

**UNITED
NATIONS**

International Residual Mechanism
for Criminal Tribunals

Case No: MICT-12-23-AR14.2

Date: 2 February 2026

Original: English

BEFORE THE PRESIDENT OF THE MECHANISM

Before: **Judge Graciela Gatti Santana, President**

Registrar: **Mr. Abubacarr M. Tambadou**

THE PROSECUTOR

v.

FULGENCE KAYISHEMA

PUBLIC WITH PUBLIC ANNEX A

**DEFENCE MOTION FOR THE RECUSAL OR DISQUALIFICATION
OF A JUDGE FROM THE APPEALS CHAMBER****The Office of the Prosecutor:**

Mr. Serge Brammertz
Ms. Laurel Baig

Counsel for Mr. Fulgence Kayishema:

Mr. Philippe Larochele
Ms. Kate Gibson

I. INTRODUCTION

1. The Defence of Mr. Fulgence Kayishema (“Defence” and “Mr. Kayishema”, respectively) hereby requests the recusal or, in alternative, disqualification pursuant to Rule 18 of the Rules of Procedure and Evidence (“Rules”)¹ of Judge Graciela Gatti Santana (“Judge Gatti Santana”) from sitting on the bench of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“the Mechanism”) currently seized of the Defence appeal against two decisions of the Trial Chamber (“Appeal”).²

II. PROCEDURAL BACKGROUND

2. On 14 August 2025, the Defence filed a request to revoke the referral of Mr. Kayishema’s case to the Republic of Rwanda (“Rwanda”).³
3. On 29 October and 24 December 2025, the Trial Chamber rendered decisions disposing of the Revocation Request (collectively, “Impugned Decisions”).⁴
4. On 8 January 2026, the Defence filed a consolidated Notice of Appeal against the Impugned Decisions.⁵
5. On 15 January 2026, Judge Gatti Santana, in her capacity as President of the Mechanism (“President”), assigned a bench of the Appeals Chamber to consider the Appeal, of which she is to be a member and preside over.⁶
6. On 23 January 2026, the Defence filed its Appeal Brief.⁷

III. APPLICABLE LAW

¹ All references to “Rule” or “Rules” herein are to the Rules, unless otherwise specified.

² Defence Notice of Consolidated Appeal Against Decisions on Defence Request for Revocation of Referral, 8 January 2026 (“Notice of Appeal”); Defence Appeal Brief against Decisions on Request for Revocation of Referral, 23 January 2026 (“Appeal Brief”). See Order Assigning Judges to a Bench of the Appeals Chamber, 15 January 2026 (“Order of 15 January 2026”).

³ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Request for Revocation of Referral to the Republic of Rwanda, 14 August 2025 (confidential; public redacted version 26 August 2025) (“Revocation Request”).

⁴ *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Decision on Fulgence Kayishema’s Requests for Revocation of Referral and Assignment of Counsel, 29 October 2025; *Prosecutor v. Kayishema*, Case No. MICT-12-23-R14.1, Further Decision on Fulgence Kayishema’s Request for Revocation of Referral, 24 December 2025.

⁵ Notice of Appeal.

⁶ Order of 15 January 2026, p. 1.

⁷ Appeal Brief.

7. Pursuant to Rule 18(A), “[a] Judge may not sit in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his impartiality.”
8. An unacceptable appearance of bias exists with respect to a Judge where the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias on the part of the Judge.⁸ A judge should not only be subjectively free from bias, but also nothing surrounding the circumstances should objectively give rise to an appearance of bias.⁹

III. SUBMISSIONS

A. Statements Made by Judge Gatti Santana before the United Nations Security Council

9. The Defence submits that certain statements made by Judge Gatti Santana regarding Mr. Kayishema in an address to the United Nations Security Council (“Security Council”) would lead a reasonable observer to reasonably apprehend bias on the part of Judge Gatti Santana.
10. In a 12 June 2023 address to the Security Council, Judge Gatti Santana, speaking in her capacity as President, lauded the arrest of Mr. Kayishema in the Republic of South Africa, observing as follows with regard to the referral of Mr. Kayishema’s case to Rwanda:

The Mechanism observes the encouraging advancements in Rwanda’s ability to discharge cases relating to international crimes efficiently and effectively. It is therefore confident that the Rwandan judiciary will be similarly steadfast during the proceedings on Fulgence Kayishema, which we will be following closely in line with our monitoring functions as set out in article 6, paragraph 5, of the [S]tatute (“Security Council Statements”).¹⁰

⁸ See, e.g., *Prosecutor v. Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“*Furundžija* Appeal Judgement”), paras. 189-190; *Prosecutor v. Stanišić and Župljanin*, Case No. IT-08-91-A, Judgement, 30 June 2016 (“*Stanišić and Župljanin* Appeal Judgement”), para. 43; *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-R.1, Decision on Request for Disqualification, 28 October 2020 (“*Lukić* Decision of 28 October 2020”), para. 11, and references cited therein.

⁹ See, e.g., *Furundžija* Appeal Judgement, para. 189; *Prosecutor v. Karadžić*, Case No. MICT-13-55-A, Judgement, 20 March 2019 (“*Karadžić* Appeal Judgement”), para. 352, and references cited therein.

¹⁰ Annex A, p. 3.

B. Judge Gatti Santana Should Recuse Herself

11. The Defence respectfully requests that Judge Gatti Santana voluntarily recuse herself and assign another Judge to sit on the bench of the Appeals Chamber seized with the Appeal pursuant to Rule 24(B). This would contribute to the expeditious conduct of the proceedings concerning the Appeal.¹¹
12. The Defence notes that, where she believed an apprehension of bias may exist, Judge Gatti Santana previously recused herself from her administrative responsibilities of assigning judges to a bench of the Appeals Chamber to consider an interlocutory appeal in the *Kabuga* case.¹² If recusal was warranted in *Kabuga* to avoid the potential apprehension of bias in Judge Gatti Santana's *composition* of a bench of the Appeals Chamber, it is *a fortiori* warranted in the present proceedings to avoid the potential apprehension of bias in Judge Gatti Santana's *participation* on the bench of the Appeals Chamber seized with the Appeal. Judge Gatti Santana may, moreover, recuse herself whether or not she agrees with the Defence's allegation that a reasonable observer would apprehend bias.¹³

C. Alternatively, Judge Gatti Santana Should be Disqualified

13. If Judge Gatti Santana decides not to recuse herself, the Defence requests that she be disqualified from sitting on the bench of the Appeals Chamber seized of the Appeal pursuant to Rule 18. As is Judge Gatti Santana is also the President, for the purpose of the present Motion, the responsibilities of the President under Rule 18(B) must be exercised by the Judge most senior who is able to act, in accordance with Rules 18(B)(iv) and 22(B).¹⁴
14. Accordingly, if Judge Gatti Santana chooses not to recuse herself, the Defence requests, pursuant to Rule 18(B)(iii), that (i) the most senior Judge able to act refer the present

¹¹ Cf. *In the Matter of Bicamumpaka*, Case No. MICT-14-75, Decision, 21 December 2021 (made public 9 June 2022) (“*Bicamumpaka Decision*”), pp. 1-2 (where the President, despite denying the apprehension of bias, decided to recuse himself to avoid a delay in the adjudication of the applicant’s request); *In the Matter of Bicamumpaka*, Case No. MICT-14-75, Order Assigning a Motion to the Duty Judge in Arusha, 21 December 2021 (made public 9 June 2022), p. 1 (assigning a new Judge to consider the matter from which the President recused himself).

¹² See *Prosecutor v. Kabuga*, Case No. MICT-13-38-AR80.2, Decision on Recusal and Referral of a Matter, 29 September 2022, p. 1.

¹³ See *Bicamumpaka Decision*, pp. 1-2.

¹⁴ See *Prosecutor v. Milan Lukić*, Case No. MICT-13-52-R.1, Decision on Milan Lukić’s Motion for Disqualification of President and Three Judges of the Mechanism, 2 October 2020, p. 1.

Request to a panel of three Judges (“Panel”); (ii) the Panel disqualify Judge Gatti Santana from sitting on the bench of Appeals Chamber seized with the Appeal; and (iii) the most senior Judge able to act assign another Judge to the bench of Appeals Chamber seized with the Appeal.

15. While the Defence is cognizant of the presumption of impartiality that attaches to judicial office,¹⁵ disqualification on the basis of an apprehension of bias reflects the storied maxim that “justice should not only be done but should undoubtedly and manifestly be seen to be done” and the need to ensure public confidence in the judiciary.¹⁶
16. An unacceptable appearance of bias is created if Judge Gatti Santana is permitted to continue sitting on bench of the Appeals Chamber seized of the Appeal. The Appeal concerns whether the referral of Mr. Kayishema’s case should be revoked in accordance with Article 6(6) of the Statute in light of the conditions for a fair trial no longer being present in Rwanda.¹⁷ Judge Gatti Santana’s position in her Security Council Statements that there have been “encouraging advancements in Rwanda’s ability to discharge cases relating to international crimes efficiently and effectively” and her expressed confidence “that the Rwandan judiciary will be similarly steadfast during the proceedings on Fulgence Kayishema”¹⁸ would be interpreted by the reasonably observer as conveying at least the appearance that she has prejudged the subject matter of the Revocation Request,¹⁹ the Impugned Decisions on which are subject to the Appeal. A plain reading of the Security Council Statements strongly implies Judge Gatti Santana’s position that Mr. Kayishema will receive a fair trial in Rwanda, a question that is at the very heart of the revocation proceedings.²⁰

¹⁵ See, e.g., *Karadžić* Appeal Judgement, para. 353, and references cited therein; *Lukić* Decision of 28 October 2020, para. 11.

¹⁶ *Furundžija* Appeal Judgement, para. 195; *Stanišić and Župljanin* Appeal Judgement, para. 43.

¹⁷ See Appeal Brief, paras. 52-54.

¹⁸ Annex A, p. 3.

¹⁹ See Revocation Request, paras. 32-37.

²⁰ See *Prosecutor v. Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016, para. 12 (“the Mechanism’s role is ... to determine primarily whether the conditions for a fair trial in the domestic jurisdiction no longer exist”); *Munyagishari v. Prosecutor*, Case No. ICTR-05-89-AR11bis, Decision on Bernard Munyagishari’s Third and Fourth Motions for Admission of Additional Evidence and on the Appeals against the Decision on Referral under Rule 11 bis, 3 May 2013, para. 27. See also Appeal Brief, paras. 52-54.

17. While the reasonable observer would understand that the Security Council Statements were made by Judge Gatti Santana in her capacity as President and in the context of her reporting obligations to the Security Council,²¹ the Security Council Statements go, in substance, beyond the President’s reporting requirements under Article 32 of the Statute. All Judges must “in principle, be very cautious when expressing views on matters of relevance to ongoing cases”.²² The Security Council Statements do not convey a neutral factual summary of the ongoing work and proceedings of the Mechanism in the *Kayishema* case,²³ but rather take a particular position on specific legal matter that is now in dispute in the proceedings arising from the Appeal.
18. The circumstances of the present case are materially from those of other cases where statements of Presidents of the Mechanism, the ICTR, and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) before United Nations bodies have been found not to lead to an apprehension of bias.
19. In *Bicamumpaka*, the President considered that his “expression supporting the conclusion of an agreement allowing for the relocation of the Acquitted and Released Persons” in a statement before the Security Council “cannot constitute pre-judgement” of the issues under consideration because such statements did not concern the specific circumstances of the applicant or the impugned decision taken with specific regard to the applicant.²⁴ In other cases, statements of the Presidents of the ICTY and ICTR before United Nations bodies were also found not to lead to the apprehension of bias where they merely (i) raise issues concerning Judges’ terms of service;²⁵ (ii) convey target dates for the rendering of judgments in cases;²⁶ or (iii) restate the mandate of the

²¹ See *Prosecutor v Mladić*, Case Nos. IT-09-92-AR73.6 & IT-09-92-AR73.7, Decision on Ratko Mladić’s Motion for Disqualification of Judge Theodor Meron, 26 October 2016 (“*Mladić* Decision”), para. 19.

²² *Prosecutor v. Bemba et al.*, Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against the Decision of Trial Chamber VII of 17 September 2018 entitled ‘Decision Re-Sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo’, ICC-01/05-01/13-2351, 27 November 2019, para. 26.

²³ Cf., e.g., *Prosecutor v Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion for Disqualification of Judge Byron and Stay of Proceedings, 20 February 2009 (“*Karemera et al.* Decision of 20 February 2009”), para. 12; *Mladić* Decision, paras. 18-20.

²⁴ *Bicamumpaka* Decision, p. 1.

²⁵ See *Prosecutor v. Krajišnik*, Case No. IT-00-39-AR73.2, Order on Defence Motion that His Honour Judge Meron Not Sit on an Appeal, 1 September 2006, Annex, Registry Pagination 70, 69 (finding that a reasonable observer would not apprehend bias on the basis of the President’s request for the Security Council to permit a number of *ad litem* Judges of the ICTY to continue service beyond their mandate to enable cases to be concluded).

