



Security Council

Seventy-second year

8120th meeting

Wednesday, 6 December 2017, 10 a.m.

New York

Provisional

President: Mr. Bessho (Japan)

Members:

Bolivia (Plurinational State of)	Mr. Llorentty Solíz
China	Mr. Li Yongsheng
Egypt	Mr. Aboulatta
Ethiopia	Mr. Woldegerima
France	Mrs. Gueguen
Italy	Mr. Lambertini
Kazakhstan	Mr. Tumysh
Russian Federation	Mr. Iliichev
Senegal	Mr. Ciss
Sweden	Ms. Schoulgin-Nyoni
Ukraine	Mr. Yelchenko
United Kingdom of Great Britain and Northern Ireland . .	Mrs. Dickson
United States of America	Ms. Sison
Uruguay	Mr. Rosselli Frieri

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 1994 and 31 December 1994

Note by the Secretary-General on the International Residual Mechanism for Criminal Tribunals (S/2017/661)

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Note by the Secretary-General on the report of the International Tribunal for the Former Yugoslavia (S/2017/662)

Letter dated 17 November 2017 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2017/971)

Letter dated 29 November 2017 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/2017/1001)

The meeting was called to order at 10.05 a.m.

Expression of thanks to the outgoing President

The President: As this is the first public meeting of the Security Council for the month of December, I should like to take this opportunity, on behalf of the Security Council, to pay tribute to His Excellency Ambassador Sebastiano Cardi, Permanent Representative of Italy, for his service as President of the Council for the month of November. I am sure I speak for all members of the Security Council in expressing deep appreciation to Ambassador Cardi and his delegation for the great diplomatic skill with which they conducted the Council's business last month.

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

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The President: In accordance with rule 37 of the Council's provisional rules of procedure, I invite the

representatives of Croatia and Serbia to participate in this meeting.

On behalf of the Council, I welcome Her Excellency Ms. Kolinda Grabar-Kitarović, President of the Republic of Croatia. I request the Protocol Officer to escort her to a seat at the Council table.

Ms. Kolinda Grabar-Kitarović, President of the Republic of Croatia, was escorted to a seat at the Council table.

The President: On behalf of the Council, I welcome Her Excellency Ms. Nela Kuburović, Minister of Justice of Serbia.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in this meeting: Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia; Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the International Residual Mechanism for Criminal Tribunals.

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

I wish to draw the attention of Council members to documents S/2017/661, which contains a note by the Secretary-General on the International Residual Mechanism for Criminal Tribunals, and S/2017/662, which contains a note by the Secretary-General on the report Organization of the International Tribunal for the Former Yugoslavia. I also wish to draw the attention of members to documents S/2017/971, which contains the text of a letter dated 17 November 2017 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council, and S/2017/1001, which contains the text of a letter dated 29 November 2017 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.

I now give the floor to Judge Agius.

Judge Agius: On a Tuesday evening back in May 1993, against a backdrop of ongoing atrocities, mass murder and war, this organ, acting on behalf of the international community, gathered to establish an

international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia. Spurred on by the belief that this was possible and necessary, by a prevailing faith in multilateral solutions, and by a determination and willingness to do something — anything — to try to halt the conflicts in the ex-Yugoslavia, the Security Council adopted resolution 827 (1993). The challenge was offering a bold and innovative response to conflict. The odds were zero to none. The score is 161 out of 161.

In retrospect, and knowing that evenings like that fateful and memorable Tuesday are much rarer today than in the golden age of political optimism of the early 1990s, many would agree with me that the establishment of the International Tribunal for the Former Yugoslavia (ICTY) was one of the international community's proudest moments. In supporting the creation and continued existence of the Tribunal, our predecessors and those present here today have put their signature on a very important page in the history of international justice and the fight against impunity. We, together with the Security Council, will be remembered for what we have achieved; for having done something good — something meaningful.

But there is another history — the history of those who, almost from the very beginning, were afraid to accept the Tribunal and even denounced it. It is a history that belongs to those who did not choose to fight impunity, but rather, for reasons of political or personal gain, blind nationalism and ethnic hatred, preferred immunity to impunity and chose to protect, and even glorify, those who had committed atrocities. Both histories will be remembered. However, in time the first will be judged favourably, and the second will be condemned.

Despite all the sceptics, naysayers and deniers who, from the very beginning, embarked on a campaign against the Tribunal and have been at pains to question our legitimacy and integrity and to portray a doomsday scenario, I am proud to appear before the Council today and say "mission accomplished". The Tribunal has, as of last Wednesday, 29 November, finished all its judicial work, firmly in line with previous forecasts. We are now only three weeks away from the ultimate conclusion of the ICTY mandate and the fulfilment of its completion strategy, having achieved over almost a quarter of a century what no one back in 1993 would

have thought possible. Allow me to recall just a few of the Tribunal's defining moments.

From 2 October 1995:

"What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife."

From 10 December 1998:

"Rape may also amount to a grave breach of the Geneva Conventions, a violation of the laws or customs of war or an act of genocide, if the requisite elements are met, and may be prosecuted accordingly."

From 22 February 2001:

"[T]he presence of a state official or of any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture under international humanitarian law."

From 5 December 2003:

"Acts of violence wilfully directed against the civilian population with the primary purpose of spreading terror constitute a violation of the laws or customs of war."

The aforementioned statements constitute points of no return that forever changed the landscape of international justice. They have been embraced by the Council in its decisions, by other international courts and tribunals in their judgements, and by numerous actors in domestic jurisdictions. These are but a handful of examples, and the Tribunal has broken new ground in areas too numerous to mention here, but which are set out in the report before the Council today (see S/2017/662).

In his initial report to the United Nations (see S/1994/1007), that great man Antonio Cassese, first President of the ICTY, proclaimed that the establishment of the Tribunal could constitute a turning point for the world community if it proved that it could work in an effective and dispassionate way and if the necessary cooperation of all States and United Nation bodies were forthcoming. I firmly believe that these two conditions have been met in the years since and that the Tribunal has fulfilled President Cassese's prophecy.

In relation to the first condition, the tasks entrusted to us have indeed been daunting. The experiences we have lived through have been sobering, but the

ICTY has demonstrated time and time again its resilience and determination to deliver justice. And we have done exactly that — rendered justice by prosecuting and adjudicating crimes committed by individuals — and I repeat individuals, not peoples or countries or Governments — in an impartial, independent, effective manner.

To that end, we developed and implemented a completion strategy, and we constantly searched for ways to improve our operations and increase efficiency. With the delivery of judgments in the final trial case against Ratko Mladić on 22 November, and the final appeal case against Jadranko Prlić and others on 29 November, the Tribunal's core work has now been concluded, in line with its previous commitment to the Council.

It is only fitting that the judges who presided over both final cases are present here today. I am delighted and honoured that Judge Alphons Orie, Presiding Judge in the Mladić Trial Chamber, is seated next to me today as I present the Tribunal's final-ever completion strategy report (S/2017/1001, annex II). And, of course, I was the Presiding Judge of the *Prosecutor v. Prlić et al.* case. Both judgments were significant and followed closely around the globe.

In relation to the *Prosecutor v. Prlić et al.* case, we can all agree that what happened in court last Wednesday was extremely unfortunate. The Tribunal attaches the utmost seriousness to this incident, which is now being thoroughly investigated. However, regrettable as they are, these circumstances must not be allowed to overshadow the ICTY's final weeks or somehow undermine the Tribunal's legacy and judgments. It is extremely disturbing, however, that some appear to be exploiting this situation. They should not be allowed to get away with that.

In relation to the second of Cassese's conditions — the cooperation of all States and United Nation bodies — I shall not recount all the logistical, financial and other problems that bedeviled the initial life of the Tribunal and that have plagued its closure, or the myriad circumstances outside the Tribunal's control that led to delays in the arrest of fugitives and the conduct of proceedings. Indeed, these and other challenges, and the Tribunal's responses thereto, are set out in the report before you. However, the difficulties faced by the ICTY should in no way lead one to

conclude that it is not worth it to resort to international criminal tribunals.

In all fairness, as it turned out, the Tribunal ultimately received all of the resources and support it needed to complete its work. But let us be honest here. If we are to believe in international criminal justice at all, then we must accept that it will always be time-consuming, unwieldy and expensive, and that it cannot be compared with criminal proceedings at the domestic level. Could we have done things better? Probably. Could we have been more efficient? In hindsight, yes. Let me assure the Council, however, that this was not for lack of trying. Did we have a choice? No. Because, rest assured, to live with the alternative of doing nothing or giving in to impunity, is to pay a much higher price. Can anyone in this Chamber honestly argue with the family members of victims that justice for their loved ones is not worth fighting or paying for?

In these brief minutes, it would be impossible to specifically recognize everyone who has played a role in the creation, development and fulfilment of the Tribunal's mandate. From the unfailingly helpful Office of Legal Affairs, to the Tribunal's outstanding host country, the Netherlands; from the forthright Chairpersons of the Informal Working Group on International Tribunals, to the European Union and numerous individual States that have provided generous voluntary contributions to the Tribunal; from all the countless legal advisers here in New York to the civil society representatives, victims' associations and members of academia both in the former Yugoslavia and around the world; and, significantly, from the members of the Security Council, who in 1993 had the courage to take the initiative — indeed, the risk — of setting up the Tribunal, to those State representatives here today, and all those who have sat on this esteemed Council in between, it is thanks to your guidance and assistance throughout, your extension of Judges' mandates and ensuring the adequate provision of resources, that we have been able to carry out our work and get the job done. To all of those stakeholders and supporters, it is only befitting that I convey our sincerest gratitude on behalf of the Tribunal.

In relation to the Tribunal's final biennium, I wish to personally acknowledge Ambassador Rosselli Frieri of Uruguay for being an eloquent and leading voice in the Security Council in the fight against impunity; Ambassador Cardi, who on behalf of Italy vigorously upheld and advanced the rule of law during his term

on the Council; Mr. Miguel de Serpa Soares and Mr. Stephen Mathias, our formidable legal support team in the Secretariat; and to Ambassador Van Oosterom. The Kingdom of the Netherlands could not be in better hands as he prepares to assume his term in the Security Council. We trust that he will continue to advance the agenda of international peace and justice, which is his country's trademark. Of course, I am personally indebted to many more, including — and certainly not least — the Tribunal's Prosecutor, Mr. Serge Brammertz, and the Tribunal's Registrar, Mr. John Hocking.

As to my own, personal reflections, I would like first of all to say that, while serving as the Tribunal's last President has been a tremendous honour, ensuring that the ICTY closes in a timely and dignified manner has been an extremely heavy responsibility to shoulder. It has required extraordinary effort to balance and absorb pressures from both within and outside the Tribunal. There has never been any question of failure, because if the Tribunal had failed, through us the whole international community would also have failed. I believe that we have been successful, and I want to stress that success cannot only be measured in terms of numbers of judgments delivered or cases concluded, but must also mean acting professionally and honourably, and being proud of what we do every day. I take great pride in closing down an institution of the calibre of the ICTY and in having kept my word to the Council that we would close by the end of this year.

Secondly, the achievements of the ICTY do not begin and end in The Hague. The completion of our work, and of our restricted mandate as a court of law, does not mean that the job is done. It is with a heavy heart that I leave the Tribunal, deeply troubled by the huge numbers of crimes yet to be prosecuted before domestic courts in the former Yugoslavia and by the thousands of victims who continue to cry for justice. While it is commendable to see that many cases have been adjudicated through special war crimes courts and that specialized war crimes prosecutors continue to investigate and bring charges against perpetrators, much more needs to be done. In that respect, I urge the United Nations to continue to assist and support the relevant institutions and actors on the ground.

Further, the rise of revisionism and nationalism throughout the region cannot be ignored. The international community must not delude itself — the absence of war does not mean peace, particularly in Bosnia and Herzegovina, where political conflict and

unrest continue to reign. I therefore urge the international community to assure those of all ethnicities throughout the region that they will not be abandoned after the Tribunal's closure, and to keep to that promise.

Thirdly, ending impunity for mass crimes is not the preserve of any one institution; it is a common goal and aspiration that ties us all together in our shared quest for justice, peace and stability. We at the Tribunal have made our contribution, and indeed the Tribunal has spurred on the creation of other courts and tribunals. However, the international community must take steps to ensure that the contributions of these institutions are not undermined, or even reversed, by a lack of political support, and that their legacies are preserved. The ICTY is fortunate to end with a strong successor institution in place — namely, the International Residual Mechanism for Criminal Tribunals — and I know we can count on the Residual Mechanism, under the leadership of my renowned colleague, Professor Theodor Meron, to carry the Tribunal's legacy forward.

Fourthly, I want to reflect on the people who have breathed life into the ICTY — the precious staff, principals and judges of the Tribunal who have been entrusted to carry out its mission. Not only has working with dedicated, talented individuals from around the world been the professional experience of a lifetime; it has also been deeply enriching and rewarding on a personal level. I only wish that each Council member could work with people as motivated and committed to the cause of justice as I have over my 16 years as an ICTY Judge. At the end of this month, there will not be a single staff member left, yet together with the judges, they have made it possible for the Tribunal to enrich international humanitarian law and to constitute a beacon of hope in the fight against impunity. I have faith that, wherever their journeys take them, they will continue to contribute to what is right and just. On behalf of the entire ICTY, I express my heartfelt gratitude to all staff, judges and principals for their outstanding service to the Tribunal and to international criminal justice. It would be remiss of me not to also mention and thank all of the defence counsel and members of defence teams who throughout the years have always been considered a crucial part of the Tribunal.

