

10170TH Meeting (AM)
Security Council Weighs Future of
International Criminal Tribunals Mechanism
amid Competing Calls for Its Closure,
Continued Support to National Authorities

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Amid its review of the entity tasked with concluding the functions of two landmark international criminal courts, speakers in the Security Council today alternately highlighted the need to safeguard the legacy at stake and finalize the work of a mechanism always envisioned as temporary.

The Council established the International Criminal Tribunals for Rwanda and the former Yugoslavia in 1994 and 1993, respectively, to prosecute those responsible for the 1994 genocide against the Tutsi in the former and for war crimes during the 1990s in the latter. The Council established the International Residual Mechanism for Criminal Tribunals in 2010 to assist these Tribunals in completing their mandates. While the Tribunals closed in 2015 and 2017, respectively, the Mechanism remains while the Council decides how best to conclude its work.

“The future of the United Nations responsibility towards those within its duty of care — and, indeed, the future of international criminal justice — now stand before the Council,” said Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals.

Created by resolution 1966 (2010) to “preserve the unprecedented success” of the Tribunals, she said the Mechanism has “effectively executed its mandate”. Now, with the referral of one of the final contempt cases to a national jurisdiction, she said that “only limited — but still essential — work

remains”.

Strategic Plan Outlines Major Downsizing

The Mechanism has developed a strategic plan for its future operations, she reported. If adopted by the Council, the Mechanism expects that it can achieve a nearly 90 per cent reduction of staffing resources, among other efficiencies. Further, it proposes transferring the duties of assisting national jurisdictions and managing archives to the Secretariat as, while these functions are vital, they “need not be embedded in a court”, she said.

Nevertheless, the plan identifies “a limited number of key judicial functions that should remain at the international level to ensure the responsible conclusion of the justice cycle”, she said. These include functions related to the transfer and release of prisoners, witness protection and the power to refer, monitor and revoke cases. The retention of these functions at the international level, she stressed, is “essential to consistent application of the law, legal certainty and fairness”.

“Durable justice does not conform to clear or finite timelines,” she said. The strategic plan “balances principle and pragmatism” and offers the Council a “viable path towards the responsible completion of the justice cycle”.

While noting the Council’s clear expectations that the Mechanism “bring its activities to an orderly closure”, its Prosecutor Serge Brammertz said that it “should continue to bear ultimate responsibility for convicts serving their sentences”. And, as Member States want the assistance function to continue, he said that the “obvious solution” is to transfer this service to the Secretariat as it falls within its core competencies.

He went on to say that, while victims and survivors “have always been at the forefront of our efforts” — and the Mechanism has endeavoured to provide them with “some measure of justice” — this work has increasing relevance for future generations. Denial persists and war criminals continue to be glorified. The horrific atrocities in Rwanda and the former Yugoslavia were not “random outbreaks of violence”.

Rather, they resulted from organized plans by senior leaders who abused their authority. He pointed out that hate speech and propaganda laid the foundation by dehumanizing others. Education about what occurred can help prevent future atrocities. To that end, he urged that the Mechanism’s archives be transferred to the Secretariat to ensure that this legacy “lives on for

generations to come”.

Competing Bids for Archive Stewardship

Where these archives will be located, however, courted much discussion from countries implicated in their legacy. While recognizing UN ownership, Emmanuel Ugirashebuja, Minister for Justice and Attorney-General of Rwanda, stressed that the archives must reside where they are most historically meaningful. “For the survivors of the genocide against the Tutsi, the transfer of the ICTR archives [to Rwanda] will not simply represent the relocation of records — it will represent the return of an essential part of their history,” he said.

However, the representative of the United Republic of Tanzania — whose country hosted the Tribunal for Rwanda for 20 years in Arusha — pointed out that the archives have been kept safe in a neutral country with access for researchers, lawyers and historians in “state-of-the-art infrastructure”. Keeping these records in Arusha would be a stress- and cost-free solution. “We are ready, we are willing and we are reliable,” he argued.