²⁶ See *Karemera et al.* Decision of 20 February 2009, para. 12 (finding that a reasonable observer would not apprehend bias on the basis of the President’s statements to the United Nations General Assembly on goals and target dates for the delivery of judgements in several cases which he anticipates will be met).

tribunal or express support for the trial of an accused in accordance with the applicable law.²⁷

20. Judge Gatti Santana's Security Council Statements, on the other hand, specifically concerned not only Mr. Kayishema's case, but the issue of the suitability of the referral of Mr. Kayishema's case to Rwanda, the very matter at issue *sub judice*. Not only do the Security Council Statements concern Mr. Kayishema's case specifically and the subject matter of the present proceedings, but they also go far beyond re-articulations of the Mechanism's mandate or expressions of goals regarding the completion of the outstanding work of Mechanism.
21. The fact that Judge Gatti Santana made the Security Council Statements in her capacity as President and as part of her responsibilities as President to report to the Security Council on the progress of the work of the Mechanism cannot shield her from an appearance of bias.²⁸ In fact, the *ad hoc* Presidency of the International Criminal Court, applying the same standard of apprehension of bias as applicable under Rule 18,²⁹ considered that the recusal of the President of the Court from sitting on the Appeals Chamber was justified by the "significant degree of related international engagement" that may arise from a given appeal and "the need to avoid any risk of perceived conflict between the ordinary duties of the President of the Court and his participation as a judge in the ... Appeal".³⁰ The Defence submits that, in light of her Security Council Statements, a comparable need to avoid the risk of perceived conflict between Judge Gatti Santana's role as President and her participation as a judge in the Appeal arises and further underpins a reasonable apprehension of bias on the part of Judge Gatti Santana so long as she continues to sit on the Appeals Chamber seized of the Appeal.

²⁷ See *Mladic* Decision, paras. 18-20 (finding that a reasonable observer would not apprehend bias on the basis of the President's statements to the Security Council that the accused should be arrested and tried before the ICTY or his reference to the prosecution of those most "responsible for" major atrocities as these statements simply reflect a restatement of the mandate of the ICTY and a commitment to try the accused in accordance with the applicable law of the latter).

²⁸ Cf. *Karemera et al. v. Prosecutor*, Case No. ICTR-98-44-AR73.15, Decision on Joseph Nzirorera's Appeal Against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009, para. 12.

²⁹ See, e.g., *Prosecutor v. Banda and Jerbo*, Decision of the Plenary of the Judges on the "Defence Request for the Disqualification of a Judge" of 2 April 2012, ICC-02/05-03/09-344-Anx, 5 June 2012, para. 11.

³⁰ *Situation in the Islamic Republic of Afghanistan*, Annex to the Decision Replacing a Judge in the Appeals Chamber, ICC-02/17-99-Anx, 25 October 2019, para. 6.

22. Judge Gatti Santana's expression of confidence on behalf of the Mechanism as a whole in the Security Council Statements in Rwanda's ability to try Mr. Kayishema's case gives rise to an objective perception on the part of a reasonable observer that Judge Gatti Santana has prejudged the merits of the Revocation Request, namely that Mr. Kayishema will receive a fair trial in Rwanda.
23. Moreover, while the Appeal had not been filed at the time of the Security Council Statements, the issue of whether the conditions for the referral of Mr. Kayishema's case to Rwanda continue to exist and whether the referral should be revoked pursuant to Article 6(6) of the Statute were reasonably foreseeable and should have been anticipated by the President at least to the extent of spurring Judge Gatti Santana to refrain from commenting on a matter potentially prejudicing the issue.³¹

IV. REQUEST FOR RELIEF

24. The Defence respectfully requests that the President:

RECUSE herself from sitting on the bench of the Appeals Chamber seized with the Appeal; and

ASSIGN another Judge to sit in her place on the bench of Appeals Chamber seized with the Appeal pursuant to Rule 24(B).

25. Alternatively, if the President chooses to not voluntarily recuse herself, the Defence respectfully requests that she:

ASSIGN the present Request to most senior Judge able to act in accordance with Rules 18(B)(iv) and 22(B) of the Rules.

26. Furthermore, the Defence respectfully requests that the most senior Judge able to act:

ASSIGN the present request to a Panel pursuant to Rule 18(B)(ii) of the Rules.

³¹ At the time, the Prosecution had already filed its own request to revoke the referral, which was dismissed without prejudice. *See Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 7 March 2019 (made public 17 December 2024); *Prosecutor v. Kayishema*, Case No. MICT-12-23-PT, Decision on Urgent Motion for Revocation of Referral and Amendment of Arrest Warrant, 26 September 2019 (made public 20 November 2024), paras. 9, 12.

27. Accordingly, Defence further respectfully requests that the Panel:

DISQUALIFY Judge Gatti Santana from sitting on the bench of Appeals Chamber seized with the Appeal pursuant to Rule 18(B)(ii) of the Rules.

28. Finally, the Defence respectfully requests that, upon the decision of the Panel, the most senior Judge able to act:

ASSIGN another Judge to sit in the place of Judge Gatti Santana on the bench of Appeals Chamber seized with the Appeal pursuant to Rule 18(B)(ii) of the Rules.

Word Count: 2,976 words



Mr. Philippe Larochele
Counsel for Mr. Fulgence Kayishema

Respectfully submitted this 2 February 2025,
At Montréal, Canada

ANNEX A to

Defence Motion for the Recusal or Disqualification
of a Judge from the Appeals Chamber

PUBLIC

United Nations

S/PV.9344



Security Council

Seventy-eighth year

Provisional

9344th meeting

Monday, 12 June 2023, 3 p.m.

New York

President: Ms. Shaheen (United Arab Emirates)

<i>Members:</i>	Albania	Mr. Stastoli
	Brazil	Mr. Silveira Braoios
	China	Mr. Geng Shuang
	Ecuador	Mr. Pérez Loose
	France	Mrs. Dime Labille
	Gabon	Mrs. Onanga
	Ghana	Mrs. Gasu Aheto
	Japan	Mrs. Shino
	Malta	Mr. Camilleri
	Mozambique	Mr. Fernandes
	Russian Federation	Mr. Chumakov
	Switzerland	Mrs. Chanda
	United Kingdom of Great Britain and Northern Ireland ..	Mr. Wickremasinghe
	United States of America	Mr. Simonoff

Agenda

International Residual Mechanism for Criminal Tribunals

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

Adoption of the agenda

The agenda was adopted.

International Residual Mechanism for Criminal Tribunals

The President (*spoke in Arabic*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in this meeting: Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals.

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

I give the floor to Judge Gatti Santana.

Judge Gatti Santana: Nothing encourages crime more than impunity. In May 1993, the Security Council agreed unanimously to take exceptional action regarding the former Yugoslavia and establish an international criminal tribunal. That bold act asserted the rule of law and served as a warning to others elsewhere that violations of international humanitarian law would not be tolerated and, more importantly, that they should not go unpunished.

What the Security Council realized back then, and what continues to be true today, is that criminal conduct affecting and offending humankind requires global accountability. That same sentiment also prevailed in 1994, with the establishment of the International Criminal Tribunal for Rwanda (ICTR). And in 2010, a successor body of the ad hoc tribunals — the International Residual Mechanism for Criminal Tribunals, which I have the honour to lead — was conceived as an expression of the ongoing collective commitment to an indispensable system of international justice.

Within the framework of the Mechanism's wide-ranging mandate, particular attention has been paid to delivering justice, establishing the truth, upholding international standards of due process and

fair trial rights and, ultimately, convicting those who have been proven guilty beyond reasonable doubt of the most horrific crimes.

Two weeks ago, the Appeals Chamber handed down its last judgment concerning crimes committed during the conflicts in the former Yugoslavia, in the case *Prosecutor v. Jovica Stanišić and Franjo Simatović*. With that judgment, the ambitious journey of the International Tribunal for the Former Yugoslavia has come to an end, insofar as the cases against all 161 persons indicted by that Tribunal have concluded. That leaves only one case related to core crimes committed in Rwanda — the trial against Félicien Kabuga.

Before I update the Council on those proceedings, I wish to pay tribute to Judge Elizabeth Ibanda-Nahamya, who was a member of the Kabuga Trial Chamber. Her sad passing in January of this year was devastating not only to the Mechanism, but also to the wider international legal community. Judge Ibanda-Nahamya was a great judge and an even greater human being, who garnered tremendous respect. Her dedication, professionalism and kindness as a colleague are terribly missed. I am, however, pleased that Uganda has nominated another experienced female jurist, Judge Lydia Mugambe Ssali, who joined our judicial roster in late May.

Turning back to the case, on 6 June, the Trial Chamber rendered its decision on the fitness and future of the trial of Félicien Kabuga. After months of carefully examining the issues at stake, the judges on the bench have decided, by majority, that he is not fit to stand trial and is very unlikely to regain fitness but that, nevertheless, the Chamber will continue the proceedings through an alternative findings procedure to provide Mr. Kabuga with an opportunity to establish his innocence of the charged offences and in view of the strong public interest to make findings in relation to allegations of conduct attributed to Mr. Kabuga. It is expected that that decision will be appealed.

Turning to the Mechanism's other important functions, I wish first to praise the outstanding quality of the Prosecutor's fugitive-tracking team. Their work is another example of the Mechanism's strong commitment to realizing its mandate. The recent arrest in South Africa of Fulgence Kayishema, one of the four remaining ICTR fugitives, serves as a stark reminder that even after all these years, justice remains achievable, especially when supported by the power of State cooperation.

Another significant development concerns the monitoring of three cases referred to the Republic of Rwanda by the ICTR. The proceedings against Jean Uwinkindi and Bernard Munyagishari were completed in 2022, prior to my appointment as President. I am pleased to note that in March of this year, the appeal proceedings in the third case, *Prosecutor v. Ladislas Ntaganzwa*, were also completed. Based on the reports of that last case submitted by our monitors, I would like to commend the efforts of the Rwandan judicial authorities towards guaranteeing due process, and I also acknowledge the cooperation and responsiveness of the Rwandan Ministry of Justice and the Rwandan Correctional Service. I further note the professionalism of the national prosecutorial authorities and the active role undertaken by the Rwandan Bar Association in that regard.

The Mechanism observes the encouraging advancements in Rwanda's ability to discharge cases relating to international crimes efficiently and effectively. It is therefore confident that the Rwandan judiciary will be similarly steadfast during the proceedings on Fulgence Kayishema, which we will be following closely in line with our monitoring functions as set out in article 6, paragraph 5, of the statute.

I now turn to three main areas that require the Council's urgent attention and vigorous backing.

The first relates to the enforcement of sentences. The Mechanism is extremely grateful for the willingness of those 13 States that are currently enforcing sentences imposed by the ad hoc tribunals or the Mechanism. That represents a major contribution to the fulfilment of our mandate. However, the burden is not shared equally. More than half of the 45 convicted persons who are serving their sentences in enforcement States are imprisoned in two African countries. In Europe, 10 enforcement States are enforcing the sentences of 18 convicted persons.

In addition, there are four convicted persons at the United Nations Detention Unit in The Hague awaiting transfer to an enforcement State. The domestic legislation of some enforcement States limits their ability to enforce lengthy sentences. As a result, the Mechanism has recently been faced with situations where convicted persons had to be returned to our Detention Unit while awaiting the designation of a new enforcement State. Unfortunately, those situations are expected to continue to occur in the future. That development also has a detrimental impact on the

Mechanism's detention function. While the Detention Unit is meant to serve as a remand facility, 80 per cent of its occupants are now convicted persons. That not only has financial repercussions for the Mechanism but also burdens the host State significantly.

Secondly, there is the situation of the acquitted or released persons who were relocated to the Niger in December 2021. Let me begin with news I received over the weekend concerning the passing of one of those individuals, Mr. Tharcisse Muvunyi, on Friday evening. As a matter of priority, the Mechanism is obtaining more information on the particular circumstances of his death. I wish to underscore that the situation in the Niger contravenes the relocation agreement concluded with the United Nations and that the Mechanism is simply not in a position to resolve that predicament alone. Indeed, the Security Council has called on all States to provide the necessary assistance. Any decision on the relocation of those persons should be consistent with resolution 2637 (2022) and is without prejudice to their own personal efforts to find a solution. In the meantime, I urge the Council to appreciate how the status quo is untenable in every respect.

The third issue I wish to bring to members' attention today — and, arguably, the biggest threat we face — has to do with the relentless attempts to undermine our current work and the judgments issued by the ICTR, the International Tribunal for the Former Yugoslavia and the Mechanism. That includes the flagrant disregard by Serbia of its international legal obligations set forth by the Security Council itself and its persistent failure to arrest and surrender Petar Jojić and Vjerica Radeta for their alleged interference with the administration of justice. It bears repeating that such non-cooperation prevents the Mechanism from fulfilling its mandated functions.

Moreover, there is a disturbing trend of genocide denial, the glorification of war criminals, the purported rewriting of history and even provocative statements by convicted persons shamelessly admitting that they would do it all over again. In the face of those challenges, one of my priorities is to consolidate, safeguard and make more accessible the invaluable legacy of the ad hoc Tribunals and the Mechanism.