I also take this opportunity to congratulate and convey my best wishes to Japan for its term as President of the Security Council for the remainder of the year. I also wish to thank all outgoing members of the Security Council and, since I will not be at the Secretariat when

it happens, to greet the incoming members who will start their terms in January.

A great statesman and diplomat once said that “justice will not be served until those who are unaffected are as outraged as those who are”. The setting-up of our Tribunal was a powerful signal that the international community would not stand idly by and watch while barbaric acts were being perpetrated far away in the former Yugoslavia. The Members of the Organization decided that heinous crimes such as rape, torture, ethnic cleansing and the wanton killing of civilians affect each and every one of us simply because they imperil the great principles of civilization, as protected by the rule of law and enshrined in internationally recognized standards of human rights and humanitarian law.

In closing, I cannot help but wonder what Nino Cassese or the ever-so-brilliant Cherif Bassiouni would say on this occasion. I can only hope that we at the Tribunal have made them proud and contributed to alleviating the anguish and sorrow of those who suffered during the conflicts of the 1990s. As the international community now looks on while mass crimes continue to take place, even as I speak, and geopolitical roadblocks impede any kind of comprehensive justice solutions, we must not forget the political courage that sparked the ICTY’s existence, the Tribunal’s long trajectory and the need to stay the course.

The President: I thank Judge Agius for his briefing.

I now give the floor to Judge Meron.

Judge Meron: It is my privilege to brief the Council once again on the progress of the work of the International Residual Mechanism for Criminal Tribunals over the past six months, and to do so under the presidency of Japan, a steadfast proponent of international justice. I would also like to express my appreciation to Egypt, Italy, Ukraine, Uruguay and Senegal — the other outgoing members of the Security Council — whose support for the Mechanism and for international justice during their terms has been tremendously important.

In this respect, I wish to acknowledge in particular Ambassador Elbio Rosselli Frieri of Uruguay for his excellent leadership of the Council’s Informal Working Group on International Tribunals over the past two years, and to thank all the members of the Group for their support for the work and effective operation of the Mechanism. Likewise, I again express my appreciation

for the guidance of the Office of Legal Affairs on a number of complex and sensitive issues, under the leadership of the Under Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Miguel de Serpa Soares, and the Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias. It is also an honour to appear here today together with my colleagues and friends, President Agius and Prosecutor Brammertz, for their final reports to the Council delivered on behalf of the International Tribunal for the Former Yugoslavia.

Today, we mark a truly extraordinary milestone in international justice. Just under 25 years ago today, the Council embarked upon a bold experiment — the creation of an international criminal tribunal to try cases involving some of the worst crimes the world has ever seen. At the time of the Tribunal’s founding, many observers and even, perhaps, some members of the Council had doubts as to what this new court could or would achieve — whether there would be arrests; whether there would be trials and whether the court that had been created on paper could become a viable institution, translating into practice what was, at the time, still a new and somewhat radical ideal: ensuring individual accountability for international crimes.

As we all know today, the ICTY has more than put to rest those doubts, instead meeting and, indeed, surpassing its most optimistic supporters’ aspirations. In the hundreds upon hundreds of judicial decisions and judgments issued over the past quarter-century, the ICTY has clarified and strengthened the fundamental principles of international humanitarian and human rights law, and led to a resurgence of attention to customary international law. In case after case, the Tribunal has made plain that even the most complex of trials can and must be conducted in full accordance with the panoply of due process guarantees, setting the standard that all other trials for serious violations of international law must meet. Moreover, through its practices and procedures, which reflect a singular harmonization of different legal traditions into a coherent whole, the Tribunal has set valuable precedents for other courts around the world.

It is not too much to say that, today, we stand in a world transformed by all that the Tribunal, together with the rising tide of other international courts and national accountability initiatives founded since 1993, has accomplished. Thanks to the brave experiment upon which the Council embarked in 1993, and thanks to all that the ICTY has achieved and made possible since

that time, the principles of justice and international law proclaimed in the Charter of the United Nations are all the stronger, the voices of victims of gross violations of international law are better heard and accountability for grave crimes is increasingly the expectation rather than the exception.

The ICTY's legacy is a proud one. As a former four-term President and long-serving Judge of the ICTY myself, I am particularly honoured to act, together with my colleagues at the Mechanism, as a guardian of that legacy as we carry out and bring to their conclusion the essential residual functions of both the ICTY and its sister tribunal, the International Criminal Tribunal for Rwanda (ICTR).

It is proper, indeed, that the focus of this meeting today should be on the ICTY, its achievements and the lessons to be learned from its work. I will therefore keep my remaining remarks brief and touch on only a few of the matters discussed more extensively in my written report, submitted to the Council on 17 November (S/2017/971, annex).

The Mechanism, as the members of the Council are aware, is in a period of heightened judicial activity at present, with two major ongoing appeals in the cases of *Prosecutor v. Radovan Karadžić* and *Prosecutor v. Vojislav Šešelj*, the continuing retrial that commenced last June in the *Prosecutor v. Jovica Stanišić and Franko Simatović* case, and a host of additional ad hoc judicial matters addressing everything from requests for review of judgments to applications for access to confidential information.

I am pleased to report that a hearing of the Prosecutor's appeal in the case of *Prosecutor v. Vojislav Šešelj* will be held next week in The Hague, on 13 December, and a judgment in that case is expected in the first part of 2018. An appeal hearing in the case of *Prosecutor v. Radovan Karadžić* is expected by the end of the second quarter of 2018, with a judgment expected in that case by late 2019. The advanced stage of appellate proceedings in both of those cases reflects the efficient working methods followed in the Mechanism's Chambers. I would also recall that any appeal that is filed from the ICTY's recent trial judgment, delivered a fortnight ago against Ratko Mladić, would today come within the jurisdiction of the Mechanism.

As members of the Council may recall, the Mechanism's Appeals Chamber granted a request for review in the *Ngirabatware* case last June, and

following considerable interim litigation a hearing on that matter has been scheduled for 8 to 16 February 2018 in Arusha, although a pending motion for the withdrawal of Mr. Ngirabatware's counsel may impact that hearing schedule. The hearing in that case is expected to mark the first judicial proceedings to be conducted in the courtroom at the Mechanism's new premises in Arusha, representing another important milestone for the Mechanism.

In the meantime, the Judges of the Mechanism continue to adjudicate a range of requests addressing everything from allegations of contempt to the variation of protective measures. In that context, I note President Agius's order issued last week, which provided for the transfer of the ICTY's remaining contempt case to the Mechanism. That matter has already been assigned by the President of the Mechanism to a single Judge of the Mechanism.

The Mechanism continues to make excellent progress in other areas as well, serving as a new, effective and efficient model of an international court as it carries out its myriad duties, from preparing to take on essential administrative and other key functions that have been carried out by the ICTY to date, to actively assisting the Tribunal in its disposition of records and transfer of materials to the archives, and from further developing its legal and regulatory framework, to carrying out a range of responsibilities in relation to the provision of assistance to national jurisdictions.

The supervision of the enforcement of sentences imposed by the ICTR, the ICTY and the Mechanism is one of the crucial residual functions that the Council has entrusted to us. In previous meetings, I have kept the Council apprised of an ongoing engagement between the Mechanism and the Government of Senegal concerning the possible enforcement of sentences in that State. It is therefore a great privilege for me to announce that we are expecting four prisoners to be transferred from the United Nations Detention Facility in Arusha to the custody of the authorities of Senegal this very day. That step almost halves the population of prisoners remaining in Arusha awaiting transfer. I very much wish to acknowledge in that regard the particular commitment of the Permanent Representative of Senegal, His Excellency Mr. Fodé Seck, to achieving that outcome, which further confirms the extraordinary leadership role that Senegal has played and will continue to play in the field of international criminal justice.

Alongside that impressive development, negotiations with several Member States are now at an advanced stage concerning the enforcement of the sentences of the remaining six prisoners at the United Nations Detention Facility in Arusha. I believe and expect that, within the coming year, all prisoners at the United Nations Detention Facility in Arusha will have been transferred to enforcement States, which would represent a major step towards completion of our mandate in that area.

More broadly, I must once more express my gratitude for the invaluable support the Mechanism receives from States Members of the United Nations. Just as the extraordinary achievements of the ICTY would not have been possible without the cooperation and assistance of Member States over the past quarter-century, so too does the timely and efficient fulfilment of the Mechanism's mandate depend upon the ongoing support given by the Council, its members and the international community and on the commitment of all concerned to preserving the invaluable legacies of both the ICTY and the ICTR.

For that ongoing commitment and for the sustained and sustaining support that the members of the Council continue to provide, I thank everyone present.

The President: I thank President Meron for his briefing.

I now give the floor to Mr. Brammertz.

Mr. Brammertz: I thank you, Mr. President, for this opportunity to once again address the Security Council on the International Tribunal for the Former Yugoslavia (ICTY) and the activities of the Mechanism for International Criminal Tribunals in Arusha and The Hague. I would like to briefly report to the Council first about Mechanism activities, and then turn to the final report of the ICTY Office of the Prosecutor (S/2017/1001, annex II).

But let me first take this opportunity to welcome Her Excellency Ms. Kolinda Grabar-Kitarović, President of the Republic of Croatia, and Her Excellency Ms. Nela Kuburović, Minister of Justice of the Republic of Serbia. We thank them for being with us, and we are honoured by their presence.

The Mechanism's Office of the Prosecutor continues to focus on expeditiously completing the limited number of trials and appeals transferred from the ICTY. During the reporting period, my Office

commenced the presentation of its evidence in the Stanišić and Simatović case. In order to reduce the length of this trial, last week we filed a motion to increase the number of trial days and hours per week. My Office also continued its work on the two pending appeal cases. We will present our oral appeal arguments in the *Šešelj* case next week.

Locating and arresting the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR) remains our second priority. During the reporting period, my Office continued its efforts to reform and strengthen our fugitive-tracking activities. We completed the restructuring of our Fugitives and Investigations Unit, and a new tracking team leader has been appointed. Our activities at present are focused on pursuing a number of new leads, while we are also reviewing and following up leads that had been generated in the past but not processed.

Finally, we continue to provide assistance to national jurisdictions investigating and prosecuting war crimes, crimes against humanity and genocide committed in Rwanda and the former Yugoslavia. In relation to the crimes committed in Rwanda, my Office is focused on improving access to our evidence collection. In addition to making more of our evidence available to national judiciaries, we are working with our Rwandan partners to establish more direct lines of communication to expedite mutual legal assistance.

In relation to the former Yugoslavia, my Office focused its activities on ensuring continuity following the closure of the ICTY. During my missions to Belgrade and Sarajevo last month, national war crimes prosecutors expressed their commitment to continuing and strengthening cooperation with my Office in future. They further requested that we provide greater support for their efforts to achieve their national war crimes strategic goals. My Office will also continue working with our national colleagues to improve regional judicial cooperation, as there are currently many deficiencies in that respect.

The ICTY will close its doors at the end of this month. For twenty-four years, my Office has endeavoured to fulfil the mandate that the Council entrusted to us: to bring to justice those most responsible for the horrific violations of international humanitarian law committed in the territory of the former Yugoslavia. We will leave a rich and complex legacy. Thanks to the Council, so

many victims and survivors received some measure of justice for the immense wrongs they suffered.

My last report reviews the Office of the Prosecutor's work in implementing the completion strategy in more detail. We identify not only our successes and lessons learned, but also areas where results did not meet the victims' expectations. We believe that our results are credible, and we hope that the Council will judge our efforts to be important contributions to the maintenance of international peace and security.

I would like to highlight today three of those lessons.

My Office considers that the completion strategy represented a successful exercise of the Council's executive authority. By combining the policy direction to focus on those most responsible for the crimes with a deadline for the filing of new indictments, the Council promoted effective and expeditious activity by my Office. For example, the so-called mega-trials that my Office undertook in the implementation of the completion strategy clearly realized significant efficiency gains while also achieving meaningful justice. The completion strategy further ensured appropriate accountability while safeguarding our prosecutorial independence in individual cases.

In turn, the completion strategy's legitimacy was further strengthened because it foresaw the transition of our responsibilities to national justice sectors. The Council decided that the Tribunal would close not because our work was done, but because it was convinced that further justice could be achieved by domestic judiciaries, in accordance with international obligations. This was critical because the investigations conducted by my Office identified hundreds of suspects, only a small number of whom we would prosecute as bearing the greatest responsibility. The presumption that national courts would continue the accountability process addressed concerns that the end of the Tribunal's work would lead to impunity.

While the ICTY initially followed the path of primacy, under the impetus of the completion strategy and as directed by the Council, my Office pursued the development of an effective system of complementarity and partnership with national judiciaries. The crucial lesson is that in future, where possible there should be an integrated approach that embraces both international and national justice mechanisms.

