bringing an end to impunity.

It is necessary that the Tribunals remain attached to the goals set forth in resolution 1534 (2004), while concentrating resources and efforts so as to make sure that the most senior leaders suspected of being responsible for crimes within the jurisdiction of the courts are prosecuted. Given the difficulties presented by the presidency of the International Criminal Tribunal for the Former Yugoslavia in its latest assessment, Brazil believes that insisting on rigid deadlines, as set out in the completion strategy, may frustrate justice, rather than assist the international community to end impunity. The Council may eventually need to adjust those timetables in order to allow the Tribunals to fulfil their mandates.

Brazil received with serious concern the letter dated 4 May 2004 from the President of the International Criminal Tribunal for the Former Yugoslavia regarding substantial lack of cooperation with the Tribunal. Obligations under the Charter, the Tribunal statute and the rules of procedure and evidence, as well as the relevant Security Council resolutions, must not be disregarded. We urge States directly involved in the Tribunal's work to cooperate or to continue to cooperate fully with it, ensuring the speedy surrender of fugitives and of documents.

It is essential that the Tribunals continue to have adequate resources and personnel to perform their functions. Financial difficulties present a threat to the accomplishment of their duties and the ability to meet the completion strategies. Brazil has been making efforts to pay outstanding contributions to the Tribunals. A payment was made in December last year and another will be made shortly.

Brazil is concerned about the possibility that trials in cases continuing beyond the end of the term of current permanent judges might be slowed or disrupted due to the non-re-election of judges acting in those cases. Given the General Assembly's prerogatives in this matter, it is our view that any legitimate solution should be approved by it. In that regard, we favour consulting regional groups in order to seek the reconduction of judges acting in cases deemed essential to the completion strategy.

Mr. Dumitru (Romania): First of all, the Romanian delegation would like to welcome the presence here of the Presidents of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and of the International Criminal Tribunal for Rwanda (ICTR), Judge Meron and Judge Møse, as well as of the Prosecutors of the two International Tribunals, Ms. Del Ponte and Mr. Jallow. We would also like to thank our guests for their highly informative and comprehensive presentation of the most recent measures put in place to implement the completion strategies of the two Tribunals.

While we welcome the significant progress made in implementing the completion strategies, we are, however, concerned about the continued existence of a number of factors that could jeopardize the time frames set out in Security Council resolutions 1503 (2003) and 1534 (2004). We emphasize in this respect the importance of full cooperation by all relevant countries with the Tribunals, especially by arresting and handing over the principal fugitives, facilitating access to evidence and granting waivers of immunity to enable witnesses to provide statements or testify before the Tribunals.

We are of the view that an increased level of cooperation would also have a positive impact on relations between some of those countries and various international organizations.

Constantly reviewing the caseload of the Tribunals in order to retain on their docket only those

cases involving the most senior leaders, suspected of being most responsible for crimes within the jurisdiction of the relevant Tribunal is also essential for the successful implementation of the completion strategies. We would be interested to learn in further detail how the mechanism envisaged by the judges of the ICTY in this respect by amending the rules of procedure and evidence will further facilitate this process.

Nevertheless, we are of the opinion that the concept of senior perpetrators could be further adjusted, as the wording of resolution 1534 (2004) permits, so as to allow an even greater number of cases to be transferred to national jurisdictions. Of course, in putting forward such a proposal, we are well aware of the need that all the requirements relating to the full observance of fair trial, due process and international human rights have equally to be met. It is also in this context that we welcome the efforts jointly undertaken by the Tribunal and the Office of the High Representative in Bosnia and Herzegovina in establishing the War Crimes Chamber in Sarajevo, and encourage the authorities in Zagreb and Belgrade to take the requisite steps in order to overcome obstacles that would prevent the transfer of such cases to their national courts.

Insofar as the ICTR is concerned, we take note of the fact that the Prosecutor contemplates, in paragraph 39 of his report, the possibility that none of the cases might be transmitted to national jurisdictions, in which situation the Prosecutor may eventually consider alternate proposals to be made by the Security Council. Perhaps Mr. Jallow could comment on those alternate proposals.

While an increased number of guilty pleas entered by those accused at both Tribunals would undoubtedly facilitate compliance with the terms of the completion strategies, we are of the view that efforts to reach that objective should not result in compromising internationally recognized principles of due process, fairness and the rights of both the accused and the victims.

On the other hand, in the case of the ICTR, the limited number of accused who have pleaded guilty might lead to the worrisome conclusion that there is a substantial lack of awareness and willingness to assume responsibility for the grave crimes committed by a large majority of indictees.

Turning now to the issue of the end of the tenure of the ICTY's permanent Judges, which could also affect the implementation of the completion strategy, I should like to express Romania's readiness to further contribute to discussions within the Security Council aiming at identifying a viable and commonly agreed solution.

Mr. Pleuger (Germany): Because of the lateness of the hour, I promise that my statement will be limited to one short remark and two short questions.

First of all, I should like to join other delegations in thanking the Presidents and Prosecutors of both ad hoc Tribunals for their comprehensive and candid presentations, which underline the fact that both Tribunals are at an extremely critical stage of their operation. We realize that the successful implementation of the completion strategy depends on factors that lie within and outside the scope of the responsibilities of the Tribunals. Critical factors that lie outside the scope of the Courts' responsibility but within that of States on the Council are, notably, first, the punctual payment of assessed contributions; secondly, cooperation with the Tribunals; and thirdly, and in particular, the arrest of fugitives, notably Mr. Karadzic, Mr. Mladic and Mr. Gotovina.