It is for the first time that a Mechanism President stands before the Council and can announce that in-court proceedings are all but concluded. The Mechanism only has the *Kabuga* case on its docket in that respect, with its future currently unclear. This represents a

watershed moment in the life of the Mechanism and for international criminal justice more generally. As a result, the Mechanism is poised to enter the next phase of its operations — one in which the reality of its daily responsibilities will be more closely aligned with its name and intended nature.

Nevertheless, the fact that the Mechanism is drawing down does not mean that it is ready to close down. We are not finished; rather, we are preparing to start a new phase. While decisions on bigger institutional changes and the transfer of our mandated activities will ultimately lie with the Council, the Mechanism will continue to streamline its activities wherever it can. As detailed in the progress report, the Mechanism made great strides over the past six months towards the planning of its future. Based on the road map we developed last year, senior managers from all three organs are working on a scenario-based workforce plan. Furthermore, a panel on judicial functions will produce recommendations with regard to the Mechanism's continuous judicial activities. Those efforts are bolstered by ongoing exchanges with officials of other judicial institutions, which have shed light on how our residual functions might look in the years to come.

In exactly one year, the Security Council will be conducting its fifth review of the Mechanism's progress of work. I am determined to continue pursuing innovative, more efficient ways of operating and to take all the necessary steps to keep achieving positive results. In that respect, I look forward to constructive collaboration with the Office of Internal Oversight Services, which is in the process of conducting another evaluation exercise.

While we do not presume to do everything to perfection, I can assure the Council that we do our very best. I conclude by expressing deep appreciation to all those whose support has been fundamental to our progress so far. The efforts we have invested in getting there are rivalled only by the satisfaction of being here to report on such results.

The President (*spoke in Arabic*): I thank Judge Gatti Santana for her briefing.

I now give the floor to Mr. Brammertz.

Mr. Brammertz: I thank you, Madam President, for this opportunity to again update the Security Council on my Office's activities and results. While my written report provides information through 15 May, I would

like to focus my briefing today on several important developments in the past few weeks.

First, I would like to express my satisfaction that, on 23 May, Fulgence Kayishema — our most wanted Rwandan fugitive — was arrested in Paarl, South Africa. As members will recall, the search for Kayishema was the subject of several of my briefings in recent years, as were the challenges in obtaining needed cooperation. As I have previously explained, Kayishema is charged with the killings of more than 2,000 innocent women, men, children and elderly persons at Nyange Church in Rwanda on 16 April 1994. He is alleged to have attempted to set the church aflame with refugees inside. When that failed, he organized a bulldozer to collapse the roof of the church, killing those who were still alive.

Kayishema's arrest is a signal moment in the global effort to punish perpetrators of genocide. That kind of result renews faith in international justice. The families of 2,000 victims will now see Kayishema answer for his alleged crimes. The wrongs they suffered 30 years ago can begin to be put right. For the Council and the United Nations, they have demonstrated again the strength of their determination to ensure that genocide is repressed and punished, and that justice for atrocity crimes is a matter of international concern. The arrest also exemplifies what can be achieved through international and national cooperation in law enforcement.

While my Office led the investigation, many Member States — particularly in southern Africa — played a critical role in bringing Kayishema to justice. South Africa is the most obvious. Over the past year, my Office enjoyed the full and unreserved support of the South African authorities, who established an operational task force to assist our investigations. The direct operational cooperation we achieved together was essential to our success, particularly on the final day of the arrest.

Eswatini also deserves recognition. Swazi authorities quickly created a task force at our request and worked intensively with our tracking team. Their dedication and cooperation were exceptional. Mozambique was another important partner. I am grateful to the Attorney General for having received my team and pledging her Office's full support.

And, as always, Rwandan authorities made enormous contributions to our success. The Prosecutor General, the Inspector General of Police and many

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others supported our work in Rwanda and ensured that we were able to obtain vital evidence.

My Office would like to extend our deepest gratitude to these countries and others who cooperated with our investigation. The challenges were immense, and it was only by working so closely together that Kayishema was finally located and arrested. There are now only three fugitives remaining. My Office is working intensively to account for them and bring this mandate to a successful conclusion in the near future.

One week after Kayishema's arrest, the Mechanism's Appeals Chamber delivered its last judgment in the *Stanišić and Simatović* case, in the International Tribunal for the Former Yugoslavia (ICTY). My Office is satisfied that the Appeals Chamber accepted key aspects of our appeal. The Judges agreed with us that both accused were criminally responsible as members of a joint criminal enterprise for a larger number of crimes in Bosnia and Herzegovina.

As the Chief and the Senior Deputy in the Serbian State Security Service, under Slobodan Milošević, Stanišić and Simatović shared the intention with other Serbian, Croatian Serb and Bosnian Serb leaders to ethnically cleanse non-Serbs from large areas of Croatia and Bosnia and Herzegovina. They further contributed to the implementation of the joint criminal enterprise in important ways, particularly by supporting notorious paramilitary groups.

The Appeals Chamber increased their sentences to 15 years of imprisonment each. That judgment is a fitting final chapter in the work of the ICTY. Over 30 years of work, we were able to successfully prosecute senior political, military and police officials from all sides of the conflict. We demonstrated that accountability for the most serious international crimes is possible, while also leaving as our legacy a record of what occurred.

I would also like to mention the decision issued by the Trial Chamber last week in the *Kabuga* case. This decision is not yet final, and will likely be appealed. What I can say at this point is that my Office believes that the trial against Kabuga can and should be completed in a manner that is consistent with the rights of the accused.

The arrest of Fulgence Kayishema and the completion of the *Stanišić and Simatović* case are significant steps bringing the Mechanism closer to finalizing its judicial activities. Under the President's leadership, the Mechanism is actively planning its

future as a true residual institution. My Office is fully participating in that process and providing our input and support. In my view, the Mechanism must and will soon be a smaller institution than today. That will mean strictly focusing resources on core functions.

At the same time, it is important to recognize that my Office and the Judges of the Mechanism will still have important work to do. For my Office, our focus will be on our mandate under article 28, paragraph 3, to assist national jurisdictions to continue the accountability process for international crimes committed in Rwanda and the former Yugoslavia. That mandate is in furtherance of the International Criminal Tribunal for Rwanda and ICTY completion strategies, which foresaw that even as trials ended in Arusha and The Hague, national courts would take over responsibility for achieving more justice.

As my written report details, there can be no question that much more justice still needs to be achieved at the national level. In Rwanda, there are more than 1,000 fugitives to be prosecuted. My Office is already actively working to transfer evidence and case files to the Prosecutor General's office.

In the former Yugoslavia, national prosecutors still must deal with several thousand cases. In addition to evidentiary and legal support, my Office is intensively engaging in resolving challenges in regional judicial cooperation, which remains problematic. In addition, every year, countries around the world identify in their territories persons suspected of committing crimes in Rwanda or the former Yugoslavia, who then need to be extradited or prosecuted domestically.

My Office plays a critical role in supporting that continued accountability process. In the past few years, we have received more requests for assistance than ever before. This is a positive sign, as justice is best delivered at the local level. Investigators and prosecutors in many countries look to my Office for assistance in obtaining evidence, preparing investigative strategies, drafting indictments or proving cases in court. That vital assistance, which helps achieve better results, cannot be obtained anywhere else. I fully trust that we will continue to enjoy the Security Council's support in carrying out that vital mandate, through which Member States themselves take the lead in securing further justice and promoting peace.

In conclusion, the past several weeks have seen the Mechanism achieve important results, bringing it much

closer to completing its final ad hoc judicial activities. After more than 20 years, Kayishema is no longer a fugitive and will now stand before a court of law. The *Stanišić and Simatović* appeal judgment brings to an end the important work that the ICTY began in The Hague 30 years ago.

In relation to both Rwanda and the former Yugoslavia, the international justice process has been imperfect. Significant time was needed, and there are lessons to be learned from constructive critiques. Yet, the results have been beyond expectation, and a significant success for the United Nations. More justice still needs to be achieved and Member States are committed to now taking the lead in that work. Very soon my Office will be fully focused on our remaining residual functions, the most important of which is assisting Member States to continue the accountability process.

As a last comment, genocide denial and the glorification of war criminals remain significant concerns. The international community is determined to bring war criminals to trial. It should be equally committed to promoting the truth after those trials are completed. My Office is grateful for the continued support of the Council in all of our efforts.

The President (*spoke in Arabic*): I thank Mr. Brammertz for his briefing.

I shall now give the floor to those members of the Council who wish to make statements.

Mrs. Onanga (Gabon) (*spoke in French*): I would like to express how pleased we are to see you preside over this meeting, Madame President. I thank you for convening this meeting on the progress report of the International Residual Mechanism for Criminal Tribunals.

I would also like to thank the President of the Mechanism, Judge Graciela Gatti Santana, as well as Prosecutor Serge Brammertz for their briefings in the context of the twenty-second progress report on the work of the International Mechanism, in accordance with resolution 1966 (2010) and article 12 of resolution 2637 (2022).

It is my honour to take the floor on behalf of Ambassador Xavier Biang, Chair of the Informal Working Group on International Tribunals.

I welcome the representatives of Bosnia and Herzegovina, Croatia, Serbia and Rwanda to this meeting.

This meeting is being held 30 years after the Security Council, in May 1993, undertook the creation of tribunals for the former Yugoslavia and Rwanda to lead the fight against impunity. I reaffirm here that combating impunity is a moral imperative to ensure more peace, security and justice. It therefore requires the sustained effort of the international community. We commend the Mechanism's efforts during the reporting period, despite the numerous challenges it faced, to successfully perform its residual functions, pursuant to resolution 1966 (2010), with regard to the efficiency and expediency of judicial proceedings, respect for the fundamental rights of the accused or the protection of witness identity.

Gabon welcomes the fact that the Office of the President has maintained its focus on implementing the road map, the strategy of which places particular emphasis on a transition to a completely residual institution while focusing, of course, on recruiting competent staff through a fair process to carry out the residual tasks. We see that approach, which prioritizes the strengthening of existing working methods and tools, as a suitable way to enable a targeted transition towards the definitive completion of the Mechanism's residual functions. To that end, Gabon supports all the measures taken to achieve that goal, including the very useful consultations with other judicial bodies.

In that particularly sensitive context that the President just highlighted, we encourage her to use that strategy to raise the awareness of the international community — and the Security Council in particular — of complex issues such as tracking down fugitives, conducting trials for highly sensitive cases, providing technical assistance to national jurisdictions, monitoring and carrying out sentences, protecting victims and witnesses, managing and archiving documents and ensuring the legacy of the Mechanism.

The significant progress made on the ongoing trials is an example of that, especially in the closing of the *Prosecutor v. Jovica Stanišić and Franko Simatović* case, which represents a crucial step in the fight against impunity and, above all, reaffirms the relevance of criminal courts. At the same time, it offers victims renewed hope in the knowledge that however long it takes, they will receive justice. That breakthrough, after so many years of legal proceedings, including a retrial, is now enabling the Mechanism to focus on the case of *Prosecutor v. Félicien Kabuga*, which has been suspended since the trial began in September 2022.

The Mechanism is now at a crucial phase. Its credibility and effectiveness will continue to depend to a large extent on the assistance it receives from States, in particular their unwavering support to Prosecutor Serge Brammertz. That indispensable support should enable him to arrest the fugitives and their accomplices who are at large. In that regard, Gabon welcomes the recent arrest of Fulgence Kayishema, which marks a considerable step forward in the Mechanism's efforts to bring the transition process to a successful conclusion. Indeed, if he had not been arrested and tried in accordance with the requisite legal procedures, the Mechanism's purpose could have been weakened.

The fight against impunity must remain an imperative for the international community. Gabon encourages the States concerned to cooperate closely with the two branches of the Mechanism in order to maximize the collection of evidence essential to the opening of future judicial investigations — which are labour-intensive — to establish the facts of serious crimes committed. We take this opportunity to denounce the glorification of perpetrators.

In conclusion, we express the hope that the work of this important Mechanism will continue unhindered, with the effective collaboration of the international community. Beyond the fulfilment of its essential mandate, its work enshrines the search for truth and justice and constitutes a moral bulwark against arbitrariness and mass atrocities. To that end, further consolidating the legacy of the Tribunals and the Mechanism is major asset in terms of strengthening the promotion of international criminal law.

Mrs. Chanda (Switzerland) (*spoke in French*): Switzerland would like to thank President Gatti Santana and Prosecutor Brammertz for their detailed briefings. We also welcome the participation in this meeting of the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia.

Thirty years ago, the Security Council took the decision to establish the International Tribunal for the Former Yugoslavia. Ten years ago, the International Residual Mechanism for Criminal Tribunals began its work in The Hague. This double anniversary reminds us of the importance of international justice in the fight against impunity and of the Residual Mechanism in particular. With that conviction in mind, I would like to highlight four points.