Finally, in relation to cooperation, as my Office regularly reported to the Council, the countries of the former Yugoslavia often failed to adhere to their international obligations, particularly in terms of the arrest of fugitives and access to documents. Yet we succeeded in accounting for all fugitives, at a time when the non-arrest of fugitives is a major challenge for international justice. This was possible only because of the strong support from the Council, the United States, the United Nations and its Member States. While a number of factors played a role, ultimately one measure was of decisive impact: the conditionality policies applied by the European Union, the United States and other States Members of the United Nations.

Our results show that if there is a clear political agenda in favour of accountability, and if the international community speaks with one voice, those most responsible for serious violations of international humanitarian law can be held accountable for their crimes.

It has been said that the Tribunal has not achieved reconciliation in the former Yugoslavia. It is hard to disagree. As we have seen over the past two weeks, the crimes have left wounds that still have not healed. Convicted war criminals continue to be seen by many as heroes, while victims and survivors are ignored and dismissed. Difficult facts continue to meet outright denial or rebuttals pointing to the crimes of others.

So the question is why reconciliation remains a significant challenge today. The reality is that there is still no true will within the region to accept the immense wrongdoings of the past and move forward, sadly, most of all among the political leadership. Unfortunately, too many listen to war criminals who hide behind claims of collective responsibility. War criminals insist that it is not they who are on trial, but their people. They insist that if they are judged to be guilty, then so is their entire community. In contrast, we have always insisted on the principle of individual criminal responsibility. The fact is that the crimes were not committed by nations or peoples but by individuals, and most of all by senior political and military leaders.

So let me be crystal-clear on this point once again: no community bears responsibility for what these men did. The guilt is theirs and theirs alone. Justice should relieve a society of the weight of collective responsibility, paving the way for acceptance and

understanding. That is why although justice alone will not achieve reconciliation, it is an essential condition.

It is clear that much more remains to be done. Many victims, from all communities, are still waiting for justice. The countries of the region need support as much as ever before. They will not be able to achieve justice and reconciliation alone. Partners can help mediate so that progress can be achieved on a shared agreement on the recent past. For our national colleagues to succeed, they will need the same support that my Office has always received from the Council, the United Nations and its Member States.

It has been a privilege to serve as Chief Prosecutor of the for the past 10 years. I thank the Council for having provided the support needed to secure the arrests of all fugitives and to bring the Tribunal's final cases to a successful conclusion. As Chief Prosecutor of the Mechanism, I am committed to continuing the implementation of the completion strategy and assisting the countries of the former Yugoslavia to move forward. Our national counterparts now have the primary responsibility of achieving greater justice, while our more limited role is in support of their efforts. That support comes through providing them with access to our evidence, sharing our expertise, passing along lessons learned and promoting accountability and the search for missing persons. We are grateful for the continued support of the Council.

The President: I thank Mr. Brammertz for his briefing.

I shall now give the floor to the members of the Security Council.

Mr. Rosselli Frieri (Uruguay) (*spoke in Spanish*): First and foremost, on behalf of my delegation and on my own behalf, I would like to congratulate you, Mr. President, and your delegation on your assumption of the presidency of the Security Council for the month of December, which is our last month as a non-permanent member of the Council. I would also like to thank and congratulate Ambassador Cardi and the entire Italian delegation for the excellent work that they carried out during the month of November.

I would like to welcome the presence in the Chamber of Her Excellency Ms. Kolinda Grabar-Kitarović, President of Croatia, as well as of Ms. Nela Kuburović, Minister of Justice of Serbia.

For me, it is a pleasure to welcome people with whom we have been working over the past two years, namely, President of the International Tribunal for the Former Yugoslavia, Judge Carmel Agius, President of the International Residual Mechanism, Judge Theodor Meron, as well as Prosecutor Serge Brammertz. I am also grateful for the presentations of the briefers, which, as usual, reflect the high quality of the work carried out by both institutions.

With regard to the International Tribunal for the Former Yugoslavia, it is the last report see (S/2017/662) prior to its closure. We believe that the Tribunal is concluding its work in a very positive way. During its 24 years of operation, it has managed to judge a total of 161 people and leave no fugitives behind. Since its previous report (see S/2017/436), the Tribunal carried out its judicial activities as planned and announced, without delay, having issued its past two verdicts a couple of days ago. Regrettably, a solution could not be reached in relation to the arrest warrants of those accused of contempt of court, namely, Petar Jojić, Jovo Ostojić and Vjerica Radeta, who are today reduced to just two following the death of the accused Jovo Ostojić in June.

The Tribunal has continued to move forward with its liquidation activities and in the transfer of activities to the International Residual Mechanism. In its latest report (see S/2017/661), the Mechanism states that it is in a position to assume the remaining functions of the International Tribunal for the Former Yugoslavia at the end of the year and operate with full autonomy for the first time since its establishment by the Security Council in 2010. That should undoubtedly be a source of satisfaction.

We also note that the search and prosecution of the eight people accused by the International Criminal Tribunal for Rwanda who remain fugitives continues to one of the major priorities of the International Residual Mechanism. The measures adopted by the Office of the Prosecutor reflect the efforts made to achieve that goal.

It is worth recalling that cooperation is still essential for the Residual Mechanism to be able to continue to comply with the mandate that has been conferred upon it by the Security Council. Now that we are approaching the closure of the International Tribunal for the Former Yugoslavia, we appeal to the Security Council and Member States to continue with and even

strengthen their cooperation with the International Residual Mechanism.

Today's meeting has a special significance, as it marks the closure of the International Tribunal for the Former Yugoslavia, and with it the end of an important stage in our contemporary history. I would like to make some personal comments on the Tribunal, which embodied an ideal and a model of fighting for justice for almost quarter of a century.

The Tribunal imparted international justice for 24 years, bringing to court those responsible for having committed crimes against humanity, war crimes and crimes of genocide. That allowed the victims of such atrocious crimes to be remembered, giving them their due, necessary and deserved justice, which is a symbol and reflection of the end of impunity.

The International Tribunal for the Former Yugoslavia strengthened the rule of law, contributed to the development of international law and was a pioneer in new areas, such as international humanitarian law. It defined armed conflict, contributed to the development of the definition of the crime of genocide, as well as other international crimes, and established important jurisprudence in matters of sexual crimes and crimes against cultural heritage. The Tribunal demonstrated that sexual violence was used as a weapon of war and that hundreds of religious and cultural sites were destroyed in order to eliminate the culture of certain ethnic groups. The Tribunal also contributed to the development of the concept of command responsibility, which is fundamental to fair accountability in the cases in which it passed judgements.

The Tribunal was unequivocal in seeing that justice would reach everyone equally, regardless of status as Head of State or Government or level as senior official, which was never a reason for being exempt from criminal liability or reducing a punishment.

By clarifying facts of the past and establishing historical truth, the Tribunal contributed to the reconciliation of the affected peoples and conveyed the message that there can be neither justice without truth nor peace without justice.

For those reasons, and fundamentally because of the respect and homage that we owe to the victims, the legacy of the International Tribunal for the Former Yugoslavia must remain alive. The Security Council successfully created the Tribunal in 1993. Today, as it

approaches its closure, the Council should expressly acknowledge the historic work that the Tribunal carried out for almost a quarter of a century, as well as its undeniable contribution to international law and justice. We believe that such recognition deserves to be reflected in at least a presidential statement of the Security Council.

Uruguay had the privilege of chairing the Informal Working Group on International Tribunals over the past two years. We are approaching the end of that work with the conviction that it is such institutions that inspire us to trust in the triumph of the rule of law and international criminal justice. The officials present here today deserve the greatest respect and gratitude. We thank them and their closest colleagues for the sincere, constructive and close relationship with which they have honored us during the past two years. Our thanks are also directed to the women and men who, through their work over the past 24 years, contributed to the success of the work of the International Tribunal for the Former Yugoslavia.

We would also like to express our thanks for the continued support of the Office of Legal Affairs and the Secretariat for our work as Chair of the Informal Working Group on International Criminal Tribunals. In particular, allow us to convey our thanks to the Under-Secretary-General for Legal Affairs, Mr. Miguel de Serpa Soares, the Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias, Ms. Ana Peyró, Mr. Tiyanjana Mphepo, Mr. Hirofumi Goto of the Secretariat, as well as all of the other staff of both Offices.

In conclusion, I wish Peru every success through its Permanent Representative, Ambassador Meza-Cuadra, who will take over our role as chair of the Informal Working Group.

Mr. Lambertini (Italy): At the outset, I should like, on behalf of Ambassador Cardi and the entire Italian delegation as well as in my personal capacity, to thank you, Sir, for your kind words regarding our month presiding over the Council. We thank the Japanese delegation and all other Council members for their help, assistance and professionalism in assuring the results of our presidency. Of course, I wish all the best to the Japanese presidency and to you, Sir, personally during this month — your last month, as ours, on the Security Council.

Ambassador Cardi regrets that he cannot be here because he is following very closely the possible election of an Italian candidate to International Criminal Court; the elections are taking place now. I want to stress this as further proof of the importance my country attaches to international justice and accountability and all that we are discussing in general in the present meeting.

Italy welcomes the presence here today among us of Ms. Kolinda Grabar-Kitarović, the President of Croatia, and Ms. Nela Kuburović, Minister for Justice of Serbia. And last but not least, I would like to thank the Presidents of the International Tribunal for the Former Yugoslavia (ICTY), Judge Carmel Agius, and of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, as well as Prosecutor Serge Brammertz, for the reports of the two organs and for their briefings.

As far as the ICTY is concerned, we welcome the successful completion of 24 years of work and the enormous efforts that were made to ensure completion by the end of 2017, as requested. We highly commend the President and the entire staff of ICTY for this final push in their work. We also take this occasion to recognize and express our gratitude for the invaluable work of all those who contributed to nearly 25 years of activity of the Tribunal. The ICTY through its seminal and rich case law has made an enormous contribution to the very creation of international criminal law and international criminal justice.

As far as the Mechanism is concerned, we are pleased to see it function effectively and efficiently at a very dynamic pace and with an innovative organizational model. Under the leadership of President Meron, the Mechanism is discharging a broad range of residual yet crucial functions, including trial, appeal and review proceedings, as well as those for contempt.

We are confident that the search for the fugitives related to the Rwandan cases and the handling all prosecutions and other proceedings regarding both the International Criminal Tribunal for Rwanda and the ICTY are in safe hands. It is up to States to continue to provide the required support, and, as far as Italy is concerned, even if our term on the Council is coming to an end, we remain ready to support the Mechanism in all aspects of its ongoing work and encourage other States to do likewise. As Italy has mentioned on previous occasions, we have a collective responsibility to keep building on the legacy of the two ad hoc Tribunals,

working with the Residual Mechanism as well as other international criminal courts and tribunals, including the International Criminal Court, which is also part of this legacy.

Clearly the primary responsibility to ensure that justice is done for war crimes, crimes against humanity and genocide rests with States. It is up to domestic authorities to prevent, stop and punish international crimes. And while the international community must be ready to provide all the necessary assistance, it should also be ready to step in when domestic jurisdictions are unable or unwilling to do justice in accordance with international standards.

Lack of cooperation has often been an issue of concern at the ICTY and Residual mechanism. True commitment to the fight against impunity, justice and the rule of law requires full cooperation and the adoption of appropriate measures at the national level. The fight against impunity does not finish with the closing of the ad hoc tribunals; it will continue through the work that will be undertaken by domestic authorities as well as regional and international bodies on not only the judicial but also the diplomatic and political levels.

Finally, I should like to reaffirm another leitmotiv of our presence in the Council. The Security Council, which has been at the origin of the establishment of the age of accountability for international crimes, should assume full ownership of the work done by the ad hoc Tribunals and, together with the Secretariat, continue to promote justice and accountability as integral parts of the broader United Nations prevention strategy. One way to do more would be to have a stronger and broader collective engagement on accountability issues.

Ambassador Rosselli Frieri of Uruguay, together with his team, have done and are doing an excellent job in steering the work of the Informal Working Group on International Tribunals, for which I commend him personally. We also support the proposal that the Council mark in a significant way the closing of ICTY. Italy, as Council members know, would like to see the subject matter of the Informal Working Group expanded because we think it would be a good idea to enable Council members to deepen their common understanding and increase their exchanges on these issues.

It is a fact that atrocity crimes continue to be committed and, even if the Council is at times unable to reach agreement on a reaction when facing such

crimes, it should at least equip itself with instruments to consider situations from the angle of accountability and make extra efforts to try to be united in the fight against impunity: we owe this to the thousands of victims of international crimes.

Mr. Aboulatta (Egypt) (*spoke in Arabic*): At the outset, I should like to extend our thanks to Presidents Meron and Agius and Prosecutor Brammertz for their valuable briefings. I would like to extend them a special greeting given that this will be our last meeting during Egypt's membership in the Security Council, which will end in a few weeks.

We have carefully considered the content of the two reports before us today, which contain comprehensive information on the activities of the Tribunals. I would like to express our full appreciation for the efforts made by those working in the International Tribunal for the Former Yugoslavia (ICTY), under the presidency of Judge Agius, to complete the mandate within the deadline.