We welcome the report of improved cooperation on the part of Croatia, and we are concerned about Serbia and Montenegro's poor record of cooperation, as reported by both President Meron and Prosecutor Carla Del Ponte. We urge all countries to cooperate fully with the Tribunals and to pay their dues, and we will push for appropriately strong Council reactions if countries do not cooperate with the Tribunals, as requested in particular by Prosecutor Carla Del Ponte.

We have taken note with great interest of President Meron's proposals with regard to the election of judges. The early holding of elections is welcome, and the Council should be open-minded with regard to the proposals concerning ad litem judges.

My first question goes to President Meron. He and Carla Del Ponte have drawn the Council's attention to Serbian non-cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). Following the presidential elections in Serbia and Montenegro and the victory of Mr. Tadic, does he see a chance for better cooperation with Serbia and Montenegro, and what could the Council or third parties do to promote such cooperation? Are there, in

his view, any lessons that he or the Council can or should draw from the factors that led to the improvement of relations between Croatia and the ICTY?

My second question goes to Prosecutor Jallow. First of all, I should like to commend him for his dedicated efforts to improve relations with the authorities of Rwanda. This is very much appreciated and a very important basis for the referral of cases to Rwandese justice. My question concerns cooperation with authorities in the Democratic Republic of the Congo. He has reported that many of the 15 fugitives accused of war crimes and genocide are hiding out in the Congo, and he has also said that efforts to apprehend and transfer them to the seat of the Tribunal have borne little fruit so far. Can he please elaborate a little, perhaps, on the cooperation he has with the Congolese authorities to apprehend these criminals?

Mr. Rostow (United States of America): I wish to thank you, Mr. President, for your indulgence with regard to the schedule.

First of all, I should like to express the sorrow of my Government at the loss of the life associated with the United Nations Mission in Sierra Leone (UNAMSIL) civil helicopter which crashed this morning in Sierra Leone and to extend condolences to the families of the victims and to the Governments of their respective countries.

My delegation welcomes, of course, the appearance of President Meron, President Møse, Chief Prosecutor Del Ponte and Chief Prosecutor Jallow, and thanks them for their reports. The Council asked for those reports because of its strong support for the Tribunals' work, including their own completion strategies.

The United States has been and remains a strong supporter of both Tribunals. We support the efforts of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda to increase efficiency and fulfil their respective completion strategies to conclude investigations by the end of this year and trials of first instance by the end of 2008 and appeals by 2010. We also applaud efforts to strengthen local judicial systems so that lower-ranking defendants can be tried there.

We recognize that the process of building up judicial capacity is not a quick or easy one but that it is indispensable to bringing alleged war criminals to justice as well as to strengthening the rule of law in societies that recently have been the scene of grave conflict.

Implementation of the completion strategies depends principally on two things: first, United Nations Member States simply have to fulfil their obligations to support the Tribunals by, first, doing everything in their power to arrest fugitive defendants. As the Council has said repeatedly, Mr. Mladic, Mr. Karadzic and Mr. Gotovina must be tried at The Hague, and Mr. Kabuga must be tried at Arusha.

Regional countries must step up and meet their responsibilities with respect to bringing at-large defendants to the Tribunals. United States engagement with such countries is ongoing, as it has been in the past.

Secondly, all United Nations Member States have to fulfil their financial obligations to support the Tribunals. At this time, according to their own completion strategies, the Tribunals should be winding down their investigative work and preparing for final trials, understanding, of course, that the most important defendants at large have to be brought to justice, and that the completion strategies cannot be fully implemented without those defendants being tried. The United States is continuing to work to see that the high-ranking defendants are brought to justice before the Tribunals.

Mr. Karev (Russian Federation): I should like to express our gratitude to the Presidents and Prosecutors of the two Tribunals for their thorough briefings to the Security Council and for their assessments on prospects for the implementation of the completion strategies of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

We are pleased to note that the information provided shows that the authorities of both Tribunals are making every effort to complete their work within the time frames set out under resolutions 1503 (2003) and 1534 (2004).

I should like to note that the implementation of the completion strategies of both Tribunals does not mean that those who are guilty of crimes will be able to evade justice. Completing this complex task will require not only intensive judicial work but also the

implementation of a number of measures that relate in particular to the transfer of lower-ranking cases to the competent national jurisdictions, which will have to be fully prepared for them and will have to comply with international human rights standards and judicial norms.

In that regard, I should like to note the efforts that are being made by the ICTY, together with high-ranking Government officials, to establish a War Crimes Chamber in the framework of State organs. We hope that the Chamber will be able to begin its work by the start of 2005. We deem it necessary for intensive efforts to be continued in order to accelerate this process and undertake the transfer of relevant cases to the authorities of Croatia, Serbia and Montenegro, Rwanda and other countries.

We share the concern of the Presidents of the Tribunals about ensuring that the two Tribunals have qualified staff. We hope that, through the Secretary-General's efforts, those temporary difficulties will be overcome. In his statement, the President of the Tribunal for the Former Yugoslavia mentioned that he had made a proposal to the Council regarding the completion of the judges' mandate in November 2005. The Security Council is working on the matter of completion dates, and we hope that in the near future the Council will find a solution that is satisfactory to all parties. The essential thing is not to make decisions that violate universally accepted norms.

I will add a further question. In President Meron's briefing, there were some important points to be underlined. I am referring to the important question of pardons and the easing of sentences and to the question of mechanisms for reviewing sentences upon completion of the ICTY's work. We believe that it is important to provide answers to those questions, with respect to the Rwanda Tribunal as well. I ask whether the Presidents of the Tribunals have any comments in that regard.

The President: There are still a number of speakers remaining on my list for this meeting. I intend, with the consent of the members of the Council, to suspend the meeting until 3 p.m.

The meeting was suspended at 1.10 p.m.