First, Switzerland commends the efforts made by the Mechanism to successfully carry out its mandate. We welcome the fact that the *Prosecutor v. Jovica Stanišić and Franko Simatović* case has been brought to a successful conclusion. Switzerland joins the Secretary-General in recognizing the dedication of the judges and staff involved in that case. We also welcome the continuing efforts in the *Prosecutor v. Félicien Kabuga* case and commend the close collaboration between the Mechanism and the local authorities. That contributes to enshrining the principle of complementarity and national ownership of post-conflict accountability. Given the Mechanism's downsizing and budgetary constraints, those various achievements are all the more impressive. It is essential for us to provide our full support to the Mechanism until its work is completed.

Secondly, we recall that all States are obliged to cooperate with the Mechanism, including in the arrest and surrender of fugitives. We therefore welcome the recent arrest of Mr. Kayishema, with the support of South Africa. On the other hand, the situation of the eight persons acquitted or released who have been resettled in the Niger remains worrying, despite the considerable work of the Mechanism. We encourage States to respect all the agreements concluded with the Mechanism and to step up their efforts to enforce sentences.

Thirdly, the work of the Mechanism is essential to preventing the commission of new atrocities. Accountability is a crucial element in turning the page on the conflicts of the past and building a sustainable peace based on reconciliation and cooperation. That is why we are deeply concerned about the hate speech, glorification of war criminals, historical revisionism and disinformation that is spreading in the Western Balkans and elsewhere. That jeopardizes the reconciliation process and peaceful, multi-ethnic coexistence. In that regard, we welcome the efforts made by the Mechanism to help the affected communities to better understand the facts of the crimes committed and to address their suffering.

Finally, we stress the importance of guaranteeing the protection of witnesses and victims while also planning for the future of the Mechanism and ensuring the continuity of its work. In that regard, Switzerland takes note of the Mechanism's meticulous preparations for the future of its operations. We also welcome the efforts made to preserve the Mechanism's archives and premises, and to digitize the Arusha archives, thereby

guaranteeing the right to the truth for victims and their families.

There is no doubt about the Mechanism's important contribution to transitional justice and, consequently, to the promotion of sustainable peace. On the occasion of this symbolic double anniversary for international criminal justice, let us demonstrate the same commitment to peace and combating impunity that inspired our predecessors.

Mrs. Dime Labille (France) (*speak in French*): I would like to thank the President of the International Residual Mechanism for Criminal Tribunals, Ms. Gatti Santana, and Prosecutor Brammertz for presenting the report of the Mechanism and for their briefings.

On behalf of France, I would also take this opportunity to also pay tribute to the memory of Judge Elizabeth Ibanda-Nahamya and her invaluable contribution to international criminal justice. We extend our sincere condolences to her family and friends.

France reaffirms its full support for the Mechanism and its efforts to combat impunity and preserve the legacy of the former Tribunals for the former Yugoslavia and Rwanda. The past six months have demonstrated the Mechanism's determination to implement its mandate and bring to justice all those indicted by the ad hoc Tribunals. The Security Council must support it in its work. The handing down of the appeal judgment in the case of *Stanišić and Simatović* on 31 May marks a crucial stage in the Mechanism's judicial activity. For the victims, it represents a victory for justice over impunity, 30 years after the establishment of the International Tribunal for the Former Yugoslavia. However, in their decision of 6 June, the judges of the Trial Chamber concluded that Mr. Kabuga, who was arrested in France in 2020 and handed over to the Mechanism, was not fit to stand trial and was unlikely to be so in the future. We encourage the Mechanism to find ways to respond to the victims' quest for justice.

France urges all States to cooperate with the Mechanism in accordance with their international obligations and to support it in its activities. We regret that certain partners have continued to refuse to do so, despite the repeated appeals from the President of the Mechanism, its Chief Prosecutor and many Member States, supported by the Council. It is imperative that the remaining fugitives indicted by the International Criminal Tribunal for Rwanda be brought to justice. In that regard, we welcomed the arrest on 24 May

of Fulgence Kayishema, thanks to the collaboration between the Office of the Prosecutor and the authorities of South Africa and other countries. His arrest exemplifies efficient and effective international cooperation in combating impunity. In that regard, I should mention that the trial of Philippe Hagekima/Manier, who has been charged with genocide and crimes against humanity, began on 15 May and will conclude on 30 June at the Paris Court of Assizes. However, the fate of those who are currently in the Niger is of great concern, and France will continue to follow their fate closely.

The recent judicial developments have marked the beginning of the Mechanism's residual activities phase, which does not mean the completion of its vital activities. We welcome the President's plan to draw up a completion plan for the Mechanism, and encourage her to pursue her efforts and work on options for the Mechanism's future jurisdiction. We call on the other organs of the Mechanism to work in close cooperation with the President, and we are confident that she will carry out her work with the leadership she is known for. After trying cases relating to core crimes, the Mechanism will have to continue to perform its essential tasks, including assistance to national jurisdictions, the protection of victims and witnesses, the management of archives and monitoring of the execution of sentences. Remembrance work is also essential for reconciliation.

We remain deeply concerned about the denial of the commission of crimes and the glorification of the perpetrators of genocide and war criminals convicted by international criminal tribunals following impartial and independent proceedings. We support the Mechanism's efforts to combat revisionism in all its forms, efforts that include the President's participation in commemoration ceremonies, the Mechanism's awareness-raising activities, the disposal of contempt-of-court cases and the completion of legal proceedings.

Lastly, we welcome the appointment of Judge Lydia N. Mugambe Ssali to the Mechanism's roster, which represents some progress towards achieving parity in the highest judicial offices of the Mechanism.

Mr. Fernandes (Mozambique): I would like to thank you, Madam President, for convening this timely and critically important debate on the International Residual Mechanism for Criminal Tribunals. I thank the President of the Mechanism, Judge Graciela Gatti Santana, and Chief Prosecutor Serge Brammertz for their insightful briefings this afternoon. We learned with sadness of the tragic loss in January of Judge

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Elizabeth Ibanda-Nahamya of Uganda. We join others in paying tribute in acknowledging her valuable contribution to the work of the Mechanism and the field of international criminal justice in general.

Mozambique strongly supports the pursuit of international justice and the work of the International Residual Mechanism, which has assumed the responsibilities and functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. We would like to share our thoughts on three points.

First, where the delivery of international criminal justice is concerned, the maintenance of international peace and security — the primary responsibility of the Security Council — requires us to assess and improve our ability to provide justice for the most serious crimes under international law. There should be no impunity for the perpetrators of crimes against humanity, crimes of genocide or serious violations of international humanitarian law. In that regard, we should recognize the historical contribution of the ad hoc International Tribunals, which were established to hold individuals responsible for genocide accountable. Mozambique would like to commend the excellent work done by the International Residual Mechanism for Criminal Tribunals since its assumption of the functions of the two Tribunals. As the Mechanism's President explained earlier, the Mechanism has been able to pursue judicial proceedings while planning for a future when it will fulfil only residual functions.

The completion of the *Stanišić and Simatović* case inherited from the Tribunal for the Former Yugoslavia is an achievement that the Mechanism should be proud of. It is a historic contribution of the institution to providing justice to the victims of the crime of genocide. Victims must be effectively placed at the centre of our efforts to promote justice for the crimes committed in Rwanda and the former Yugoslavia. In that context, we believe that truth-telling and reconciliation mechanisms must also be taken into account, together with judicial mechanisms.

Secondly, concerning the importance of cooperation between the Mechanism and States, we recognize that for the Mechanism to properly undertake its functions, it requires cooperation and above all compliance by States with their legal obligations regarding judicial proceedings in progress. Mozambique encourages all States to collaborate speedily with the Residual Mechanism when required so that it can complete its

work. We call on States to cooperate with the Mechanism in the areas of the enforcement of sentences and the relocation of acquitted and released persons. With regard to sentence enforcement, States are required to collaborate to ensure compliance by those who are convicted by the ad hoc Tribunals or the Mechanism. Ideally, those who have been convicted should be allowed to carry out their prison terms in their country of origin, with the assistance of the Mechanism and other organizations in supporting the host countries in that endeavour.

Thirdly, with regard to the preservation of the legacy of the ad hoc Tribunals and the Mechanism, the management and preservation of records and the granting of public access to them are important for research purposes and education, and can significantly contribute to combating denial and revisionism and achieving our overall objective of the maintenance of international peace and security. We encourage the Mechanism to pursue its ongoing efforts to address the challenges linked to managing physical and digital records. Finally, we take note of the fact the Mechanism has begun the critical phase of its transition from an operational court to a fully residual institution. We look forward to the assessments and recommendations of the panel on judicial functions that will ultimately assist the Council in deciding on the future of the Mechanism.

In conclusion, we wish to reiterate Mozambique's appreciation for the achievements made by the Mechanism. We want to assure the Mechanism of our continued support in all its endeavours, and we wish the Mechanism's President and Chief Prosecutor success in the accomplishment of their noble mission and crucial activities.

Mrs. Gasu Aheto (Ghana): First of all, I wish to thank Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals, and Mr. Serge Brammertz, Prosecutor of the Mechanism, for their insightful briefings to the Council, which provide Council members with an overview of the progress of the work of — and the challenges facing — the Mechanism.

My delegation remains convinced that the Mechanism has an important role in ending impunity and bringing the perpetrators of atrocity crimes to justice and will continue to support every effort and work constructively with other delegations in that regard. With regard to the content of the report, Ghana would like to make the following three points.

First, on cooperation, Ghana continues its call on all States to cooperate with the Mechanism, in accordance with applicable laws, by handing over fugitives to enable the judicial process to continue and be completed. It may be noted that 153 States have said no to atrocity crimes, through the Convention on the Prevention and Punishment of the Crime of Genocide, and we urge those States that are still harbouring identified fugitives to hand them over, in fulfilment of their international obligations. We also call for the cooperation of States in the enforcement of sentences.

Ghana has always maintained that, as a comity of nations, we have a collective responsibility to remember the survivors and families of victims of those atrocity crimes that have been committed and to sustain the demands of justice and accountability without limitation over time. We underscore that the wheels of justice may sometimes grind slowly. However, it is also our collective responsibility to seek justice for them by holding accountable the perpetrators of the heinous atrocity crimes. The only way the survivors, their families and the families of victims can find closure is for the perpetrators of such heinous crimes to be brought to justice.

On the challenges facing the Mechanism in relocating persons who have been acquitted or have completed their sentences, pursuant to resolution 2529 (2020), Ghana regrets to note that such persons who were sent to the Niger are still being kept in a safe house against their will, given the withdrawal of the Niger from the cooperation agreement signed with the United Nations. Ghana wishes to once again draw attention to the challenges facing the Mechanism in implementing the resolution. It is pertinent to state that the international justice community must pay attention to and resolve the situation of the acquitted and the released persons who have completed their sentences.

The continued lack of liberty of those persons remains a stain on international justice and perpetuates a well-founded criticism that international justice has failed to ensure and implement fundamental human rights. As we commend the efforts of the Registrar for using diplomatic, political and judicial avenues to resolve some of the challenges, we call on the Council to critically discuss the matter with an outcome that will assist the Mechanism, in line with resolution 2637 (2022).

Ghana wishes to reiterate that paragraph 5 of the resolution states,

“Notes that decisions on the relocation of persons who have been acquitted or completed their sentences should take into account inter alia the readiness of the state of origin to accept its nationals, the consent or any objections raised by the individuals to be relocated and the availability of other relocation states” (resolution 2637 (2022), para.5).

Ghana remains convinced that paragraph 5 sets the tone for an in-depth discussion by the Council. The proposal is being made against the backdrop that more of such persons will be released in the future. Faced with that fact, not many States have expressed interest in taking in those persons of late. How long will the Mechanism continue to take on such responsibilities, which also have budgetary implications?

Finally, Ghana continues to note with appreciation the collaboration between the Office of the Prosecutor and the national prosecutions through the provision of access to evidence and information in response to a high volume of requests for those crimes. We deem that to be a positive development, as it helps build the Office’s capacities in the national prosecutions of the affected countries.

Mr. Simonoff (United States of America): I thank President Gatti Santana and Prosecutor Brammertz for today’s briefing on the ongoing work of the International Residual Mechanism for Criminal Tribunals to advance accountability for atrocities committed in Rwanda and the former Yugoslavia.

Since the previous briefing (see S/PV.9217), the Mechanism has achieved a significant milestone, with the capture and arrest of fugitive Fulgence Kayishema. We congratulate the Mechanism and the South African authorities on the arrest and are grateful for the indispensable role played by South Africa in the capture and arrest. Kayishema was indicted more than 20 years ago, charged with genocide and extermination as a crime against humanity, for his role in the cold-blooded murders of more than 2,000 Tutsi men, women and children at the Nyange parish church. His arrest cannot restore what was lost in April 1994 in Kivumu, but we hope that it will provide victims some comfort that the fight for justice for their loved ones will continue and the facts surrounding their death will be fully brought to light. We continue to offer a reward of up to \$5 million for the three remaining Rwandan fugitives sought by the Mechanism. Let Kayishema’s arrest to

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be a message to all those responsible for similar crimes that they cannot escape accountability.