We commend the close cooperation between the International Residual Mechanism for Criminal Tribunals and the ICTY to ensure the smooth transition of the jurisdiction from ICTY to the Residual Mechanism. We note with satisfaction the content of the report on the activities of the Residual Mechanism, which contains information on the handover process of the archives of the ICTY, as required. We also stress the need for an optimal use of the available financial and administrative resources to facilitate the activities of the Residual Mechanism.

The establishment of the two international tribunals for the former Yugoslavia and Rwanda was irrefutable proof of the concerted effort on the part of the international community to take action against war crimes and crimes against humanity, to ensure that their perpetrators are held accountable and to strengthen the principle of ending impunity at the international level. The two tribunals played an invaluable role and have made a genuine effort to carry out these tasks as swiftly as possible. In this regard, we believe that it is important to thoroughly study and document the work of these two tribunals to draw lessons learned, highlight strengths and identify any shortcomings in order to build on the experience gleaned from these two tribunals if necessary in the future. It is also important to work on documenting and preserving the legacy of

the two tribunals, which will undoubtedly strengthen international legal jurisprudence.

In conclusion, international criminal tribunals are an important tool for the international community to ensure justice and to punish those responsible for grave violations of international humanitarian law.

It is therefore important to strive to maintain the independence and impartiality of the international criminal justice system and to provide conditions favourable to the work of international criminal tribunals. We must also make the best use of these tribunals so that they can achieve their noble mission, in accordance with the requirements of justice and commitment to international law. We must avoid any attempt to politicize this important judicial tool, as this would undermine the credibility of and our trust in the international criminal justice system.

Mr. Tumysh (Kazakhstan): We commend the Japanese presidency for its choice of very timely and critical issues for consideration on this month's agenda, including today's important debate, which we believe will result in greater awareness and action. We welcome and congratulate you on your stewardship, Mr. President, and cordially wish you and your country a very fruitful presidency.

We also extend a warm welcome to Her Excellency Ms. Kolinda Grabar-Kitarović, President of the Republic of Croatia, and Her Excellency Ms. Nela Kuburović, Minister for Justice of the Republic of Serbia. My delegation expresses its appreciation to President Agius, President Meron and Prosecutor Brammertz for their important briefings.

Kazakhstan notes with satisfaction the progress achieved over the past six months in the work of the International Tribunal for the Former Yugoslavia, especially in effectively implementing the strategy to close the Tribunal towards the end of 2017 despite serious challenges posed by staff attrition. We highly appreciate the stewardship of President Agius in ensuring the proper functioning of the Tribunal under very difficult circumstances. All pending tasks have been completed on time, notwithstanding the challenges and setbacks encountered. It is commendable that efforts have also been made to assist the victims of some of the most inhumane crimes and that due justice will be served.

We acknowledge the measures taken by the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals to locate and arrest fugitives and, at the same time, to reform and strengthen its fugitive-tracking activities. Despite its limited resources, the fact that the Mechanism has endeavoured to build the capacities of national judiciary systems to prosecute war crimes — particularly its focus on the Great Lakes region and East Africa, where important training will be held in Kampala in mid-2018 — is praiseworthy.

Kazakhstan appreciates the commitment of the Tribunal and the Mechanism to ensuring the administration of international justice. We see the value of the significant role played by international judicial and quasi-judicial bodies in preserving our faith in international law and the inevitability of punishing the perpetrators of serious crimes. My delegation commends the respect for and strict adherence to the important principles of objectivity, independence and impartiality. The experience and legacy of the Tribunal must be considered seriously, while taking into account the work that the other tribunals need to accomplish in order to fulfil their primary task of bringing all perpetrators to justice in an accountable manner.

To conclude, I would like to thank the Permanent Mission of Uruguay, ably led by Ambassador Elbio Rosselli Frieri, for his tireless efforts as Chair of the Informal Working Group on International Tribunals, and we cordially wish his successor, Ambassador Gustavo Meza-Cuadra, Permanent Representative of Peru, every success.

Mr. Li Yongsheng (China) (*spoke in Chinese*): China thanks President Agius, President Meron and Prosecutor Brammertz for their briefings on the work of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals.

The International Tribunal's ended its judicial activities on 29 November and will be formally closed on 31 December. China welcomes the efforts of President Agius in fulfilling his commitments and commends the contributions made by successive judges, prosecutors and staff of the International Tribunal.

Over the past six months, the Mechanism has pursued its judicial activities, issuing 211 decisions and orders and advancing case-related work in an orderly manner. China has taken note of the efforts made by

the Mechanism to streamline its internal processes. We hope that the Mechanism will assume the remaining functions of the ICTY in a smooth manner and expect that it will learn from the Tribunal's past experiences and lessons learned, and continue to increase efficiency and cut costs in order to meet the request of the Security Council that the Mechanism be small, temporary and efficient.

Since its establishment by the Security Council in 1993, the ICTY has carried out judicial activities and upheld justice by punishing over 160 criminals for serious international crimes, although it has not been able to implement its completion strategy on time. The judicial practices of the ICTY have enriched and developed international criminal law, while its experiences and lessons learned have served as references to other international judicial organs established afterwards. China has consistently supported the rule of law at the international level and the work of the ICTY and the Residual Mechanism. China will continue to support the work of the Mechanism.

Finally, I would like to take this opportunity to thank Uruguay, in its capacity as Chair of the Informal Working Group on International Tribunals, and the Office of Legal Affairs for their work.

Mr. Llorentty Solíz (Plurinational State of Bolivia) (*spoke in Spanish*): Bolivia congratulates you, Sir, and the delegation of Japan on assuming the presidency of the Council for the month of December. I also commend Italy and Ambassador Cardi and his entire team for having led the Council's work in an exemplary manner throughout November.

Bolivia welcomes the presence of Her Excellency Ms. Kolinda Grabar-Kitarović, President of Croatia, and Her Excellency Ms. Nela Kuburović, Minister for Justice of Serbia, in the Chamber today.

We are grateful not only for the reports but also for the hard work of the President of the International Tribunal for the Former Yugoslavia, Judge Carmel Agius; the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron; and the Prosecutor of the International Tribunal and the Mechanism, Mr. Serge Brammertz.

Bolivia wishes to express its highest appreciation for the work of Ambassador Roselli Frieri of Uruguay in his active and diligent chairmanship of the Informal Working Group on International Tribunals over the past

two years. We also take this opportunity to join the Uruguayan initiative to draft a presidential statement on the closing of the International Tribunal for the Former Yugoslavia. Bolivia also appreciates the work of the Office of Legal Affairs, particularly for its assistance and cooperation on this matter.

The work carried out by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda over the past 24 years has contributed significantly to the fight against impunity. They have played a vital role in the quest for justice and restoration of the rule of law. This being the last report, and with less than a month before the culmination of this enormous task and the closing of the International Tribunal for the Former Yugoslavia, it is up to the Council to provide the support necessary for the International Residual Mechanism for Criminal Tribunals to conclude the remaining processes transferred to its jurisdiction in a timely and efficient manner. We are certain that the Mechanism in carrying out its mandate set out in resolution 1966 (2010) of 22 December 2010 will also assume an important role in strengthening and complementing the work of national jurisdictions.

We emphasize that the effective implementation of the completion strategy proposed by the International Tribunal for the Former Yugoslavia has made it possible for that high-level court's work to finally be concluded within the established time frame. Similarly, it is our opinion that, in its composition, the final annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (see S/2017/662), which is before us today, discusses the cross-cutting compilation of good practices and lessons learned during the years of the Tribunal's work. That valuable contribution will serve as a compulsory reference for the work of other tribunals in the administration of justice not only within international forums, but also with regard to domestic jurisdiction. We also appreciate the outstanding and committed work of the Tribunal's staff and team during the effective period of its mandate, as well as its follow-up during the final stage, which resulted in the handing down of sentences in its two pending significant cases.

Moreover, we underscore and marvel at the work of promoting and preserving collective memory, which the Tribunal has developed through what has been termed "legacy dialogues" in the areas of academic training, public information and digital

communication platforms. We believe that publicizing the achievements and challenges that the Tribunal has faced in implementing its mandate bear important witness to the work carried out to strengthen the right to truth, justice, reparations, the preservation of memory, reconciliation and guarantees of non-repetition, and serve as a reminder that dialogue and mediation are the only means of resolving conflicts so that situations such as those that occurred in the former Yugoslavia are never repeated.

Lastly, the International Tribunal for the Former Yugoslavia has completed not only its work, but also its historic mission. As the Prosecutor of the International Residual Mechanism for Criminal Tribunals said so well earlier, the last remaining task involves reconciliation for which we are lacking clear political leadership and which would allow us to close this final chapter.

Ms. Sison (United States of America): Today is an especially momentous occasion as we reflect upon the most recent report (see S/2017/662) and, more importantly, the closing of the International Tribunal for the Former Yugoslavia (ICTY) at the end of the month. The United States thanks Judge Meron, President of the International Residual Mechanism for Criminal Tribunals; President Judge Agius, President of the International Tribunal for the Former Yugoslavia; Mr. Brammertz, Prosecutor of the International Residual Mechanism for Criminal Tribunals; and indeed all those who have served at the ICTY, or supported it through their work in Government, non-governmental organizations or United Nations institutions over the past 23 years. In addition, we express our special gratitude and respect for the many victims who participated in proceedings and kept faith in the international community's commitment to justice.

The ICTY was the first international tribunal since those established in Nuremberg and Tokyo to investigate and prosecute allegations of war crimes, crimes against humanity and genocide. As the vanguard of modern international justice, it established key precedents in international criminal law, thereby setting the stage for and guiding the work of subsequent tribunals established to investigate and prosecute atrocities in Rwanda, Sierra Leone, Cambodia and elsewhere. Through its work, the ICTY has created a legacy of the greatest importance. It has established a factual and depoliticized record of the crimes committed during the war. We applaud the ICTY's record, which includes indicting 161 individuals and holding accountable

senior political and military leaders for their roles in crimes committed during the war in the Balkans.

We especially highlight the recent verdict in the case of *Prosecutor v. Ratko Mladić* as an important step towards holding accountable those individuals responsible for the tremendous suffering of the people of Bosnia and Herzegovina. Among other crimes, *Mladić* was found guilty of genocide in Srebrenica in 1995, crimes against humanity and persecution across the country, terrorizing the population of Sarajevo, and taking United Nations peacekeepers hostage. We hope that that decision can provide some sense of justice and closure to victims and their families.

The United States has been a steadfast supporter of the ICTY, and we encourage all States to respect its rulings. Countries cannot pick and choose on matters of justice. Our commitment to supporting justice and reconciliation in the Balkans continues as the Tribunal's remaining functions shift to the International Residual Mechanism for Criminal Tribunals. The primary focus of attention now moves to national jurisdictions, and we call on all countries in the region to reinvigorate cooperation to resolve remaining cases. However, concerning the specific issue of the two surviving individuals charged with contempt of court in relation to witness intimidation in the case of *Prosecutor v. Vojislav Šešelj*, the United States applauds the order of President Agius, transferring that case to the Residual Mechanism. We call on the Government of Serbia to cooperate with the Residual Mechanism, execute the relevant arrest warrants and underscore the Government's obligation to do so.

The United States commends the Residual Mechanism for its progress during the reporting period. We appreciate the continued focus on the expeditious completion of trials and appeals. We also note with satisfaction that, following the issuance of three audit reports during the reporting period, the Residual Mechanism has either implemented or is in the process of implementing all recommendations. We are encouraged by the priorities identified by the President and the Prosecutor, and applaud the progress made in restructuring and refocusing the fugitives and investigations unit so as to apprehend the eight remaining fugitives of the International Criminal Tribunal for Rwanda (ICTR). The United States is firmly committed to the continuing efforts to locate and arrest the eight remaining ICTR fugitives. Three of

the fugitives will be tried by the Residual Mechanism, and five other will be transferred to Rwanda.

We continue to offer a reward of up to \$5 million each for information leading to the arrest or transfer of those eight men, and stand ready to engage with the new task forces. We likewise call on all States and relevant law enforcement agencies in Europe and Africa to cooperate with efforts to apprehend those fugitives. They have escaped justice for too long. With a refocused tracking unit and the renewed cooperation of the international community and law enforcement agencies, their arrest is possible. The Residual Mechanism's efforts to increase public access to judicial records and translate international criminal trial judgments of the ICTR into Kinyarwanda, as well as the responsiveness of the Prosecutor to request assistance from national judicial authorities, are important initiatives that will ensure that the ICTR has an enduring and broad impact. Similarly, training for domestic prosecutors from East Africa conducted by the Prosecutor will contribute to building the capacity of national jurisdictions to investigate and prosecute atrocity crimes.

Although the ICTY may be closing its doors, it leaves behind a legacy of justice, a robust body of international case law and hope among victims of atrocities that perpetrators — even the most senior military and political leaders of a country — can be held accountable. It also established a truthful historical record that can both assist with regional reconciliation efforts and ensure that crimes cannot be legitimately denied. The same can be said of the Rwanda Tribunal. The pursuit of justice for conflict-related atrocities is not over. In the Balkans, there are hundreds of cases currently in the hands of national authorities in the region. In Rwanda and surrounding countries, fugitives remain at large. We call on those Governments to credibly investigate and prosecute those cases as appropriate, while cooperating with one another and the Residual Mechanism to that end.

