

TRIBUNAL IN HAGUE

STATEMENT BY TRIBUNAL PRESIDENT JUDGE FAUSTO POCAR TO THE SECURITY COUNCIL 7 JUNE 2006

Fausto Pocar



Madame President, Your Excellencies,

It is a privilege to appear, once again, before the Security Council as President of the International Criminal Tribunal for the Former Yugoslavia. This is the fifth report of the President of the Tribunal pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004. It explains the concrete measures taken, as well as the challenges faced by the Tribunal from December 2005 to May 2006, in its efforts to meet the objectives of the Completion Strategy. I will also update you on new developments which have taken place since its submission.

Madame President, it is a special honor to address the Security Council during your presidency. On behalf of the Tribunal, I sincerely thank you for the strong support your country has demonstrated for our work over the years. We have also benefited from the experienced and dedicated service of one of your citizens as an *ad litem* Judge at the International Tribunal.

Excellencies, allow me to begin with a brief overview of the judicial work of Chambers. In the reporting period, the Trial Chambers continued to function at maximum capacity and heard six trials simultaneously while managing 22 cases in the pre-trial stage. In addition, they proceeded with four contempt trials involving six accused and one guilty plea. Almost 200 pre-trial decisions were issued and three Judgements rendered. Following the termination of the Milošević trial, I reorganized the Trial Chambers to fully engage the Judges of that Chamber in new judicial work and to allow for the commencement of the three multi-accused trials involving 21 accused several months earlier than originally planned. Notably, the first of the multi-accused trials began in April 2006 involving six accused and the other two multi-accused trials, involving a total of 15 accused, are on track to start in July 2006.

Similarly, the Appeals Chamber has continued working at full-speed and disposed of 127 appeals both from this Tribunal and the International Criminal Tribunal for Rwanda ("ICTR"), including three Judgements. In July, two more Judgements will be issued and another two are expected in the fall.

To date, 161 persons have been charged by the International Tribunal and proceedings against 94 accused have concluded. In addition, the Appeals Chamber of the International Tribunal has concluded 12 ICTR cases and proceedings involving 16 accused. Furthermore, other international criminal tribunals are now benefiting from the International Tribunal's jurisprudence and experience.

I now turn to update the Security Council on the latest developments following the deaths of Milan Babić and Slobodan Milošević since my video-link conference with the Council on 31 March 2006. First, with respect to Mr. Milošević, on 5 April 2006, the Dutch authorities finalized their confidential report on their inquest into his death under Dutch law. The report confirms that Mr. Milošević died of natural causes, particularly a heart infarction, and rules out any suggestion of a suicide or criminal conduct such as poisoning.

Second, on 15 May 2006, the general audit report of the United Nations Detention Unit ("UNDU") by the Swedish authorities, which I authorized, was made public. While the team of Swedish experts was generally satisfied with the overall operation of the UNDU, they made specific recommendations for improving the conditions of detention as well as the management structure of the Detention Unit. In response, the International Tribunal established a Working Group of representatives from Chambers, the Registry and the UNDU to follow-up on these recommendations.

Third, on 30 May 2006, Judge Kevin Parker, whom I appointed to lead an internal inquiry into the death of Mr. Milošević, submitted his report. The report concludes that there was proper provision of medical care to Mr. Milošević while he was being held at the UNDU both by the UNDU medical doctor and by independent cardiologists and specialists. Mr. Milošević's serious health problems were complicated by the fact that he insisted on representing himself against repeated medical advice. In an effort to afford Mr. Milošević the right of self-representation while not jeopardizing his health, the Trial Chamber progressively reduced his trial schedule and often adjourned the trial pursuant to medical advice. Mr. Milošević's health was also complicated by his refusal to comply with the treatment prescribed by his

doctors. On a number of occasions, he refused to be tested or hospitalized. In addition, Mr. Milošević failed to take some prescribed medications, varied prescribed dosages, and self-medicated with non-prescribed medications such as rifampicin, at times disrupting the effectiveness of prescribed medications.