We also acknowledge the significance of the Mechanism's recent appeals judgment in the case *Prosecutor v. Jovica Stanišić and Franko Simatović*. That long-awaited judgment, which confirmed their liability as participants in a joint criminal enterprise to forcibly remove civilians through the crimes of persecution, murder, deportation and inhumane acts in Bosnia and Herzegovina and Croatia, is the final case involving atrocity crimes committed in the former Yugoslavia and closes an important chapter in the history of international criminal justice.

Just over 30 years ago, the Security Council adopted resolution 827 (1993) to establish the International Tribunal for the Former Yugoslavia (ICTY). The ICTY, the first international tribunal since Nuremberg and Tokyo to address atrocity crimes, demonstrated the international community's enduring commitment to holding those most responsible for atrocity crimes accountable. We are grateful for the decades of work by the judges, attorneys and other court staff of the ICTY and the Mechanism and their immense contributions to the rule of law and the fight against impunity in the former Yugoslavia.

There is only one other remaining case involving core crimes pending before the court — the case *Prosecutor v. Félicien Kabuga*, accused of acting as the primary financier of the militia and political groups that perpetrated the genocide in Rwanda. We note the Trial Chamber's decision last week finding Kabuga unfit for trial and deciding to adopt an alternative finding procedure.

Unfortunately, this year we mourn the loss of Judge Elizabeth Ibanda-Nahamya of Uganda, who served on the *Kabuga* Trial Chamber and worked on other matters of distinction at the Mechanism. Her contributions in service to the field of international criminal law were outstanding, and we appreciate and recognize her years of service.

As President Gatti Santana's report notes, the Mechanism is now preparing to enter a new phase in its life cycle. We appreciate the efforts of the Mechanism to manage a smooth transition away from active casework to focus on residual court functions and learn lessons from the tribunals on Cambodia, Sierra Leone and Lebanon on how best to address important

issues, including supporting national jurisdictions and managing and preserving evidence.

The success of the Mechanism has always depended on the cooperation and support of all States. We are grateful to the 13 countries that serve as enforcement States, holding those who were convicted. They are a fundamental pillar of the Mechanism's successful operation. We also continue to urge all parties to find a durable solution for the acquitted and released persons who have been relocated.

We are also pleased to note the Prosecutor's report of increased cooperation among Bosnia and Herzegovina, Montenegro and Serbia on war crimes cases, as well as the report that the Croatian Minister for Justice has been transferring requests for assistance to the appropriate judicial authorities for action. We hope that the region can continue to make progress on cooperation, as victims have waited too long for justice. In particular, we continue to urge Serbia to act on the outstanding arrest warrants for Jojić and Radeta.

Finally, we acknowledge and honour the courage and resilience of victims and survivors and their loved ones who continue to fight for the official acknowledgement of the crimes that they have witnessed and experienced. We recognize the courage of the thousands of witnesses who have participated in these and other trials, without whom justice could not be served. The United States will continue to press for justice, mutual trust and reconciliation as the foundation for peace and stability.

Mr. Silveira Braoios (Brazil): I would like to thank the President of the International Residual Mechanism for Criminal Tribunals (IRMCT), Judge Graciela Gatti Santana, and Prosecutor Serge Brammertz for their latest reports on the activities of the Mechanism.

We also express our condolences following the passing of Judge Elizabeth Ibanda-Nahamya to her family and close ones.

As we know, the IRMCT inherited judicial cases and the residual functions of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Those former Tribunals are landmarks in the history of international criminal justice. One cannot underestimate their invaluable contribution to the development of jurisprudence on international criminal law and their role in providing accountability for the most serious crimes of international law committed in the territories

of the former Yugoslavia and Rwanda. It is of the utmost importance to preserve their legacy.

One year ago, by adopting resolution 2637 (2022), the Security Council allowed the IRMCT to continue its work for two more years. One year before the expiration of the current mandates of its Prosecutor and Judges, we must acknowledge that the IRMCT still needs time to complete the tasks for which it is responsible in its mandate to fulfil the residual functions of the ICTY and the ICTR.

In spite of its importance, the IRMCT, with the support of the Security Council, must envisage the path towards the conclusion of all of its activities. The Security Council conceived it to be temporary and for its functions to diminish over time. For that reason, we commend the principals of the IRMCT for bearing in mind the need for clear timelines for the completion of its judicial activities. We also welcome Judge Gatti Santana's remarkable efforts to promote a reflection on how best to gradually discontinue the activities of the IRMCT — an undeniably complex task. In that regard, we note with satisfaction the establishment in January of a panel on judicial functions to assess the nature and duration of the Mechanism's remaining judicial functions.

We were also satisfied to learn about the progress achieved by the Mechanism in its remaining core judicial cases. That was illustrated by the conclusion of appeal proceedings in the *Stanišić and Simatović* case on 31 May. We are also grateful for Judge Gatti Santana's initiative to present Council members' experts with an overview of the expected timeline concerning the case of Félicien Kabuga, whom on 7 June the Trial Chamber considered unfit to stand trial. We support the Trial Chamber's decision to proceed with evidence hearings, even in the face of the impossibility of a conviction.

Despite the progress in the conclusion of the IRMCT's core judicial cases, Brazil is aware that there are long-term residual functions that the Mechanism is expected to perform. That is the case for the supervision of the enforcement of sentences. That task must be carried out until the final convict passes away or finishes serving their sentence. Victim and witness protection may be necessary until the final member of the immediate family deceases. Convicted persons may also request judicial reviews of their cases if new facts arise.

The tracking of fugitives is also a key function of the IRMCT to ensure punishment for serious crimes. There are still remaining fugitives. In that context, we

commend the Office of the Prosecutor for its key role in arresting Fulgence Kayishema, who remained at large for more than 20 years and will be extradited to Rwanda for prosecution. It is also crucial to preserve the IRMCT's archives, and we welcome its efforts to disseminate information about its legacy. The IRMCT needs the support of the international community to discharge its mandate. Therefore, we call for full cooperation with the Mechanism in the tracking of fugitives and the execution of outstanding arrest warrants and orders for surrender and for the relocation of acquitted or released persons.

Brazil reiterates its belief that States bear the primary responsibility to hold accountable those who perpetrate crimes in their territories. International tribunals are supplementary to national judiciaries. They must act when national institutions are unable or unwilling to adjudicate those crimes themselves. The principle of complementarity ensures that States retain ownership in their right and, above all, duty to provide justice to their citizens. Strong national institutions that ensure accountability for serious crimes make their societies more resilient against criminality.

Mr. Camilleri (Malta): I also thank President Gatti Santana and Prosecutor Brammertz for their briefings on the ongoing work of the International Residual Mechanism for Criminal Tribunals to bring perpetrators of atrocities committed in Rwanda and the former Yugoslavia to justice. We applaud their leadership and commitment towards advancing the work of the Mechanism.

We value the focus on the remaining judicial work. In that regard, we highlight the remarkable progress that has been made by the Mechanism. In particular, we welcome the recent judgment and final convictions in the *Stanišić and Simatović* case and take note of the arrest of Fulgence Kayishema, which was achieved through a joint operation by the Office of the Prosecutor's fugitive-tracking team and the South African authorities, with the assistance of Mozambique and Eswatini. That is a clear example of how State cooperation is a major contributor to the justice process. The arrest sends a strong message that those who commit such crimes cannot escape justice.

As noted in the report, the Mechanism continues to make strides in relation to supervising the enforcement of sentences, responding to national requests for assistance, protecting victims and witnesses and tracking the remaining fugitives indicted by the International

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Criminal Tribunal for Rwanda. Moreover, the careful forethought and preparation for the Mechanism to enter into the next phase in its life cycle — that of being a truly residual Mechanism — is commendable and must be continued in line with resolution 2637 (2022) and the outstanding recommendations of the Office of Internal Oversight Services.

However, we recognize that the Mechanism will need to continue its work on the enforcement of sentences, the preservation of archives, the protection of witnesses and, in particular, assistance to national jurisdictions and other judicial activities, and we want to assure the President of our full support.

Cooperation is essential in ensuring that the Mechanism can fulfil its mandated functions. We urge all States to comply with their obligations and to cooperate fully with the Mechanism in its efforts to arrest and surrender the remaining fugitives.

Moreover, Malta adds that the continuing situation of the acquitted and released persons who were relocated to the Niger in December 2021 requires an urgent solution. We call on the States concerned to respect the provisions of resolution 2637 (2022) and urge the Registrar to continue using his good offices to resolve the issue.

Regrettably, as we have just heard from the President and the Prosecutor, we continue to confront the dangerous matter of non-acceptance of historical facts. We concur with the Prosecutor on his call for a break with the rhetoric of the past and leadership in favour of reconciliation and peacebuilding. In that regard, we welcome the continuation by the Mechanism, together with the European Union, of the Information Programme for Affected Communities and the recently launched the *Guide for History Teachers*, which allows public access to judicial records of the Mechanism, thereby contributing to defending the truth.

Let me also welcome the Office of the Prosecutor's continued efforts to build the capacity of national authorities prosecuting war crimes and commend the Office for the recent training on the prosecution of sexual violence crimes for prosecutors from Eswatini.

In conclusion, let me acknowledge that President Gatti Santana has made it a priority to address victims and survivors, including through the recent remarks for the thirtieth commemoration of crimes in Ahmići. We must continue to place victims, including women and children, at the centre of our efforts to promote

justice for the crimes committed in Rwanda and the former Yugoslavia.

Malta reaffirms its steadfast commitment to international criminal justice. Ensuring accountability and achieving justice is a priority. The victims and survivors of atrocity crimes deserve no less.

Mr. Chumakov (Russian Federation) (*spoke in Russian*): We have carefully reviewed the reports of the President and the Prosecutor of the International Residual Mechanism on the activities of that body over the past six months.

The situation of the Residual Mechanism is still best described by the Russian proverb: "Nothing is more permanent than a temporary solution." In that regard, we continually remind its leadership of resolution 1966 (2010), which established the Mechanism as a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions.

At the same time, we note some initial steps have been taken in the right direction, namely, the closure of the detention centre in Arusha and the Sarajevo office, as well as some reductions in temporary and permanent positions. However, the number of reduced positions has not even reached that set out in the plans of the Mechanism itself, which were presented to the Council previously. Let us recall that they stipulate the reduction of at least 46 more positions by the end of 2023. We await full implementation in that regard, and we will continue to closely monitor the Mechanism's fulfilment of its pledges.

Until recently, the Residual Mechanism had essentially only one case pending against Kabuga. We will not count the so-called case of contempt of court. As we have repeatedly stated, the Mechanism should not multiply cases under that category to artificially prolong its existence. National courts can manage those perfectly well. The referral of such cases is permitted under article 1, paragraph 4, of the statute of the Mechanism.

In a recent decision, Mr. Kabuga was declared unfit to stand trial for health reasons. The trial of facts initiated by the Trial Chamber in his case, which will take place without the participation of Mr. Kabuga, is not based on the founding documents of the Mechanism and therefore its status is completely unclear to us and raises questions in terms of its practical expediency. The Mechanism appears to have invented yet another way to prolong its existence.

In that sense, the Mechanism's judicial docket is effectively empty. Against that backdrop, no amount of rhetorical balancing acts in its reports can justify the preservation of a huge bureaucratic machine comprised of 388 people. Since many of the positions are part of the inordinately inflated staff of the Mechanism, we demand that the Registrar undertake robust measures to reduce superfluous staff as quickly as possible.

The intention expressed by President Gatti to implement a strategy to transform the Mechanism into a genuinely residual body is appropriate. We are surprised that this appropriate idea was first voiced 10 years after the Mechanism's establishment. In fact, the President acknowledged the rectitude of the Russian delegation, which for all these years has stated that the Mechanism failed to comply with the parameters of the resolution that established it to begin with and had simply ignored the Council's instructions regarding its residual, temporary and compact nature. In that regard, given that the transformation of the Mechanism into a genuinely residual structure has been delayed by at least a decade, a significant acceleration in the pace of the efforts to draw down its work is required from its current leadership.

In that connection, we call on the Office of Internal Oversight Services to develop a set of recommendations and scenarios for the Mechanism to help it finally comply with the Council's instructions, as set out in resolution 1966 (2010) which established it, to come to terms with its temporary nature and transition to an active closure of its activities. Those recommendations should be aimed at, above all, a fundamental reduction in staff and budgetary expenditures. To summarize, we are awaiting specifics on what will be closed, transferred or reduced and when. We also would like to know the date for the completion of the functions of this structure, which was originally created as a temporary structure.

Moreover, we would like to comment on some issues related to the current activities of the Residual Mechanism. The question of respect for the basic rights of convicted persons remains acute. At the previous meeting of the Security Council (see S/PV.9217), we mentioned the case of an open letter from Serbian intelligentsia defending the rights of Mr. Karadžić, who is serving a sentence in the United Kingdom. Having failed to receive information on that matter from the Mechanism, we attempted to make enquiries of Parkhurst Prison, where the convicted person is

being held. It emerged that, among local human rights activists, that prison has a notorious reputation because of the conditions of detention, which are "unacceptable and detrimental to the health of detainees". The January report of the specialized British government commission notes that the prisoners in this prison are deprived of medicine and psychological care. The leadership of Parkhurst does not even deny this but does refer to a lack of financing.