The United States will continue its support, and congratulates the forward-looking efforts of the Residual Mechanism to play a role in those processes, including through capacity-building support. As the ICTY has shown, when we work together, we can achieve a measure of justice and accountability for the world's most horrific atrocities.

Mrs. Dickson (United Kingdom): I would like to begin by saying how pleased the United Kingdom is to see Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia, Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals, and Mr. Serge Brammertz, recently Prosecutor of the ICTY and now Prosecutor of the Residual Mechanism. We are grateful to all of them for their very thorough assessments and reports and for coming to the Security Council today to present them to us.

Today is a landmark day for both the ICTY and the Security Council. Nearly a quarter of a century ago, the Security Council formally established the ICTY by means of resolution 827 (1993). At the time the Tribunal was something new and an innovation — a body that would lead the way for others — and nobody knew how or whether it would be able to fulfil the tasks that were being assigned to it. However, during its lifetime, the Tribunal, in the face of many obstacles, has worked tirelessly to deliver justice to thousands of victims and their families.

In delivering its final report, Judge Agius has highlighted the important legacy of the Tribunal. It has worked with objectivity, professionalism and a sense of purpose to convict those most responsible for some of the most serious crimes of international concern. In doing so, it served not only to entrench the rule of law but also to develop international law, including in relation to non-international armed conflict, genocide and sexual violence. However, probably most importantly, it has demonstrated that individuals who perpetrate such heinous crimes, however powerful and however senior, cannot do so with impunity.

We commend the more than 7,000 staff members, 87 judges, 5 prosecutors and 4 registrars who have served at the Tribunal and contributed to its work for their diligence, determination and commitment over the past 24 years. We recognize that their task was not easy but, thanks to them, the Tribunal has fulfilled its mandate to hold individuals accountable for their appalling actions and to contribute to lasting peace in the region. Set up more than two decades ago, when it was nothing more than an aspiration on a piece of paper, it was never the role of the Tribunal to ensure full reconciliation in the region but it has contributed significantly to that.

Besides the judgments that it has delivered, the Tribunal has shown, through its legacy conferences, how much it has achieved beyond the courtroom. The conferences have involved hundreds of participants from the former Yugoslavia, engaging them in dialogue and forging important relationships. Participants have included victims, officials from national judiciaries, experts on transitional justice, lawyers and journalists. In that way, the Tribunal has shown how it can impact significantly in a post-conflict region to deliver on Security Council and United Nations objectives. We look forward to the final academic symposium, which will be held in The Hague on 18 December.

While we recognize those important achievements, we are also aware of the ongoing challenges still being faced. Acknowledging the need to address those challenges is still important as we recognize the significant contribution of the Tribunal. In that regard, we remain concerned that the arrest warrants for the three individuals in the remaining contempt case have still not been executed. State cooperation is integral to holding perpetrators accountable.

We also note the Prosecutor's concern that reconciliation and stability are jeopardized by the denial of crimes, the rejection of facts and revisionism. In moving forward, we encourage States within the region to promote regional judicial cooperation in order to bring justice to victims. While the ICTY has completed its mandate, it is also important to ensure that the objectives of the ICTY are continued through independent and impartial prosecutions in national courts.

With the closure of the ICTY, we will continue to support the Residual Mechanism. We have been pleased to hear from both Presidents that the transition is progressing smoothly and recognize that that is due, in large part, to the collaboration that has taken place between the two Presidents and their staff, including with the Prosecutor moving from one body to the other.

The United Kingdom looks forward to further progress in the remaining cases, with the *Stanišić and Simatović* retrial, the *Karadžić* and *Šešelj* appeals and the review proceedings in the *Ngirabatware* case. We hope that the Mechanism will proceed with all those cases in an expeditious and efficient manner and acknowledge that that is the intention of President Meron. We also remain fully supportive of the Prosecutor, his Office and his continued efforts in apprehending the

remaining fugitives, including through the proactive efforts of his Office and by engaging with national enforcement authorities.

We would also like to thank the Prosecutor's Office for the extensive capacity-building efforts in which it has been involved. Through its activities and training in Nairobi, Nuremberg and Colombia, the Prosecutor has successfully drawn attention to national ownership of post-conflict accountability and provided support to national judiciaries. We welcome the book jointly published in June 2017 by the Office of the Prosecutor of the Mechanism and the Office of the Prosecutor of the ICTY, entitled *Prosecuting Conflict-Related Sexual Violence at the ICTY*. We also recognize and welcome the training that has been provided to address conflict-related sexual violence at both the international and national levels.

Finally, we would like to highlight the invaluable service of the Tribunals in producing a comprehensive historical record of the atrocities committed during the conflicts of the 1990s. It is a matter of great importance that the judgments of those Tribunals and the facts that they record be universally accepted. Only by acknowledging the truths of the past can we learn lessons for the future, ensuring peace and reconciliation for all.

I would like to finish by again thanking the Presidents of the ICTY and the Residual Mechanism and the Prosecutor for their reports and to warmly commend them on what they have achieved and are achieving.

Ms. Schoulgin Nyoni (Sweden): I would like to begin by expressing my sincere appreciation for the comprehensive briefings and reports on the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals by President Carmel Agius, President Theodor Meron and Prosecutor Serge Brammertz.

As the ICTY concludes its work and we approach that closure, I would also like to take a moment to recognize the staff of the ICTY for their invaluable contribution to international justice. We welcome the fact that the Tribunal has issued its judgement in the final trial case, regarding Ratko Mladić, which was concluded on 22 November, and the final appeal case of *Prlić et al* on 29 November. I also pay tribute to the commitment of President Agius to leading his team until the closing date. Finally, let me also express a

special word of thanks to the Netherlands in its role as host country for the Tribunal.

The establishment of the ICTY in the aftermath of the Yugoslav wars — the first court established by the United Nations to try war crimes and the first Tribunal on war crimes since the Nuremberg and Tokyo Tribunals — signalled the determination of the Security Council and the international community to end such crimes and to bring those responsible to justice. The ICTY was unique in being the first Tribunal to address conflict-related sexual violence, to consider violations against cultural heritage as a crime against humanity and to indict a sitting Head of State for war crimes. The legacy of the ICTY, together with the International Criminal Tribunal for Rwanda (ICTR), is therefore not only the justice that they have brought to victims but also their important contribution to the development of international criminal law.

There can be no lasting peace without justice. Ensuring that the perpetrators of atrocity crimes are held to account, by either international or national courts, is essential to rebuilding trust among communities and to national reconciliation. As the Tribunal completes its work, it is our hope that national judicial systems will take up their responsibility to build on the legacy of the Tribunal in order to contribute to reconciliation in the region. We note, with regret, that Serbia has not carried out the arrest and surrender orders issued by the Tribunal in January 2015.

We share the Prosecutor's deep concern about the widespread denial of crimes and facts established by the ICTY in relation to its cases. Those issues have the potential to have real consequences for reconciliation in the Western Balkans. As the Prosecutor points out in his report, it is now more important than ever to address such issues. In that regard, we agree with the President that the Tribunal's creation of a historical record is a key part of its legacy. We hope that the Council will be in a position to adopt a statement in connection with the closure of the ICTY by the end of the year, in order to recognize and highlight the substantial contribution of the Tribunal to the achievement of justice for the atrocities committed in the former Yugoslavia.

We welcome the handover to the International Residual Mechanism for Criminal Tribunals upon the closure of the ICTY. We underline the importance of the ongoing work by the International Residual Mechanism for Criminal Tribunals on victim and

witness protection. Lastly, we are also concerned about the fact that eight individuals indicted by the ICTR for serious crimes remain at large. We call on States to cooperate fully with the Residual Mechanism on their speedy arrest, as well as on other matters where it can assist the Mechanism.

The International Criminal Tribunals have played an important role in acknowledging the wounds that remain after conflicts end and providing survivors of the worst crimes known to humanity with the means to seek and find justice. In the process, they have also strengthened the international legal framework, showing that despite the impunity we so regularly lament in this Chamber, accountability is possible. Sweden will remain firmly committed to international criminal justice, and the Residual Mechanism can be assured of our full support for its work.

Mrs. Gueguen (France) (*spoke in French*): I would like to thank Presidents Agius and Meron and Prosecutor Brammertz for their comprehensive briefings. I also welcome the presence here today of the President of the Republic of Croatia and the Minister of Justice of Serbia.

At the time when, through its adoption on 25 May 1993 of resolution 827 (1993), the Security Council created the International Tribunal for the Former Yugoslavia (ICTY), the region was still ravaged by massacres and ethnic cleansing that amounted to war crimes, crimes against humanity and genocide. The civilian population was displaced and hundreds of thousands of lives were destroyed in violation of the most basic principles of international law and international humanitarian law.

On 31 December this year, 24 years later, the ICTY will close its doors after judging a total of 161 indicted individuals, showing that it is possible to bring the perpetrators of the most heinous crimes to justice and hold them accountable for their actions, regardless of their political function or rank. It has proved that today we can prosecute the perpetrators of genocide, war crimes and crimes against humanity, and that no one is above the law. Today the region is at peace. Slovenia and Croatia are now members of the European Union, while the other Western Balkan countries, as candidates for membership or in the process of rapprochement with the European Union, are on their way to stabilization. The ICTY played a major role in that evolution by rigorously establishing the facts, assigning clear responsibility for

the most serious crimes and enabling the victims to be heard through their painful and courageous testimony to the crimes that they suffered. It has undeniably rendered them justice. It leaves a fundamental legacy that concerns the international community as a whole.

We do not deny that the Tribunal has had its difficulties. It has faced numerous challenges that have forced it to learn from its mistakes, but its successes are indisputable. It has been a pioneer in several respects. Through its impressive judicial work, along with the International Criminal Tribunal for Rwanda (ICTR), it has contributed to the development of an entirely new branch of law — international criminal law. It has also contributed to the establishment of the International Criminal Court. For those reasons, we welcome the Secretary-General's intention to participate in the commemoration to be held in The Hague at the end of December. My delegation believes that the Security Council should commend the work accomplished by the Tribunal.

The Security Council created the ICTY because it was believed that it was vital to restore the rule of law to a region that had been the victim of an especially deadly conflict and to enable the judiciary to fully and independently exercise its functions and establish accountability for the crimes committed there without the possibility of denial. But however crucial it is to ensure that the people suspected of committing crimes as serious as genocide, crimes against humanity or war crimes are held accountable in a fair trial, we must also remember that on their own, a court's judgments and rulings cannot heal the profound wounds inflicted by crimes of this nature. Judicial decisions alone cannot lead to reconciliation. It is up to political officials, members of the worst affected communities, civil society, religious leaders, parents, teachers and victims' representatives to find the strength and the means to rebuild their communities without giving in to revisionist temptations.

The ICTY has accomplished the task it was assigned and it is now up to each of the States concerned to preserve the work achieved by the international justice system, by accepting its decisions and working unceasingly to bring to justice the perpetrators of crimes under their jurisdiction. Those are the conditions for true national and regional reconciliation, and that is our duty to their memory. With the closing of the ICTY two years after the closing of the ICTR, the International Residual Mechanism for Criminal

Tribunals is fully responsible for implementing the residual activities of those two institutions. Its work continues to be extremely important. Several cases, at first instance and on appeal, are currently pending before the Mechanism, and France reiterates that all States have the responsibility to cooperate fully with it in accordance with the relevant Security Council resolutions. In particular, we urge all States to make every effort to ensure the arrest of the eight fugitives indicted before the Rwanda Tribunal.

In conclusion, on behalf of my Government, I would like to pay a sincere tribute to President Agius, who has just spoken for the last time before the Council as President of the ICTY with eloquence, wisdom and justifiable pride. I thank him sincerely for his commitment, professionalism and perseverance in providing high-quality, impartial service to international criminal justice. Through him, France would like to pay tribute to all the judges and prosecutors and their teams, the translators and interpreters, and the lawyers and associations that have been involved in the success of the Tribunal over the past 24 years. They are an example to us all in their commitment to continuing to advance along the path of justice and peace, one to which the peoples of Syria and Myanmar, including Sudan, Libya and all the peoples of the world aspire.

Mr. Iliichev (Russian Federation) (*spoke in Russian*): Today the Security Council is preparing for the last time to discuss the report (S/2017/662) on the International Tribunal of the Former Yugoslavia (ICTY), which will finally terminate its activities on 31 December after numerous delays.

The Council's establishment of the Tribunal in 1993 was a very daring step on its part. At the time, we all assumed that a body established under the Council's auspices would play a role as an impartial instrument of justice and would contribute both to the process of reconciliation in the region and to the development of international criminal law as a whole. Today, 24 years later, we are compelled to state definitively that the Tribunal has unfortunately not been up to its tasks.