As for the archives relating to the former Yugoslavia, Serbia’s representative said that “appropriate consideration should be given to making relevant materials available to national jurisdictions, particularly States of origin”. He, too, spotlighted their value for judicial authorities, historians and researchers, presenting Serbia’s readiness to assume responsibility for the preservation and management of relevant archival material “under internationally accepted standards ensuring security, professional oversight and appropriate access”.

Yet, Croatia’s representative pointed to Serbia’s lack of “sufficient political will and commitment” to share relevant information, citing the unresolved fate of 1,725 missing Croatian citizens. He reiterated Croatia’s offer to host the UN entity responsible for preserving the archives. His counterpart from Bosnia and Herzegovina, for her part, spotlighted the importance of these records as an “invaluable resource whose significance extends far beyond their legal function”. They are an authoritative and irrefutable record of her country’s recent history, she said, underscoring that they must be accessible.

Debate over Proximity, Neutrality, Access

Council members also weighed in on this issue, with France’s representative expressing support for Rwanda’s aspiration to host the records of the relevant Tribunal on its soil, “on the understanding that they will remain the property of the UN”. As for the Tribunal for the former Yugoslavia, he said that they should reside in a “neutral country”. The representative of the United Kingdom, meanwhile, said that the archives should be housed “as close as possible to affected communities, also taking into account cost-effectiveness and ease of access”.

Latvia’s representative said that these records should be transferred to appropriate host countries while ensuring “broad accessibility for victims, survivors and diaspora communities affected by these crimes”. As for the Mechanism itself, she said that it “has always been temporary in nature, and it is not our goal to prolong its existence arbitrarily”. However, she joined others in stressing that overly expeditious transfer of its remaining functions risks undermining hard work and accumulated legacy.

Several Council members — among them the representatives of Greece, Pakistan and Somalia — expressed support for a “small, temporary and efficient” structure for the Mechanism as envisioned by the resolution that created it. Bahrain’s representative added that this process should be conducted in a measured, balanced manner. “As a Council, we have important work ahead of us in the coming weeks to take the decisions necessary to pave the way for a responsible and expeditious conclusion of the Mechanism’s work,” said the representative of the United States.

Calls to Wind Down International Residual Mechanism Intensify

The representative of the Russian Federation, for her part, said that the Mechanism “stubbornly continues to cling to residual functions”. Its residual function regarding early release, specifically, is being carried out “negligently and with bias”. She urged the Council to entrust it to a “designated responsible person” with administrative and technical support from the UN Office of Legal Affairs.

Calling for the transfer of the Mechanism’s functions to relevant States or international institutions where possible, China’s representative urged all

parties to heighten their sense of urgency and formulate ambitious timelines to those ends. He, too, noted the importance of preserving the Mechanism's archives, as they "embody the institutional memory" of the two Tribunals. "It is essential that the legacy of the [former Tribunals] be preserved in line with the highest international standards," said Panama's representative.

"The Mechanism's existence is a testament both to humanity's ability to commit the most abject atrocities on the one hand, and its determination to fight against impunity and pursue justice [on the other]," said the representative of the Democratic Republic of the Congo. Outstanding issues must be addressed. His counterpart from Liberia observed: "We are at a pivotal stage in our joint pursuit of accountability and justice for the gravest crimes." To that end, he expressed support for the Mechanism's proposed "ambitious yet pragmatic" strategic plan to transfer or complete its residual functions.

"The goal must be the definitive and orderly closure of the Mechanism to ensure that it is satisfactory for all of those involved," said the representative of Colombia, Council President for June, speaking in her national capacity. This goes beyond Council members, she stressed, because the legacy involved is that of international criminal justice itself. "Justice", she said, "is sustainable over time only when decisions are made in a transparent and inclusive manner."

And, noting that the long-term consequences of the conflicts that gave rise to the Tribunals continue to reverberate in the Council, Denmark's representative underscored: "This is precisely why these institutions matter."

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