Mr. Karadžić's daughter, Sonja Karadžić-Jovičević, also shed light on the conditions of detention of her father. As she puts it, those conditions are simply inhumane. He has had all forms of communication, including books and personal correspondence, confiscated from him. He has been prohibited from speaking in his mother tongue, allegedly due to security concerns related to the fear that Muslim cellmates may try to take his life. Similar information has emerged from Goran Petronvjevic, Mr. Karadžić's lawyer, who has also drawn attention to the fact that the sentenced person was not given the right to meet his basic cultural and religious needs. Specifically, the Orthodox priest who recently visited him was subject to the undignified procedure of a body search and had to remove his garments.

Mr. Petronjevic has been following the conditions of other Serbs serving sentences. In addition to the violations reported to have been committed by the United Kingdom and the Kingdom of the Netherlands, there have been violations reported to have been committed by Germany, Poland, France and Estonia. Further, the magnitude of the problems related to prison conditions are eloquently attested to by the fact that 14 Serb convicts serving sentences died while proceedings were being carried out by the ICTY and the Mechanism. We demand that the Mechanism adopt urgent measures to remedy this unacceptable situation, and Mr. Karadžić and other sentenced Serb persons must be allowed to serve their sentences under appropriate conditions.

The following issues are related to the Serb general Mr. Ratko Mladić. We remain uncertain as to whether Mr. Mladić is receiving quality medical assistance while at the Mechanism's detention facility. Given Mr. Mladić's advanced age and the state of his health, we wish to recall article 26 of the statute of the Mechanism, which empowers the President to decide issues of pardoning or commutation of sentences in the interests of justice and the general principles of law. At the same time, we wish to stress that, in this specific

instance, it would be well advised to take into account not just the humanitarian component, but also the specific procedural features that are linked to the well-known shortcomings in the work of the Mechanism and its predecessor, the International Tribunal for the Former Yugoslavia (ICTY).

The handing down of a final ruling in the case of the Serb general took unacceptably long and was accompanied by a disregard of the basic rights of an accused person that have been enshrined in core international legal human rights protection instruments, key Security Council resolutions and the Mechanism's rules of procedure and evidence. On the whole, the ICTY and the Mechanism have for now mentioned what has been explicitly stipulated in their founding documents, namely, the commutation of sentences, only when the sentenced or convicted persons were literally at death's door. Indeed, Radoslav Brdjanin, who was gravely ill, received an early release literally days before his death. It is not about humanity. It is a mere attempt to evade responsibility and avoid uncomfortable questions about inappropriate conditions in detention facilities and failure to provide medical assistance. This is a practice that needs to be fundamentally revised.

We draw attention to the growing concern in the statements of the Prosecutor of the Mechanism about the glorification of war criminals and the failure of all countries in the region to recognize the rulings of the ICTY and Mechanism. It is important to get to the bottom of this and ascertain why it is taking place. The reasons for Serb dissatisfaction are not hard to grasp. The anti-Serb bent in the rulings of the ICTY and the Mechanism is impossible to deny, for the absolute majority of persons convicted are Serbs. Representatives of other parties to the conflict have received a minority of guilty verdicts, and of some parties just a handful of such verdicts.

There are double standards and politicization in the work of the bodies of international criminal jurisdiction. These double standards and politicization have hampered the achievement of lasting national reconciliation, which is one of the main objectives of transitional justice mechanisms. In this regard, the Mechanism has become a "worthy descendant" of the ICTY case. On 31 May, it denied the appeal of Serb security service representatives Jovica Stanišić and Franko Simatović, who had been found guilty of war crimes and crimes against humanity

perpetrated in 1992 in connection with the seizure of Bosanski Šamac, in Bosnia and Herzegovina.

The trial of Stanišić and Simatović will probably go down as one of the most protracted and contradictory in the history of international justice. The trial began with an indictment way back in 2003. In 2013, the ICTY Trial Chamber acquitted both accused of all charges because their direct involvement in the tragic events on the territory of the former Yugoslavia was not established. On appeal, proceedings led to the ICTY Appeals Chamber overturning the acquittal, on 15 December 2015, and calling for a second judicial proceeding, which the Mechanism commenced in 2017. It was only on 30 June 2021 that the Trial Chamber found both individuals guilty on all charges and sentenced them to 12 years of incarceration.

The insufficient evidentiary basis was disregarded, as if the appellate judges had never heard of the core principle of criminal law that all doubts in a case are to be resolved in favour of the accused. Nevertheless, they eagerly embraced legal innovations penned by the ICTY, namely, that the joint criminal enterprise concept could be applied to the alleged expulsion of persons not ethnically Serb from the territories of Croatia and of Bosnia and Herzegovina. This concept had, in practice, already allowed the ICTY to identify as guilty not just those persons who physically did not commit crimes, but also persons who had simply no knowledge that those crimes had been perpetrated.

As a result of such "creativity", the acquittal was reversed and turned completely on its head. Appeals proceedings then dragged on up until very recently, namely, 31 May 2023, resulting in a sentence for both individuals, that increased the term from 12 years to 15 years. This probably happens only at the ICTY and the Mechanism. With each new trial, the situation of the accused only worsens. Perhaps it merely boils down to the fact that they have already served their appointed sentences, given the time spent in the detention facility, and there was a need to tack something on at the last minute.

We view this verdict as an open mockery of the provisions of the core international legal instruments in the area of the protection of human rights, specifically the right to expeditious and fair judicial proceedings, which is reflected in the statute of the Mechanism. We believe that with rulings of this quality, the achievement of lasting national reconciliation is simply impossible.

I thank the interpreter for her good interpretation.

Mr. Stastoli (Albania): I would like to begin by thanking President Gatti Santana and Prosecutor Brammertz for their insightful report and their detailed briefings. Albania commends their efforts and dedication to the pursuit of justice, in full compliance with their mandate. We express our condolences for the passing of Judge Elizabeth Ibanda-Nahamya, of Uganda, and pay tribute to the work and legacy that she leaves behind.

Allow me to state at the outset that Albania strongly supports the work of the International Residual Mechanism for Criminal Tribunals (IRMCT) as an international judicial body in pursuit of accountability for the most serious crimes under international criminal law. By seeking accountability, the Mechanism lays the foundations for reconciliation, peace and stability. The Mechanism's ruling on 31 May, which decided to expand the conviction for Stanišić and Simatović, rather than acquitting them, is a milestone development in the quest for justice in the Balkans. We commend the valuable work of the Office of the Prosecutor and the tracking team that succeeded in finding and arresting Mr. Kayishema — indeed another milestone achievement for transitional justice.

However, we regret that Mr. Kabuga was declared unfit to stand trial. Albania stands with the victims and their families and strongly supports their quest for justice.

These tangible results in achieving justice for atrocities in the Balkans demonstrate the value of the Mechanism's work. But there is a real need for active support and cooperation from all Member States for the Mechanism to deliver justice and heed the demand for justice from thousands of victims and their families in the Balkans and elsewhere. Member States are obliged to cooperate with the Mechanism to arrest, surrender and execute arrest warrants, without delay. We call on all Member States to cooperate fully and in good faith with the Mechanism.

In that regard, we deplore the persistent refusal to cooperate with the Mechanism. In particular, the arrest warrants for Jojić and Radeta must be executed by Serbia promptly to make sure that they face justice. Failure to cooperate fully and in good faith with the Mechanism not only goes against the rulings of the International Tribunal for the Former Yugoslavia, but it also offends and dishonours the memory of thousands

of victims everywhere, not least in Srebrenica, Vukovar and Račak.

Those atrocities are part of the darkest chapter of the Balkans and need to be properly addressed in order to open a new chapter of reconciliation and lasting peace in the region and beyond. Fighting impunity, incitement to violence and the denial of atrocities, as well as condemning the glorification of war criminals, are crucial to preventing the repetition of heinous crimes, properly recognizing their lingering effects across the Balkans and forging ahead towards a more hopeful future.

In conclusion, Albania reaffirms its strong support for the international courts in fighting impunity and delivering justice everywhere. The Security Council must ensure that the Mechanism gets the resources it needs to fully complete its mandate.

Mrs. Shino (Japan): I thank President Gatti Santana and Prosecutor Brammertz for their informative reports and briefings. I would like to express our heartfelt condolences for the passing of Judge Elizabeth Ibanda-Nahamya and our gratitude for her dedication, especially to the *Kabuga* case. I also extend our sympathy and solidarity to her family, friends and colleagues.

During the reporting period, the International Residual Mechanism for Criminal Tribunals (IRMCT) has shown progress in the areas of investigation and prosecution. Japan is committed to promoting the rule of law, including the fight against impunity and the pursuit of transitional justice, and therefore supports the role of the Mechanism. We would like to call upon all States to cooperate with the Mechanism.

Japan welcomes the recent arrest of Fulgence Kayishema, long sought for the alleged atrocious murder of over 2,000 Tutsi refugees. As the Secretary-General has stated, "those who are alleged to have committed such crimes cannot evade justice and will eventually be held accountable, even more than a quarter of a century later." We commend the Prosecutor and his team for their efforts, and we commend South Africa, Eswatini, Mozambique and Rwanda for their important support. We hope that the three remaining fugitives will be held accountable in the near future.

Another important development is the conclusion of the *Stanišić and Simatović* case, which is one of the remaining two cases dealt with by the Mechanism. Thirty years after its inception, we have finally witnessed the completion of the mandate given by the Security

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Council to the International Tribunal for the Former Yugoslavia. With regard to the other outstanding case, the *Kabuga* case, we note the Trial Chamber's decision to adopt the "trial of the facts" procedure. Japan hopes these proceedings will lead to the finding of truth and contribute to future reconciliation.

Japan understands that fair and legitimate due process requires time. On the other hand, for victims and societies, justice needs to be done as expeditiously as possible. We encourage the Mechanism to advance its proceedings under a clear and reasonable timeline and to use its accumulated information, evidence and expertise in cooperating with national authorities in their endeavour to end impunity. In that regard, we acknowledge that the Mechanism continues to fulfil a limited, but indispensable role to hold those responsible accountable.

Once again, let me reiterate Japan's unwavering support for the activities of the Mechanism. We are committed to promoting the rule of law together with fellow Member States and the international judicial institutions, including the IRMCT.

Mr. Geng Shuang (China) (*spoke in Chinese*): China thanks President Santana and Prosecutor Brammertz for their briefings and expresses its condolences for the passing of Judge Elizabeth Ibanda-Nahamya.

During the reporting period, the International Residual Mechanism for Criminal Tribunals (IRMCT) advanced its judicial work in an orderly manner for the transition towards a truly residual body and delivered its judgment on one appeal case earlier than the estimated timeline. That judgment marks the completion of all cases transferred to the Residual Mechanism by the International Tribunal for the Former Yugoslavia and is of positive significance to the IRMCT's advancement of the processing of other cases.

According to the relevant Security Council resolutions, the Residual Mechanism should be a small, temporary and efficient structure. China hopes that the Mechanism will continue to carry out its activities, as mandated by the resolutions of the Council, and gradually draw down its functions and size as the number of cases and judicial functions diminish. The Residual Mechanism should reduce its expenditures in a rational manner and further optimize the allocation of financial resources, with a focus on ensuring judicial activities. The practical and effective cooperation between the Mechanism and the countries concerned is

of major significance to the completion of its mandate and progress in its work.

Regarding the transfer of cases, the tracking of fugitives and the relocation of those who have been acquitted or completed their sentences, among other things, China hopes that the Residual Mechanism will work with all of the relevant parties to step up communication, enhance mutual trust, accommodate each other's legitimate concerns and draw on the successful practices of international criminal tribunals so as to find appropriate solutions and jointly combat impunity.

In conclusion, I wish to take this opportunity to thank Gabon, Chair of the Informal Working Group on International Tribunals, and the Office of Legal Affairs for their work in coordinating the work in the Council and the Residual Mechanism.

Mr. Wickremasinghe (United Kingdom): I would like to begin by acknowledging the sudden and tragic passing of Judge Ibanda-Nahamya and remembering her vital contribution to international justice. In that respect, in particular, I would point to her exemplary work on the *Prosecutor v. Ratko Mladić* and *Prosecutor v. Félicien Kabuga* cases. I also take this opportunity to welcome the appointment of Judge Mugambe Ssali and wish her all the best in her new role.

Turning to today's briefing, let me thank President Gatti Santana and Prosecutor Brammertz for presenting the report of the International Residual Mechanism for Criminal Tribunals and for their statements today. Under their guidance, over the past six months, the Mechanism has continued to implement its mandate in a timely and effective manner. Two very recent successes reflect that.

First, there are the final convictions of Jovica Stanović and Franko Simatović, which bring to a close the major cases of the International Tribunal for the Former Yugoslavia (ICTY) and are landmarks in international justice. Their convictions, while occurring many years after their offences, are of great importance in demonstrating the international community's continued fight against impunity for the most serious crimes. The judgments of the ICTY and the Mechanism form part of the record of the suffering inflicted on civilians during the conflicts in the former Yugoslavia in the 1990s. We remember the victims and survivors and recognize the bravery of all those who have cooperated and supported the judicial processes.