The ICTY has been a glaring illustration of the existence of double standards. The Tribunal has been unable to become the impartial and independent body that the interests of genuine rather than selective justice demand. It is revealing that during the totality of its existence, an absolute majority of those sentenced by the ICTY were Serbs — more than 60 per cent, who

between them were sentenced to more than 1,000 years in prison.

The Tribunal's adoption of a basically one-sided anti-Serbian approach to the tragic events of the 1990s in the former Yugoslavia not only did not encourage implementation of the basic principle of the inevitability of punishment for war crimes, it also undermined the process of re-establishing mutual trust in the Balkans. Ratko Mladić's recent sentence was a continuation of this biased, politicized attitude. The other side of this issue is the series of acquittals of defendants from among the representatives of other parties to the conflict. Among others, former Kosovo Liberation Army commanders went unpunished. The scandalousness of the proceedings is a well-known fact. It was the first time in the history of international justice that witnesses were subjected to barefaced blackmail and intimidation on such a scale. Not to mention that these actions took place in an atmosphere of complete impunity and with the connivance of the international presences in Kosovo.

The ICTY consistently turned a blind eye to the unlawful nature of the NATO military operations in the Balkans. We should remind the Council that that resulted in civilian deaths and general large-scale destruction. Nobody was held responsible for those barbarities. The Tribunal fell far short of generally accepted standards for ensuring an appropriate judicial timetable and the fundamental right to life, health care and a fair trial of the accused. For example, the ICTY will go down in history as the court that had to keep Vojislav Šešelj in pre-trial detention for more than 11 years in order to finally sentence him. The number of defendants who died while under the Tribunal's jurisdiction speaks to the level of medical care given to prisoners. The death of Slobodan Milošević in The Hague was truly shocking, and unfortunately not the only example. Astonishingly, despite being unable to provide adequate care and treatment for the accused, the Tribunal repeatedly denied the defence's petitions for their temporary release for medical treatment in Russia, despite our provision of thorough guarantees. Ratko Mladić's recent petition was no exception. His lawyers also sent an appeal to the Secretary-General in that regard, which we hope will be very carefully considered. The final stage of the Tribunal's work did not conclude without tragedy. Slobodan Praljak committed suicide in the courtroom itself, raising

serious questions about security and the conditions for detainees.

The Tribunal twice failed to meet the deadlines set by the Security Council. In its resolutions, the Council not only repeatedly asked the Tribunal not delay its proceedings but also to review the timetables for considering cases with a view to shortening them. That did not happen. In the past two years, the new leadership of the Tribunal has managed to prevent any new delays and cope with the consequences of staff departures, showing that proper planning for legal proceedings is possible in practice and that the explanations of previous years were nothing more than excuses.

The work of the International Tribunal for the Former Yugoslavia will be analysed by historians and criminal-law experts. For our part, we are convinced that a great many of its decisions have discredited the very notion of international justice. Many of the ICTY's actions have created mutual mistrust among the peoples of the former Yugoslavia. As a result, the hopes that peace can be restored through the dispensing of justice have been significantly undermined. We doubt that it would be worthwhile for the Security Council to repeat the experiment of creating similar tribunals in the future. Our delegation shares the opinion of the leadership of the ICTY on the lessons to be learned from the activities of the Tribunal. For that reason, we intend to closely monitor all the proceedings in the International Residual Mechanism for Criminal Tribunals, including during the Council's upcoming review of its activities.

As we have frequently stated, based on resolution 1966 (2010), the Residual Mechanism is a provisional structure with a strictly limited mandate, and not a new international tribunal. That is why its official title includes the word "residual". We also expect the leadership and staff of the Residual Mechanism will focus on the speedy completion of the matters assigned to them following the closure of the ICTY, with maximum effectiveness and strict adherence to judicial standards, including where the timetable for legal proceedings is concerned. The Council's review of the Residual Mechanism in 2018 is extremely important, and the extension of the Mechanism's work for the next two years will depend on it. We urge the Council to approach it very seriously. In general, we believe that while the Mechanism is starting to review the relevant appeals, it is also time that the Council thought about approaches to ending its activities.

Mr. Ciss (Senegal) (*spoke in French*): The delegation of Senegal would first like to congratulate Japan on its presidency of the Security Council for the month of December in the final month of its mandate as a member of the Council. We also commend Italy for its exemplary conduct of the Council's work in November. I welcome the presence at today's meeting of Ms. Kolinda Grabar-Kitarović, President of the Republic of Croatia, and Ms. Nela Kuburović, Minister of Justice of Serbia.

The Senegalese delegation welcomes the convening of the second meeting this year on the progress of the work of the International Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Residual Mechanism for Criminal Tribunals. We would like to take this opportunity to congratulate Ambassador Elbio Rosselli, Permanent Representative of Uruguay to the United Nations, and his entire team for their remarkable work over the past two years as Chair of the Informal Working Group on International Tribunals.

My delegation would also like to sincerely thank Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia, Judge Theodor Meron, President of the Residual Mechanism, and Mr. Serge Brammertz, Prosecutor of the ICTY and Chair of the Residual Mechanism, for their enlightening briefings and their decisive work at the helm of those bodies. In the difficult missions that they still have to fulfil they can of course count on my country's continued support, which, as the President mentioned, we have manifested by hosting persons convicted by the ICTR in renovated prison cells that meet international standards.

The review of the latest report on the implementation of the ICTY completion strategy (S/2017/1001, annex II) reminds us that the establishment of the Tribunals was certainly one of the most relevant initiatives of the United Nations for the preservation and development of international law and the execution of justice. That ad hoc judicial system — which has benefited from the support of the international community, especially the Security Council, as well as from the cooperation of every State — has made a substantial contribution to international criminal jurisprudence and to combating terrorism and the impunity of all those responsible for serious violations of international humanitarian law, thereby helping to prevent mass crimes and provide justice for the victims. We are also happy to note the

fundamental role played by the Residual Mechanism in strengthening the rule of law and promoting stability and gradual reconciliation in both the Balkans and Rwanda.

As we prepare to turn the final page for the ICTY on 31 December, we have to ask how we can consolidate and capitalize over the long term on the enriching experiences and the encyclopedic legacy acquired in dealing with the serious crimes that fell under the Tribunals' jurisdiction. That legacy is also a reference point for national jurisdictions in jurisprudence and good practice. This legacy is also about sharing competencies, technical assistance and the participation and training of stakeholders to help them to reinforce their capacities.

At a time when its closure is before us, we must also think of the consequences of setting up this type of tribunal in the first place. By that, I mean the fate of those who have been found guilty and who have had to serve their sentences; the fate of those who have been acquitted or of those who have finished serving their sentences; the fate of the witnesses who have needed to be protected; and many others.

Turning to the Residual Mechanism, it will begin to operate on its own from 1 January 2018. Thanks to the Mechanism, the closure of the ad hoc tribunals will not become a synonym for impunity or for selective or incomplete justice. The Mechanism therefore has to take on the issues of the reintegration of those who have been acquitted or who have finished their sentences; the best possible use of financial and administrative resources; access to archives; the relocation of witnesses; and systematic auditing to improve its functioning. In other words, the temporary nature of the Residual Mechanism entails the need for effective and rigorous management and the constant support of the Council.

As is evident, the closure should be an opportunity to take a general stock of the gains and the best practices, but also to explore areas for improvement so as to make both domestic and international justice more effective and efficient. In doing that, the ICTY would fully play its role as a pioneer allowing other international legal institutions, and even national ones, to draw a great deal of benefit from its experience.

Mr. Woldegerima (Ethiopia): We join others in congratulating you, Mr. President, on your assumption of the presidency, and pledge our full support in the effective discharge of your responsibilities. We also express our appreciation to Italy for effectively steering

the work of the Council last month. We would like to thank Judge Agius, Judge Meron and Prosecutor Brammertz for their respective briefings today.

In countries emerging from conflict, weak justice and security institutions struggle to manage the wider socioeconomic and political challenges inherent in recovery processes. Institutional actors may prove to be incapable or unwilling to pursue accountability for serious crimes of the past. In such contexts, the contribution of international or regional mechanisms that function on the principle of complementarity, such as the International Tribunal for the Former Yugoslavia (ICTY), the International Residual Mechanism for Criminal Tribunals or previous similar tribunals, such as the International Criminal Tribunal for Rwanda, are important.

We recognize that the continued support of the Council to such mechanisms has enabled them to contribute to combating impunity and ensuring accountability for serious violations of international humanitarian law. Such support from the Council, which could be complemented by cooperation from States, continues to be critical for the Residual Mechanism in fulfilling its mandated residual functions.

We welcome the readiness of the Mechanism to assume the residual judicial mandate and work transferred from the ICTY, and the preparation of the Mechanism to fully stand on its own for the first time since its establishment by the Security Council in 2010. We also welcome the smooth transition from the ICTY to the Residual Mechanism and the work done by the ICTY and the Mechanism to that end. We also welcome efforts by the Mechanism to increase its efficiency and to streamline its internal working methods and processes within chambers.

We note with appreciation that the cooperation of Bosnia and Herzegovina, Croatia, Rwanda and Serbia with the Office of the Prosecutor of the Mechanism remained satisfactory during the reporting period. It is important that States continue to provide the necessary assistance to the Office of the Prosecutor of the Mechanism, including in the tracking of the three fugitives to be tried by the Mechanism and the five fugitives to be tried by Rwanda. However, we note with concern the denial of the extradition request by Rwanda in relation to those suspected of committing crimes during the Rwandan genocide. We concur with the Special Prosecutor that Rwanda has taken extensive

measures to reform and ensure that its courts meet international fair trials standards. We also concur with the Prosecutor that Rwanda should have been informed concretely of what is required and given an opportunity to continue to demonstrate its commitment to fair trials in its courts.

In that context, we would like to underscore the importance of strengthened cooperation that ensures the principle of complementarity and national ownership in the framework of post-conflict accountability in relation to transferred cases. We have noted from the report (see S/2017/661) the challenge faced by the Mechanism in relation to relocation of acquitted and released persons. Therefore, we would like to underscore the need for such issues that require follow-up during the completion of the mandate of tribunal to be given proper consideration in the upcoming review of the Residual Mechanism.

While noting the challenge encountered by the ICTY in fulfilling its mandate, including delays in case management, we recognize its contribution to ensuring accountability and fighting impunity. We also recognize that the ICTY has made significant legal achievements, and we commend the judges, the principals, the Office of the Prosecutor and the staff of the ICTY. We also commend the ICTY for meeting the completion strategy within the time frame specified. As the ICTY concludes its activities on 31 December after 25 years, we are of the view that the challenges, best practices and lessons learned by the Tribunal could serve as a basis for future similar accountability mechanisms.

Finally, we support the Council's acknowledging the significant contributions by ICTY by marking its closure through a press statement, as was the case for the International Criminal Tribunal for Rwanda. We wish to conclude by expressing our appreciation to Ambassador Rosselli and his team for all the dedicated efforts over the past two years in guiding the work of the Council's Informal Working Group on International Tribunals.

Mr. Yelchenko (Ukraine): We warmly welcome the presence today of Her Excellency Ms. Kolinda Grabar-Kitarović, President of Croatia, and Her Excellency Ms. Nela Kuburović, Minister for Justice of Serbia. We thank Presidents Agius and Meron and Prosecutor Brammertz for their written reports (see S/2017/662 and S/2017/661, respectively) and comprehensive briefings.

My delegation would like to commend the team of the International Tribunal for the Former Yugoslavia (ICTY) for the successful completion of the crucial and complex task of bringing to justice the perpetrators of genocide, war crimes, crimes against humanity and other serious violations of international humanitarian law. Looking back at the tremendous work accomplished, I would like to say that it is a job well done. We would like to express our gratitude to the entire staff of the Tribunal, in particular to the 87 judges, one of them Mr. Volodymyr Vassilenko, is sitting right behind me, and also the five prosecutors and four Registrars. They have worked over the lifespan of the ICTY, contributed their time, knowledge and experience and made every effort to ensure the fulfilment of the mandate of the Tribunal and of its successful closure this year.

As the first international criminal tribunal since the Nuremberg and Tokyo Tribunals, the ICTY built a significant record of accountability by concluding proceedings against all 161 individuals indicted for serious violations of international law, as well as contempt proceedings against 25 persons. I will touch upon the remaining contempt cases later in my statement.

Some sceptics may criticize the ICTY activity and question the importance of its decisions, the role of the Tribunal in prevention and in legal history in general. We are absolutely convinced that learning from challenges faced by the Tribunal, highlighting its legal achievements and their impact for combating impunity is necessary for the Council to improve its practices to achieve peace through justice. We all know about the countless challenges the ICTY was bound to face. First, it literally had to start from scratch with undeveloped international criminal jurisprudence and no pre-existing adequate model to follow. In addition, the ICTY started operating during ongoing conflicts where crimes under its jurisdiction continued to be committed. Secondly, logistical problems, such as distance — gathering evidence for crimes that occurred hundred or thousands of miles away — made it more difficult to meet the level of proof required for a conviction and for an accused to develop a comprehensive defence. Thirdly, the Tribunal faced obstacles beyond the its control, including failure of witnesses to appear, numerous contempt proceedings, the health of the accused and many others. At the same time, some incidents in the ICTY need to be properly investigated and learned from, such as what happened

recently during the public pronouncement of the appeal judgement for Slobodan Praljak.

Last but not least, the cooperation of States is the basis for the functioning of the Tribunal. Unfortunately, there are many examples of delayed cooperation or unwillingness by States to do so. Among those examples is the lack of cooperation by Serbia concerning the arrest warrants issued by the Tribunal almost three years ago against persons accused of contempt of the ICTY. Taking into account the transfer of that case to the International Residual Mechanism for Criminal Tribunals, we urge Serbia to demonstrate its political will and cooperate fully with the Mechanism. Those and other challenges, including staff attrition and the loss of highly experienced experts as the mandate of the ICTY nears its end, seriously affected the time framework of proceedings and activity of the Tribunal in general.

I would now like to focus on the judicial legacy of the ICTY. There are many achievements in that field. In particular, the Tribunal has played a historic role in the persecution of war-time sexual violence in the former Yugoslavia and has paved the way for more robust adjudication of such crimes worldwide. It has specified crucial elements of the crime of genocide, especially the notion of specific intent and the definition of targeted groups of that crime. The Tribunal has identified a general prohibition of torture in international law, which cannot be delegated from a treaty, internal law or otherwise. It determined that enslavement and persecution constitute crimes against humanity. It has made contributions to the doctrine of the criminal responsibility of superiors and command responsibility. It has elaborated the definition of armed conflict and contributed to the definition and understanding of other international crimes, including that the destruction of cultural heritage may amount to a crime against humanity.

The Tribunal has made numerous contributions to the issues of procedural law, some of which have to do with protective measures for witnesses. Moreover, with respect to criminal responsibility, the Tribunal clearly indicated that not even Heads of State are beyond the reach of the law, and succeeded in arresting and trying suspects, regardless of their official status, which resulted in the indictment of Slobodan Milošević. We consider that holding leaders accountable, along with contributing to the development of international

criminal law and strengthening the rule of law, is one of the Tribunal's most important achievements.

By holding individuals responsible, the ICTY has brought justice and relief to victims and provided thousands of them an opportunity to be heard. The prosecution of persons responsible for committing serious violations of international humanitarian law is a clear signal to all perpetrators in all conflicts that sooner or later they will be held accountable. It gives hope to my countrymen that war crimes, crimes against humanity and other serious breaches of human rights committed during the ongoing armed aggression of the Russian Federation against Ukraine will not go unpunished and that justice will prevail.

The establishment of the ICTY, as well as the International Criminal Tribunal for Rwanda (ICTR), was a huge step forward in the fight against impunity, which inspired the world community to establish a permanent institution — the International Criminal Court. The Tribunal's knowledge and expertise will therefore not be wasted. In that regard, we support the conclusions of the reports regarding the necessity to learn from the lessons of the ICTY to avoid mistakes, improve the efficiency of criminal tribunals, identify best practices and build on its legacy.

We are convinced that the heritage of the Tribunal must be preserved for future generations of international criminal courts — including the International Criminal Court — and national courts and tribunals. We welcome the legacy dialogues of the ICTY and the creation of the ICTY information centres. The knowledge and expertise of international criminal tribunals should be accessible to a wider public, thereby contributing to the efforts to maintain international peace and deliver justice throughout the world.

In relation to the International Residual Mechanism for Criminal Tribunals, we commend its active judicial activities carried out during the period covered by the report regarding the assumed responsibility for a number of functions of the ICTR and the ICTY. We welcome its close cooperation with the ICTY in enabling the smooth and efficient transition of the remaining functions and services, as well as the improvement of the Mechanism's operations, procedures and working methods. We also welcome the intensive efforts of the Mechanism with the Office of the Prosecutor to locate and arrest the remaining eight ICTR fugitives and strengthen its fugitive tracking activities, as well

as to provide continuous support to national judicial authorities prosecuting war crimes cases during conflicts in Rwanda and the former Yugoslavia. We are grateful to all States for their cooperation in those activities, including in the provision of assistance in the enforcement of sentences of the tribunals on their territories.

In conclusion, I would like to reiterate that the cooperation of States with international tribunals is crucial in the achievement of their important objectives. With that in mind, we regret that the timely proposal by the Chair of the Council's Informal Working Group on International Tribunals to adopt a draft presidential statement related to the ICTY closure did not materialize due to a lack of consensus. The failure on that purely technical issue does not bode well for the Council, and is regrettably an indicator of its many weaknesses.

As we have seen so often in the recent past, the ability of the Council to rise to the challenges of the present day is nowhere near that of the early 1990s. We urge the international community to unite in enhancing the development of international tribunals. Let us recall the recent horrible event of the downing of Malaysia Airlines Flight MH-17, murdering 298 innocent civilians. Unfortunately, the international community could not provide justice for the victims and their relatives by creating a tribunal by Security Council decision. Such a failure must never be repeated in the future.

The legacy of the Tribunal, however, gives us faith that new and efficient ways and instruments to maintain international peace and security are firmly establishing themselves and will play an important part in saving succeeding generations from the scourge of war.

The President: I shall now make a statement in my capacity as the representative of Japan.

I would like to thank Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia (ICTY); Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia and Prosecutor of the International Residual Mechanism for Criminal Tribunals, for their reports and informative and comprehensive briefings. Japan is committed to the fight against impunity and to supporting the international criminal tribunals.

Japan welcomes the conclusion of the judicial activities of the ICTY through the delivery of judgements in the cases *Prosecutor v. Ratko Mladić* and *Prosecutor v. Jadranko Prlić et al.* Japan hopes that those judgements will help bring justice to the region. We appreciate the efforts of the Tribunal to deliver those judgements in line with the projected timeline, despite serious staff attrition. We commend the strong leadership of President Agius.

After 24 years of work, the ICTY will be closing in a few weeks. Japan wishes to recognize the legacy of the Tribunal and expresses appreciation to the contribution made by the Tribunal to help victims see justice. The report submitted by the ICTY (S/2017/1001, annex II) contains many valuable and practical lessons learned, which the Council could consider going forward. The most important takeaway lesson that the ICTY teaches us is that delivering justice heavily depends on the cooperation rendered by Member States. In resolution 827 (1993), which established the ICTY, the Council decided that all States shall cooperate fully with the Tribunal. Despite the fact that the ICTY required the cooperation from Member States in various areas, such as in the execution of arrest warrants, access to evidence and apprehending fugitives, securing such cooperation was always a challenge. In hindsight, the Council might have acted more proactively to address those challenges by discharging its responsibility as the organ that created the ICTY.

Let me now turn to the International Residual Mechanism for Criminal Tribunals. We are very pleased to hear the steady progress in judicial activities. As in the case of the ICTY, the full cooperation of Member States with the Mechanism is required in order to deliver justice. We would like to call upon all States to cooperate fully with the Mechanism. In addition, arresting the remaining fugitives is a priority for the Mechanism. We welcome the Prosecutor's efforts to intensify his actions in that regard and hope it will lead to arrests as soon as possible.

Before concluding, let me express Japan's appreciation for the dedicated work done by the ICTY and its staff in the fight against impunity. The ICTY has had a positive impact on the strengthening of the rule of law in the international community. The establishment of the ICTY also helped to spur the creation of other international and hybrid tribunals, including the International Criminal Court, which is the first-ever permanent international criminal court.

We reiterate our strong commitment to the promotion of the rule of law and the advancement of justice in the international community through supporting the work of the tribunals.

I now resume my functions as President of the Council.

The representative of the Russian Federation has asked for the floor to make a further statement.

Mr. Iliichev (Russian Federation) (*spoke in Russian*): Unfortunately, the Ukrainian delegation once again used this meeting of the Security Council to divert attention from the issues discussed. We would like to recall that the current authorities in Kyiv unleashed an armed confrontation with their own people in the south-east of the country. It resulted in numerous casualties among the civilian population and the destruction of infrastructure. If the Ukrainian delegation wants to use the experience of the ICTY to bring those responsible to justice, then the first clients of justice will be the current authorities in Kyiv and their accomplices.

The President: The representative of the Ukraine has asked for the floor to make a further statement.

Mr. Yelchenko (Ukraine): It is quite telling that the Russian delegation decided to comment on our statement. This kind of reaction suggests that it believes that the dock in The Hague will remain empty. But we would like to recall that the crimes committed by the Russian Federation in Ukraine have no statute of limitations. I do not want to repeat once again our well-known position on crimes committed by the aggressor State, which are under consideration in international courts. The only honest and responsible way out of the situation created by the Russian aggression is by ending the aggression, offering appropriate assurances and guarantees of its non-repetition and ensuring full reparation, compensation and satisfaction for the damage caused.

The President: I now give the floor to Her Excellency President Grabar-Kitarović of Croatia.

President Grabar-Kitarović: I congratulate Japan for assuming the presidency of the Security Council for the month of December. I would also like to welcome Judge Agius, Judge Meron and Prosecutor Brammertz, who are present here today.

Twenty-four years ago, Croatia was one of the States that strongly advocated for the establishment of

the International Tribunal for the Former Yugoslavia (ICTY). Its creation lifted the hopes of thousands of Croatians who suffered at the hands of a merciless aggressor. Croatia looked to the ICTY to shield its citizens from grave breaches of international humanitarian law and to punish perpetrators and their sponsors.

Croatia shares the assessments that the ICTY greatly lived up to the expectations of the international community, played an important role in the fight against the culture of impunity and provided an instrument for ensuring accountability for war crimes, crimes against humanity and genocide. Equally important is the Tribunal's role in giving voice to over 100,000 victims of horrific crimes. The Tribunal has demonstrated that crimes will not go unpunished, as well as the fact that the international community has found a means through which it can and must react. That is confirmed by the fact that, following the establishment of the ICTY, the international community established other ad hoc tribunals and the International Criminal Court, while taking into account its experience with the ICTY, its best practices and shortcomings.

A quarter of a century later, as the Tribunal closes its doors, we assess its work and legacy against its expected role in securing justice for victims of all war crimes committed in the territory of the former Yugoslavia, paving the path to reconciliation and putting the troubled past behind. Allow me at this point to express my deepest respect for all the victims of crimes committed on all sides, and especially to extend my heartfelt condolences to the families of all those who perished or remain missing.

In the overall assessment of the work of the Tribunal, we have to distinguish between legal assessment of its work and political connotations attached. In that regard, I can speak only for Croatia. When we look at the ICTY's record in bringing to justice perpetrators of war crimes committed during the onslaught on Croatia, we can be fairly satisfied with its legacy. As an example, let me highlight the case *Prosecutor v. Milan Martić* and the case *Prosecutor v. Milan Babić*, where the Tribunal established the existence of a joint criminal enterprise to expel the Croat population from occupied Croatian territory in order to create a Greater Serbia. I also note that two so-called Yugoslav People's Army officers responsible for the unimaginable atrocities at Ovčara, where over 260 Croatian prisoners — mostly wounded — were executed by Serbian forces and

buried in a mass grave, were convicted and sentenced. One of them has since died in prison, and the other was released early. In the case *Prosecutor v. Pavle Strugar*, the ICTY convicted yet another Yugoslav People's Army officer for attacks on the civilian population of Dubrovnik and the destruction and wilful damage to a UNESCO protected heritage site.

On the other hand, last month, Croatia marked another mournful anniversary of the tragedies and atrocities of the war in the autumn of 1991. Besieged for three long months and levelled to the ground, the city of Vukovar and its inhabitants suffered a fate unseen in Europe since the Second World War. Nearly 1,000 white crosses at the Vukovar cemetery stand today as a reminder of the massacre and for the victims exhumed from mass graves in and around the city. They also stand for 86 children killed during the siege of Vukovar, the youngest being a 6-month-old infant. In Croatia, to borrow the words of International Court of Justice Judge Cancado Trindade, there was an onslaught, not exactly war. Regrettably, the ICTY did not charge anyone for the horror of the three-month siege of Vukovar.

While the judgement in the trial of Ratko Mladić brought a degree of relief to the families of his many victims of the genocide in Srebrenica, I would recall again that it was in Croatia in 1991 that he began his infamous warpath, which he later continued in neighbouring Bosnia and Herzegovina. Hundreds of his victims in Croatia, in Škabrnja or Nadin, to name just a few infamous examples, never saw him stand trial for those crimes. What is more, they were never even included in his indictment. As some of these most horrific crimes occurred in November 1991, they were commemorated in Croatia only a few days before the final judgements rendered by the ICTY, thereby creating an emotional, highly sensitive setting.

Sharing some critical assessments about the ICTY does not diminish our support for the work of the Tribunal. As in all justice systems in the world, there are deficits. I note that the ICTY Prosecutor himself has in the past publicly stated that in some cases that resulted in acquittals of the defendants, he respects the judgements of the judges but fundamentally disagrees with them. Similarly, Croatia fully supports the work of the ICTY and respects all its judgements, even if it may on occasion express its disagreement with certain aspects of the Tribunal's work.

In the final analysis, it has to be said that, in the more than 10,000 days of its duration, the ICTY spent too much time on procedural and status-related matters, and not enough on providing the victims with a true sense of justice. We have stated in this Chamber on many occasions that justice delayed is justice denied. On far too many occasions, justice came too late or not at all.