Secondly, there is the recent arrest of Fulgence Kayishema. Having recently marked the twenty-ninth commemoration of the 1994 genocide against the Tutsi in Rwanda, Mr. Kayishema's arrest is a salient reminder of the Mechanism's ongoing commitment to securing justice. The United Kingdom would like to commend the Mechanism's fugitive-tracking team and the South African authorities for their successes in that matter, and we also thank the authorities of Eswatini and Mozambique for their important contributions to that success.

We note the recent news that the Trial Chamber has decided that Félicien Kabuga is no longer fit to stand trial and that it will deal with his case by way of an alternative finding procedure. We look forward to future updates on that case and underline our commitment to holding the perpetrators of the genocide against the Tutsi to account. As such, we are concerned about the reports of the ongoing denial of genocide. That is unacceptable, both in its impact on the victims and in hampering the international community's efforts to ensure the accountability of the perpetrators and to deter future atrocities.

While the international trial and appeal processes for the former Yugoslavia and Rwanda are coming to an end, processes at the domestic level are ongoing. We call on all countries to cooperate and to support those national processes in order to ensure justice for all. In that regard, continued reports from the Mechanism of some States blocking cooperation in the Western Balkans remain deeply concerning. It is also high time that Serbia arrest and transfer Petar Jojić and Vjerica Radeta to the Mechanism, following years of requests.

Looking to the future, we note that the Mechanism continues to have much work to do, even though the trial phase is very nearly over. There are 47 individuals serving sentences, which need to be supervised, many witnesses who continue to need protection and domestic proceedings in the former Yugoslavia and Rwanda that need the Mechanism's support. It is nevertheless important that this remaining work is done as efficiently as possible, so we welcome the President's focus on the future strategy of the Mechanism as it transitions to becoming a fully residual institution. We commend the detailed work being done in that respect and look forward to the Mechanism's proposals.

Finally, I must say a few words in response to the representative of Russia's unfounded allegations against the United Kingdom authorities in relation

to Karadžić. The United Kingdom is proud of its assistance to the Mechanism in enforcing sentences and encourages other States to do so as well. Karadžić is not being mistreated in any way. He has exactly the same treatment as any other prisoner. He has been subject to some time-limited, proportionate and lawful restrictions on his contacts externally, but that followed his misuse of those privileges to publish articles that pushed political messages, genocide denial and the glorification of war crimes — and he has been informed of that. Underpinning all of that is Karadžić's own failure and that of his supporters to recognize that he has been convicted of some of the most heinous crimes witnessed in Europe, including the genocide in Srebrenica.

Mr. Pérez Loose (Ecuador) (spoke in Spanish): I thank President Gatti Santana and Prosecutor Brammertz for their briefings, and I am pleased to welcome to this meeting the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia.

I would like to begin my statement by expressing my country's support for the role of the International Residual Mechanism for Criminal Tribunals in rendering justice and protecting the rights of victims of war crimes and genocide. Its work is a fundamental component in the fight against impunity for the grave violations of international law perpetrated in Rwanda and the former Yugoslavia.

With regard to what we have heard today, I would like to highlight three points.

First, we note with satisfaction that since the presentation of its previous report (see S/PV.9217), the Mechanism has made decisive progress in fulfilling its judicial functions. That included the judgment issued by the Appeals Chamber on 31 May in the case of *Prosecutor vs. Jovica Stanišić and Franko Simatović*, which constituted a milestone in the history of international justice, marking the conclusion of all the trials before the International Tribunal for the Former Yugoslavia (ICTY), and which was issued during the month of the thirtieth anniversary of the historic decision adopted by the Security Council to establish that Tribunal.

We take note of the judgment issued by the Trial Chamber on 6 June in the *Prosecutor v. Félicien Kabuga* case and will closely follow the next procedural steps arising from that decision.

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We would also like to welcome the appointment of Judge Lydia Mugambe Ssali, who will replace Judge Elizabeth Ibanda-Nahamya, who unfortunately passed away in January.

Secondly, we emphasize the essential role of the cooperation of States in enabling the Mechanism to fulfil its functions and therefore urge all States to intensify their cooperation with the Mechanism and to provide the necessary assistance. We cannot forget that we have a collective responsibility to ensure that such horrendous crimes as genocide and war crimes do not go unpunished. The arrest on 24 May in South Africa of Fulgence Kayishema, who was indicted for organizing the murder of approximately 2,000 Tutsi refugees during the 1994 genocide, was a clear result of effective cooperation between States and the Mechanism. We thank South Africa for its cooperation in complying with its obligations under international criminal law, and we congratulate the Office of the Prosecutor on its work and encourage it to continue investigations to ascertain the whereabouts of the three remaining fugitives. The Mechanism should continue to help States strengthen their national investigative and prosecutorial capacities so that they can meet their responsibilities for ensuring justice and accountability for crimes committed on their territory.

Thirdly, we support the initiatives that the President has proposed in order to continue the Mechanism's transition from a purely operational court to a genuinely residual body. We are aware of the challenges that the work will entail in terms of downsizing staff, executing sentences, protecting witnesses and preserving archives. The establishment of a panel of judges to assess the character and duration of the Mechanism's remaining judicial functions, together with their potential transfer, is an outstanding initiative that my delegation supports. Achieving a smooth transition will be one of the most effective ways to preserve the legacy of the International Tribunals for Rwanda and the former Yugoslavia.

In conclusion, we would be remiss if we failed to express our concern about the increase in the denial of genocide, historical revisionism and the glorification of war criminals, which seeks to dehumanize the victims and deprive them of justice. Ecuador condemns and rejects all such practices, which undermine efforts to achieve reconciliation, cohesion and inclusion in the communities concerned.

The President (*speak in Arabic*): I shall now make a statement in my capacity as the representative of the United Arab Emirates.

I would like at the outset to thank Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals, and Mr. Serge Brammertz, Chief Prosecutor, for their valuable briefings. I welcome the representatives of Croatia, Rwanda, Serbia and Bosnia and Herzegovina to this meeting. We also offer our sincere condolences on the passing of Judge Elizabeth Ibanda-Nahamya.

The United Arab Emirates reaffirms the important role played by the Mechanism in carrying out the residual functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The Mechanism's contributions have been instrumental in achieving justice, protecting the rights of victims of war crimes, genocide and ethnic cleansing and combating impunity. We would like to take this opportunity to reiterate that the international community must address the root causes of such crimes, which are often fuelled by hate speech, discrimination and racism.

We take note of the appeal judgment in *The Prosecutor v. Jovica Stanišić and Franko Simatović* and once again express our condolences to the victims' families and our solidarity with the survivors and others affected. We continue to follow the progress made by the Mechanism in fulfilling its core functions, including the trial proceedings of the *Kabuga* case, which we hope will be concluded right on time.

We would like to emphasize that States bear the primary responsibility for holding crime perpetrators accountable, while at the same time we acknowledge the complementary role played by international bodies in achieving international justice. We also appreciate the efforts led by the Mechanism's judges and the Office of the Prosecutor to streamline and conclude its pending work. We commend the ongoing efforts to strengthen the Mechanism's effectiveness and efficiency and reduce its workload. We urge for an increase in its focus on future planning, guided by the Security Council's vision that the Mechanism should be a temporary and effective body whose functions should diminish over time.

The United Arab Emirates urges all States, particularly those directly concerned, to comply with their obligations in cooperating with the Mechanism

and supporting its tasks. Upholding justice is the most fitting way to honour victims. Cooperation with the Mechanism has been shown to have significant success, as demonstrated by the recent arrest of the fugitive Fulgence Kayishema, the result of joint efforts by the Mechanism's fugitive-tracking team and the South African authorities.

In conclusion, the United Arab Emirates reaffirms that strengthening international justice and the rule of law, based on the Charter of the United Nations, is imperative for the international community to effectively achieve peace and security.

I now resume my functions as President of the Council.

I give the floor to the representative of Rwanda.

Mr. Gatete (Rwanda): I would like to thank Judge Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals, and its Chief Prosecutor, Serge Brammertz, for their extensive briefings. I also want to thank the members of the Security Council for their statements. We appreciate the cooperation between the Mechanism and the Government of Rwanda. We commend the Prosecutor for the recent arrest of the genocide fugitive Fulgence Kayishema, one of those on the most-wanted list of the International Criminal Tribunal for Rwanda, who had been on the run for 22 years. We would also like to express our condolences on the passing of Judge Elizabeth Ibanda-Nahamya of Uganda.

We thank the Residual Mechanism for the consolidated progress report and its personnel's continued efforts to seek justice for the crime of genocide. We welcome the cooperation that led to Kayishema's arrest, provided by the law-enforcement agencies of South Africa, Mozambique and Eswatini, together with United Nations investigators. We are especially grateful to South Africa for the role that it played in the process. Rwanda continues to thank countries that have extended their cooperation to the Office of the Prosecutor and to Rwandan prosecutions.

It is important to highlight that the Mechanism has officially confirmed Rwanda's ability to conduct genocide trials in complete compliance with international due-process standards. In recent years, as Prosecutor Brammertz emphasizes in his report, Rwanda has effectively carried out trials and appeals for cases referred to it by the Mechanism. Nonetheless, considering the substantial volume of appeals, we

continue to welcome the ongoing partnership and support provided by the Mechanism. We also hope that the staff of the Office of the Prosecutor will help the Rwandan authorities overcome the ongoing challenge of tracking down more than 1,000 genocide fugitives and achieve further justice for the victims and survivors in Rwanda. As of June, Rwanda has issued 1,148 indictments against genocide suspects in 33 countries and INTERPOL's General Secretariat. In view of that, we call upon countries where indictments have been issued to redouble their efforts in arresting the remaining fugitives within their jurisdiction.

Justice for the victims and survivors of the genocide against the Tutsi is not merely about prosecution; it is about timely justice. Every delay in the process equates to justice denied. It is unfortunate that the pace of justice is slowed by a lack of cooperation from some Member States, despite clear Security Council mandates and judiciary instruments urging such cooperation. Such delays not only hinder the pursuit of justice but also impede the opportunity for criminals to face trial and be held accountable for their crimes. A recent instance highlighting that issue is the Trial Chamber of the Residual Mechanism's decision ruling that Félicien Kabuga is unfit to continue standing trial — a deeply disheartening outcome for the survivors, victims and the people of Rwanda as a whole.

Despite the provision in article 28, paragraph 3, of the Mechanism's statute for assisting national authorities in the prosecution of serious violations of international humanitarian law, we observe a reluctance by some States to cooperate. That inaction, in the face of available options for deportation, extradition or conducting trials within their territories, hinders the fight against impunity.

We extend our gratitude to the countries that have demonstrated their commitment to justice by extraditing or prosecuting fugitives on their soil. They include Belgium, France, the United States of America, Uganda, the Netherlands, Canada, Norway, Germany, Denmark, Sweden, Malawi, the Republic of the Congo, Finland and Switzerland. Their action reinforces the belief that the pursuit of justice is not insurmountable, but merely requires the political will to act.

Each year in April, Member States stand with us as we commemorate the genocide against the Tutsi. They show us compassion and acknowledge our resilience. However, when we send indictments, our appeals are often met with silence. We need Member States to

demonstrate solidarity in our pursuit of justice, as they do when we commemorate.

Rwanda and Rwandans have come a long way from the dark events of 1994. However, having prominent figures and perpetrators of genocide remaining active and the spread of genocide ideology and incitement threatens the hope of a truly peaceful society. We ask that members join us in making “never again” a reality.

As I conclude, let us reflect on the plight of the survivors, whose peace is continually disturbed by the knowledge that perpetrators are still at large. They, and indeed all of us, yearn for the day when justice will no longer be delayed, the guilty will finally answer for their actions and the victims can find solace in knowing that their suffering has not been forgotten.

Let me reiterate that the fight against impunity is not a task that Rwanda should shoulder alone. It is a collective responsibility that we, as the global community, must undertake. We plead with all Member States to consider the gravity of the crimes committed during the genocide against the Tutsi, the prolonged suffering of the survivors and the potential instability that the ongoing impunity poses. Each day that a fugitive remains free is another day that justice is delayed. And as we all know, justice delayed is justice denied.

The President (*spoke in Arabic*): I now give the floor to the representative of Bosnia and Herzegovina.

Mr. Alkalaj (Bosnia and Herzegovina): I thank the President of the International Residual Mechanism for Criminal Tribunals, Ms. Graciela Gatti Santana, and Prosecutor Serge Brammertz for the briefings related to the progress report of the work of the International Residual Mechanism. We appreciate the detailed projection of the remaining tasks, pursuant to the requirements set out in resolution 2637 (2022). The continuation and proper completion of the work of the Mechanism remain essential in concluding this historical chapter in the history of international criminal justice.

On that note, I wish to make the following remarks.

In May 1992, we joined the family of nations with our restored independence — one that came at a high and bloody cost. We never allowed ourselves to be split in two or be attached to the “whatever greater”, which was the plan. And so we were brutally attacked, from both outside and inside. For that precise reason, again in May 1993, by establishing the International Tribunal

for the Former Yugoslavia (ICTY), the Security Council made an unprecedented and historical contribution to justice, both in Bosnia and Herzegovina and at the international level. Those developments were of consequential importance for Bosnia and Herzegovina and international criminal justice alike.