It has to be underlined that a fair trial and the due process of law in front of the ICTY depended on the interaction of responsible work by the Office of the Prosecutor, defence counsel and judges. Furthermore, one of the results of the protracted work of the Tribunal — achievements in putting the focus on the future and reconciliation — were often set back by particular judgements that provoked opposing interpretations, not allowing the sands of time to settle over the troubled history of the area.

Lastly, the mastermind of the greater Serbian project that brought on the tragedy that struck the former Yugoslavia — Slobodan Milošević — evaded final legal judgement. That remains a gaping hole in the Tribunal's legacy.

The Tribunal was not established to determine the legitimacy and justification of wars, but rather whether certain individuals acted in accordance with the laws of war, in accordance with international humanitarian law and criminal law. Therefore, the Tribunal was not a court dealing with the legitimacy of war, but with the criminal responsibility of individuals during the course of war. Nevertheless, despite the fact that the Tribunal judged individuals, the quagmire of political connotations in individual judgements and the legal and political consequences that resulted, and that will result, from its judgements, including the work of the Tribunal as a whole, is unavoidable.

However, throughout its work the ICTY did contribute to the realization that crimes were committed during the war by all sides in the conflict, and those findings facilitated the process of accountability. It is not easy to find the strength to admit that some of your own compatriots committed crimes and that they should be held accountable for them. We have faced that truth in Croatia and expect nothing less from others. However, there is a difference between dealing out individual responsibility and collective guilt.

In creating the ICTY, the Security Council tasked the Tribunal with establishing individual criminal

responsibility and confined the Tribunal to the strict application of existing international humanitarian law and criminal law. The ICTY was not to create precedents or legislate international humanitarian law and criminal law. Its duty, rather, was to uphold the highest of standards with regard to the interpretation and appropriate application of existing law. The mandate of the ICTY was to establish individual criminal responsibility for committed criminal acts, that is, to prosecute concrete individuals for concrete deeds — no more and no less than that.

Consequently, we reject interpretations of the ICTY's recent judgement in the case *Prosecutor v. Jadranko Prlić et al.* — and let me add that it was overshadowed by the tragic death of General Praljak — that it was Croatia, Croatian leadership at the time or the Croatian nation that were indicted or found guilty in front of the ICTY. The ICTY was dealing with the individual defendants who were before the Tribunal and who were parties to the proceedings. Any interpretation of that judgement outside the legal framework and the absence of explicit findings necessary to establish the criminal responsibility of Croatia or its leadership is misleading and erroneous.

It is important to stress that, in July 2016, the same Appeals Chamber, when rejecting Croatia's amicus curiae request and interpreting the 2013 trial judgement, clearly and unequivocally stated that no explicit findings concerning the participation in a joint criminal enterprise of high Croatian officials were made, that they were neither indicted nor charged in the case, and that they were not found guilty of any crimes. Furthermore, the same Appeals Chamber confirmed that the Tribunal did not have the competency to make findings on State responsibility and that the findings of the Trial Chamber in no way constituted findings of responsibility on the part of Croatia.

The recent ICTY judgement in the *Prlić et al* case should not be misused to imply the collective guilt of the Croats in Bosnia and Herzegovina or to hinder their legitimate political objectives as one of the three constituent peoples in the country. No community there should feel unsettled — and that is, unfortunately, what we have witnessed these days. Croats must feel secure in the homeland they share with Bosniaks and Serbs. I appeal to all politicians in Bosnia and Herzegovina to think first and foremost of their responsibility for the good of both entities, and of Bosnia and Herzegovina as a whole. Croatia, as a co-signatory and guarantor of

the Dayton Peace Accords, has a special responsibility for the stability of our neighbourhood and for the preservation of Croats in their homeland of Bosnia and Herzegovina. We will relentlessly advocate for productive dialogue among the constituent peoples and all minorities in Bosnia and Herzegovina, thereby paving the way for its prosperous future in the European Union.

It is a historical fact that Croatia was crucial in the very survival of Bosnia and Herzegovina as an independent State. While a victim of aggression and under threat itself at the time, Croatia for years sheltered hundreds of thousands of refugees from Bosnia and Herzegovina and treated more than 10,000 of its wounded in Croatian hospitals. The overwhelming part of humanitarian and military aid to Bosnia and Herzegovina arrived from or through Croatia. At the same time, Croats in Bosnia and Herzegovina were victims of war crimes by the army of Bosnia and Herzegovina, in particular in central Bosnia and Herzegovina. Those crimes remain unpunished.

Ultimately, Croatia played a pivotal role in defeating greater Serbian aggression. Upon the request for aid from Sarajevo and in accordance with our bilateral agreements, Croatia prevented the imminent danger of a repetition of the Srebrenica genocide in Bihar in 1995. The Croatian army, supported by the Croatian Defence Council and the army of Bosnia and Herzegovina, confronted Slobodan Milošević with his inevitable and total military defeat, which forced him to the negotiating table, thereby ending the war in Bosnia and Herzegovina.

Let me be clear: when we in Croatia speak about the greater Serbian aggression that brought about the conflict, the destruction of property and the loss of life, we do not in any way attach blame to the Serbian people as a whole, but highlight the sole responsibility of Slobodan Milošević and his regime at the time.

In conclusion, my wish is that we leave the war and all the misfortunes in our neighbourhood behind us, that we pay tribute to all the victims and condemn all the crimes and that we primarily and above all look foremost to the future. With the closing of the Tribunal, we continue to bear the responsibility of finding the strength to reconcile all nations and all peoples in our region. Saint Pope John Paul II said,

“no peace without justice, no justice without forgiveness ... the path of forgiveness, which opens the way to mutual understanding, respect and trust”.

The victims of crimes committed on all sides and the families of all those who perished or remain missing deserve justice. Some received it in The Hague, many did not. Crimes must be addressed for the benefit of our future. Croatia has done that and will continue to do so, and expects it from others.

I call upon the other leaders in our neighbourhood to ensure that the ICTY’s judgements are not misinterpreted, misused or misconstrued, and to view this moment as the beginning of a new period — one of mutual understanding, respect and trust. My responsibility is to improve relations with our neighbours and to focus on the future. I hope that we can all agree that it is not only mine, but our common responsibility.

The President: I now give the floor to the representative of Serbia.

Ms. Kuburović (Serbia): I thank you, Mr. President, for this opportunity to address the Security Council today on behalf of the Republic of Serbia. Allow me to welcome the President of the International Tribunal for the Former Yugoslavia (ICTY), Judge Carmel Agius, the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, and the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Mr. Serge Brammertz.

Fighting impunity for the most serious international crimes and efficiently prosecuting war crimes were the key reasons for the establishment of the International Tribunal for the Former Yugoslavia. Since its establishment, it has been the subject of frequent criticism by the expert community, and with its mandate completed some important questions remain unresolved. By and large, the controversies revolve around the efforts made by the States of the former Yugoslavia to cooperate with the ICTY efficiently. While the efforts of some countries have been assessed as sufficient, the much greater efforts of Serbia have not been adequately recognized. Serbia’s record in that regard has been exemplary, both in terms of compliance with its obligation to cooperate with the ICTY and the results achieved within its national judicial system. Moreover, its compliance has been efficient and non-selective. The judgements rendered before Serbian courts are eloquent proof of Serbia’s readiness

to punish the perpetrators of the most serious crimes committed in violation of international humanitarian law, irrespective of their nationality.

Serbia has aligned its legislation with relevant standards, facilitating cooperation with the ICTY without exception, and bearing in mind all acts that the Security Council recognized in the ICTY statute as serious international crimes. Its commitment to fighting impunity has also been reflected by the number and rank of the accused persons it handed over to the Tribunal. Out of 46 persons whose extradition was requested by the Tribunal, Serbia extradited 45; one person committed suicide before he could be extradited. Some of those people were in very high positions, including high-ranking officers in Serbia’s military and high officials in the executive branch of its Government, which is a convincing illustration of my country’s non-selective cooperation — one that is hardly matched by any other State.

Serbia enabled the ICTY Prosecutor free access to evidence, documents, archives and witnesses; 2,183 requests for assistance were submitted by the Office of the ICTY Prosecutor and the Office of the Prosecutor of the Residual Mechanism, all of which were complied with. Serbia allowed 759 witnesses to testify freely, relinquishing their right not to on account of State, military or official secrets, and 1,341 requests were submitted by various defence teams, all of which were complied with.

In the ICTY final report (see S/2017/662), it is said that Serbia is not cooperating with the Tribunal, as it has failed to secure the arrest and transfer of two persons in the case *Prosecutor v. Petar Jojić and Vjerica Radeta*. That failure to cooperate with the ICTY is characterized by a lack of political will — such a contention is erroneous, and therefore unacceptable. It has been clarified several times by Serbian representatives that the competent, independent Serbian court has rejected the request under relevant legislation, in line with the ICTY statute. Under the provisions of the law and the statute, Mr. Jojić and Mr. Radeta committed no criminal offence.

The following data, however, is much more illustrative of the deliverance of justice by the ICTY. One hundred and sixty-one persons were indicted: 109 Serbs, 33 Croats, 10 Bosniaks, seven Albanians and two Macedonians. Proceedings against 156 individuals were finalized. Of the total number of those sentenced,

70 per cent are Serbs, 19 per cent are Croats, 6 per cent are Bosniaks and only 2 per cent are Albanians. Those numbers speak tellingly about the selective justice of the Tribunal, especially in the context of its mandate to establish the truth about the armed conflict in the former Yugoslavia and to bring about reconciliation.

In a report of the Office of the United Nations High Commissioner for Refugees, it is stated that 333,000 refugee Serbs from Croatia and 266,000 from Bosnia and Herzegovina ended up in Serbia in the wake of the armed conflict, as well as 287,000 internally displaced persons from Kosovo and Metohija after the bombing of the Federal Republic of Yugoslavia in 1999. Those numbers make it difficult for us to understand why such a small number of persons have been found responsible for the killing or expulsion of hundreds of thousands of Serbs. Is it that Serbian victims count for less? Only Serbs have been handed life sentences, in five cases before the Tribunal. Such selective prosecution is a legitimate cause for legal concern and, in some legal systems, provides the basis for the pursuit of selective prosecution claims. In any case, it remains an issue that should be considered in the ICTY records in the future.

The initiative of my country related to the enforcement of sentences in the countries of origin of the sentenced persons is another matter to which I want to draw the attention of the Council. We believe that it is hard to achieve the goal of punishment and resocialization in cases where sentenced persons serve their sentences in faraway countries. In those countries, they are unable to communicate in their maternal language and have no possibility of receiving family visits or maintaining contact with relatives. Moreover, some of them are kept in inadequate conditions and provided inadequate health care. In launching the initiative, Serbia is committed to providing guarantees that ensure, in cases of sentence-enforcement transfers, all security measures are taken. In that regard, it is ready to accept international monitoring.

Serbia will continue to try war crimes and expects other countries to follow suit. Improving its national judicial system along the guidelines defined, among others, by the national strategy to process war crimes, which were adopted in 2016, continues to be one of Serbia's priorities. To that end, a monitoring mechanism, directed by the Minister of Justice and the War Crimes Prosecutor, has been established to monitor the implementation of the strategy. It is hoped

that it will contribute to the effective prosecution of all those responsible for war crimes.

The Tribunal is receding into history, but its legacy is here to stay. The question, however, continues to linger as to whether it has accomplished its purpose. From our perspective, the statistical account of its decisions strengthens our impression that it has delivered justice selectively. The ethnic disparity of accused persons in ICTY judgements and sentences, the violations of the right to trial within reasonable time and the lack of respect for procedural guarantees will also be the legacy of the Tribunal. In the eyes of Serbia and many other countries that believe the law is an irreplaceable vehicle to ensure respect for, and the protection of, basic human rights, the 13-year case involving Vojislav Šešelj, who surrendered voluntarily, which ended in a first-instance acquittal, is surely a stain on the proceedings of the Tribunal.

For over two decades the Tribunal failed to note two important and relevant facts: first, during the celebration of the first anniversary of Croatian independence, in 1992, Franjo Tuđman, the President of Croatia at the time, said in front of more than 100,000 people that the war could have been avoided, but he did not want that; and, secondly, in 1992, Alija Izetbegović, the President of Bosnia and Herzegovina at the time, withdrew his signature from the Cutileiro plan, which was signed by all three sides in Bosnia and Herzegovina. The plan could have preserved peace and saved the victims of the civil war. In disregard of those and other facts, and motivated by extra-legal considerations, the Tribunal, which we all believe was established to render justice impartially, has often fallen short of making a contribution to regional reconciliation and achieving fairness and equality — the fundamental principles of each and every legal order.

To conclude my statement, I express the greatest respect for all the victims of the armed conflicts in the former Yugoslavia, irrespective of nationality, religion or any other affiliation. The need to work jointly on mutual understanding, regional cooperation and reconciliation is indispensable. After all, for peace and stability in the region it is necessary that efforts be invested by all its countries, and that active, open and constructive dialogue and cooperation be engaged in to bring about a better future, economic development and the normalization of relations.

The meeting rose at 1 p.m.