As we marked the thirtieth anniversary of ICTY this past May and as we welcome the final verdict in the case *Prosecutor v. Jovica Stanišić and Franko Simatović*, I find it opportune to acknowledge the role of the Tribunal in irreversibly changing the landscape of international humanitarian law through its precedent-setting decisions on genocide, war crimes and crimes against humanity. More important, it contributes to an indisputable historical record — a crucial element in combating denial and revisionism.

In the case *Prosecutor v. Jovica Stanišić and Franko Simatović* in particular, it finally spelled out what even the International Court of Justice elegantly skirted — the direct responsibility of Serbian State officials for the crimes committed in Bosnia and Herzegovina during the 1990s and the existence of a joint criminal enterprise

“shared by certain senior political, military and police leaders in Serbia for a common criminal purpose to forcibly and permanently remove, through ethnic cleansing, the majority of non-Serbs from large areas of Bosnia and Herzegovina and Croatia”.

It has been proven beyond reasonable doubt that mass murder in Srebrenica was genocide. And now it has been proven beyond reasonable doubt that a civil war never occurred, but it was a brutal aggression on my country, as independent and sovereign, by its neighbour. And while family members and the victims can never see their loved ones again, justice has prevailed. After that, it is a bit more difficult to deny the undeniable. It is difficult but apparently still very possible, as evidenced by the unimaginable that recently surfaced, which demonstrated cruelty, shamelessness and inhumanity. When asked if it was worth the jail time, war criminal Dario Kordic answered that every second was worth it and that he would do it all over again.

Denials and efforts to rewrite history will continue to fail. Efforts to justify the unjustifiable will fail. And there is a special place in history, alongside the worst of humankind, for all those either committing war crimes or glorifying war criminals. They are

much the same — the ugliest of diseases. But for so long as it is being tolerated without consequences, we become accomplices in renewed attacks on victims, never allowing wounds to heal. Moreover, as so bluntly demonstrated in the very words of Dario Kordic, it raises the very real risk of similar atrocities being committed again in the future.

The day 25 May was once celebrated as the Relay of Youth. On that day in 1995, a shell fired from positions held by the Bosnian Serb army hit the Gate area of Tuzla, wiping out 71 young lives. The youngest was a two-and-a-half-year-old boy, called Sandro Kalesić. General Djukic, who ordered the shelling of the Tuzla Gate area, was sentenced to 20 years in prison in 2014 by the Bosnian State court. Shortly after, he escaped to Serbia. Today Djukic is a retired General of the Army of Republika Srpska. He is in Serbia, where he has been avoiding serving a well-deserved prison sentence ever since.

That not only damages the fragile process of rebuilding trust and opening future-oriented relations between our countries, but it also perpetrates narratives that go against every civilized norm and the principles of humanity, justice and the rule of law. The day of reckoning is unavoidable. And maybe, just maybe, it will finally set the countries that made up the former Yugoslavia on a more honest path toward true reconciliation. Forgiveness can come only with atonement.

About 3,000 suspected perpetrators of war crimes, crimes against humanity and genocide committed in the former Yugoslavia have yet to face justice. Of the total number of all unresolved cases, in Bosnia and Herzegovina alone more than 35 per cent concern persons unavailable to the domestic criminal prosecution authorities, and 63.3 per cent of those persons are located in Croatia, Montenegro or Serbia. The assistance from the Mechanism and the Office of the Prosecutor in that regard is critical, but the main responsibility for delivering meaningful justice now lies with national judicial institutions. Effective and open regional cooperation among prosecution offices is also crucial. The unavailability of suspects or accused persons not only undermines our courts' general effectiveness in carrying out their heavy responsibility, but it also promotes impunity and hinders reconciliation processes in the region.

For our part, we are committed to investigating, prosecuting and punishing all who are responsible for war crimes, regardless of the offenders' nationality,

ethnicity, religion or political or other affiliation. The Prosecutor's Office of Bosnia and Herzegovina, as well as the country's lower-level prosecutor's offices, are taking all necessary measures to investigate all war crimes that remain unresolved and to prosecute all potential perpetrators for their personal or command responsibility. On 30 March, the Council of Ministers of Bosnia and Herzegovina formed a supervisory body for monitoring the implementation of the revised national strategy for the processing of war crimes. A specific sublegal framework has been established, which will contribute to the implementation of the strategy's goals by improving the efficiency and quality of the processing of war crimes. In that regard, the normative framework that established control over the management and influx of newly registered cases of war crimes has already resulted in a visible reduction in the number of unresolved cases of war crimes registered within the judicial system.

In addition, the coordination by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina of the activities of the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina has improved the functionality of the Mechanism for the transfer of proceedings in accordance with strategic objective 3 of our revised strategy, contributing to a better dispersal of war-crime cases by levels of justice according to each case's legal complexity. Further to the issue, we continue working on intensifying all our efforts in the search for the more than 6,000 persons who remain missing in Bosnia and Herzegovina. Cooperation between institutions in Bosnia and Herzegovina and those of neighbouring countries in the exchange of information is equally critical.

Bosnia and Herzegovina's cooperation with the International Residual Mechanism for Criminal Tribunals has been stable and complete. We will continue that close collaboration towards our mutual goal of implementing our national strategy for the processing of war crimes, advancing investigations and prosecutions and clearing the existing backlog. We will neither falter nor tire, whether in our support for the Mechanism in completing its work or in our determination to deliver much-deserved justice for crimes committed in Bosnia and Herzegovina.

Finally, on a personal note, as my term of duty comes to an end and as this is my final address to the Security Council in my present capacity, I would like to thank all Council members for their continuing

contribution to ensuring peace, justice and prosperity for Bosnia and Herzegovina.

The President (*spoke in Arabic*): I now give the floor to the representative of Serbia.

Mr. Stevanovic (Serbia): After that political speech by the Ambassador of Bosnia and Herzegovina, I will try to speak about the relevant cases today before the Security Council.

With the end of the proceedings in the case of *Stanišić and Simatović*, which began more than two decades ago, there is no longer a single case before The Hague branch of the Mechanism concerning serious violations of international humanitarian law on the territory of the former Yugoslavia. We would like to express our expectation that the Mechanism will function in the future as it was designed to by resolution 1966 (2010) and reaffirmed in resolution 2637 (2022), that is, “to be a small, temporary and efficient structure, whose functions and size will diminish over time”.

However, in his report, the Prosecutor of the Mechanism mentioned alleged challenges that threaten to undermine the ability of the Mechanism to complete its work. In that context, the case of *Jojić and Radeta* is mentioned again. There is no need to repeat here what has already been stated at previous Council meetings, or the reason for the Mechanism’s decision to deny the transfer of that case for contempt of court to the judiciary of the Republic of Serbia. In the context, we can only remind all Council members of paragraph 11 of resolution 2637 (2022), which clearly states that the Security Council

“[c]alls upon the Mechanism, as part of its completion strategy, to provide options regarding the transfer of its remaining activities in due course”.

Furthermore, proceedings before national judicial authorities can promote justice and strengthen confidence in national judicial systems. We want to indicate the readiness of the judicial authorities of Serbia to take over any case concerning contempt of court or false testimony, with a full guarantee that the proceedings will be conducted in accordance with the requirements of the proper administration of justice and with full respect for both the Mechanism and the rights of witnesses and the accused. Today we also repeat our request and express my country’s readiness for the prison sentence imposed by the International Tribunal for the Former Yugoslavia to be carried out in Serbia under the Mechanism’s supervision.

Additional obstacles standing in the way of ending the work of the Mechanism include the continued refusal to return extensive documentation to my country. Once returned, those documents will be open not only to the Mechanism but to historians, researchers and national judicial authorities. We see no reason why they are still in the Mechanism’s possession or why, despite our continuing insistence, the process for returning them has not even begun.

I also want to bring the Council’s attention to what we perceive as a very questionable understanding of prosecution regarding the legal framework for regional cooperation in criminal matters. For example, in the part of the report referring to cooperation between Serbia and Croatia, the Office of the Prosecutor states that it has previously noted the standstill in the long-standing bilateral negotiations between Croatia and Serbia on establishing an agreement on a framework for war crimes cases and that the status quo in effect ensures nothing but impunity. It is pertinent here to cite examples such as the acquittals of Ramush Haradinaj for serious crimes in the territory of our province of Kosovo and Metohija; of Naser Orić for serious crimes in Podrinje; and Ante Gotovina for serious crimes on the territory of Croatia. Those acquittals are part of the Mechanism’s legacy as well, and they significantly bolster impunity, especially for crimes committed against people of Serbian ethnic origin in our province of Kosovo and Metohija, in Croatia and in Bosnia and Herzegovina.

As has been mentioned, the Office of the Prosecutor ignored the fact that Serbia and Croatia are both members of the Council of Europe, which has an adequate legal framework for cooperation in criminal matters. That is ensured both through our national legislation and the application of the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, which take precedence over any bilateral agreement regulating the matter of mutual legal assistance in criminal matters. The absence of a bilateral agreement therefore cannot in any way be qualified as the Prosecutor did in his report. As regards the complaint by the Office of the Prosecutor of the Mechanism about the denial of crimes and the glorification of convicted persons, we feel once again compelled to clearly state my country’s position. The Republic of Serbia has ended many proceedings in which it supported severe punishment for crimes committed on the territory of the former Yugoslavia, primarily against its citizens or ethnic Serbs. A large number of proceedings and investigations are ongoing.

My country absolutely rejects any accusation either of the denial or glorification of crimes.

After the end of the final proceedings before the Mechanism, my Government expressed its hope and expectation that effective cooperation will be achieved between Serbia and the Mechanism in the manner prescribed by the relevant resolutions of the Security Council. In that vein, we also expect that the Mechanism will act in accordance with the principles of the Charter of the United Nations. Long live Serbia.

The President (*speak in Arabic*): I now give the floor to the representative of Croatia.

Mr. Šimonović (Croatia): I would like to thank the President of the International Residual Mechanism for Criminal Tribunals, Judge Gatti Santana, and Prosecutor Brammertz for their reports and today's briefings. We also use this opportunity to express our condolences to the family of deceased Judge Elizabeth Ibanda-Nahamya.

The Mechanism has finally passed its final judgment for crimes perpetrated in Croatia and Bosnia and Herzegovina during the 1990s. That verdict against Jovica Stanišić and Franko Simatović, former top Serbian security service officials, who participated in a joint criminal enterprise led by late Serbian President Slobodan Milošević, with the participation of the Serbian rebel leaders from Croatia and Bosnia and Herzegovina, establishes a clear link between the Serbian leadership and the atrocity crimes committed in Croatia and Bosnia and Herzegovina. Although Milošević died in detention before his verdict and Stanišić and Simatović were regrettably not convicted for a long list of additional crimes they were involved in, we sincerely hope the judgment will bring some comfort to the victims and contribute to healing and reconciliation, as well as to sustainable peace and stability in the region.

We regret that the President of the Mechanism was compelled to raise once again with the Security Council Serbia's failure to arrest and transfer Petar Jojić and Vjerica Radeta to The Hague. The intimidation and bribing of witnesses are serious crimes, and acting in accordance with the Mechanism's arrest warrant is a national obligation under Chapter VII of the Charter of the United Nations.

Croatia remains fully committed to complying with its obligations under resolution 1966 (2010), namely, constructive, transparent, non-politicized and evidence-based judicial cooperation with other neighbouring States on matters related to war crimes. To that end, we need to reiterate that meaningful and productive cooperation is not a one-way process and that, alongside transparency and openness, good practices and international legal standards must be upheld.

We stress that Croatia is still waiting for Serbia's response to its invitation to the fourth and final round of negotiations for a bilateral agreement on processing war crimes. We are convinced that the provisions of such bilateral agreement would prevent further misuse of the instrument of mutual legal assistance and help to finally end the harmful practice of initiating politically motivated processes that do not comply with international legal standards.

The denial of the findings and disrespect for the legal qualifications of the Tribunal are continuing and require our full attention. The glorification of war criminals and the denial of committed crimes, including the genocide in Srebrenica, are unacceptable as they increase the suffering of the victims, hamper reconciliation and destabilize the region. They also confuse, if not poison, future generations.

In that regard, we have to raise again the issue of insufficient cooperation in the tracing of missing persons and mortal remains. Determining the whereabouts of 1,807 missing Croatian citizens is our long-standing priority. Regrettably, we need to stress that the lack of political will in Serbia to share information and to enable access to archives still remains the greatest obstacle to progress in resolving those cases. To that end, we reiterate that establishing the fate of the missing persons, as well as finding mortal remains and their proper burial, are essential for closure and reconciliation. In addition to its call for improved bilateral cooperation, Croatia urges the Mechanism to prioritize its support for tracing missing persons and mortal remains during its remaining short mandate.

In conclusion, let me reaffirm our strong support for the important work of the Mechanism and its successful completion.

The meeting rose at 5.25 p.m.



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