Judge Parker's report further concludes that the circumstances suggest that non-prescribed medications were smuggled into the UNDU during privileged visitations to Mr. Milošević. Unique arrangements were made available to Mr. Milošević by order of the Trial Chamber in September 2003 for "privileged communications" with legal associates and witnesses in order to allow him to effectively conduct his own defence. Thus, Mr. Milošević had a private room with a telephone, computer and facsimile machine. These arrangements led to security deficiencies in the UNDU. Where abuses were discovered, the International Tribunal endeavored to take appropriate action while still upholding Mr. Milošević's rights. The measures taken reduced, but did not eliminate, the capacity for misuse of the privileged room.

Finally, Judge Parker's report makes a number of recommendations and emphasizes that close attention must be paid to the experience of the Milošević case in making future arrangements for accused to represent themselves so as not to compromise security in the UNDU. Specifically, there should be provision of special training for inspection of materials brought into the UNDU by privileged visitors. On 2 June 2006, I ordered that the Working Group implementing the recommendations of the Swedish audit also follow-up on Judge Parker's report.

Fourth, with regard to Mr. Babić, the Dutch authorities completed their final, confidential report on the results of their inquest into his death under Dutch law at the end of May. The report confirms that the cause of death was suicide and that there was no evidence of criminal conduct. Judge Parker's internal inquiry could not be completed until receiving this extensive report. At present, the Dutch report is still being translated into English, and it has become evident that some aspects require follow-up investigations by Judge Parker. He has informed me that these will be concluded in a few days and his report will follow soon thereafter. At that time, copies of Judge Parker's report will be forwarded directly to Members of the Council.

These preliminary matters aside, I now address my first topic with regard to the Completion Strategy, that is, concrete measures taken by the Tribunal towards its implementation during the reporting period. The Working Group on Speeding Up Trials, chaired by Judge Bonomy with the assistance of Judges Hanoteau and Swart issued its final report in February 2006 and made specific recommendations to enhance the efficiency of pre-trial and trial proceedings by shifting away from party-driven process to one that is closely managed by the Judges of the Tribunal. Following an open dialogue on the report, the Judges met in an informal plenary in April 2006 and adopted specific measures, which are having a fundamental impact on the efficiency of the Tribunal's trials.

First, a policy has been put into place whereby all pre-trial cases are transferred to the Trial Chamber that will hear the trial at the earliest possible stage. In this way, the Pre-Trial Judge and the Pre-Trial staff already familiar with the case will also serve on the trial and thus facilitate more efficient proceedings.

Second, on 30 May 2006, I convened a second plenary of the Judges of the Tribunal, which adopted an amendment to Rule 73bis of the Rules with regard to indictments. The Judges have been increasingly aware that the length of trials starts with the complexity and breadth of the indictments, leading to a lengthy presentation of the parties' cases. Previous efforts by the Judges to change this pleading practice have been largely unsuccessful. Under this amendment, Trial Chambers now have the explicit ability, at the pre-trial stage, to invite the Prosecution to reduce the number of counts charged or to direct the Prosecution to select the counts on which the trial should proceed. The basis for this amendment is the Statutory responsibility of a Trial Chamber to manage the trial with respect for an accused's right to a fair and expeditious trial and the right of those in pre-trial detention to be tried within a reasonable time. It also follows common practice in national jurisdictions of avoiding overloaded indictments to protect the integrity of the proceedings. At the same time, the amendment respects Prosecutorial independence in bringing indictments before the Tribunal and seeks the Prosecution's cooperation in shortening the trials through focused indictments.

Third, substantial steps are being taken by Pre-Trial Judges to more proactively manage pre-trial proceedings. In this way, they can focus the proceedings, ensure trial readiness and shorten the trials. Specifically, Pre-Trial Judges are:

- Establishing work-plans of the parties' obligations at trial with strict timetables for presenting their cases and ensuring a strict implementation of such work-plans;
- Requiring the Prosecution to, at an earlier stage, specify its trial strategy, submit a focused pre-trial brief, and produce the final statements of all Prosecution witnesses to be called at trial;

Obliging the Defence to make timely submission of a focused pre-trial brief and disclosure of expert testimony in order to identify points of agreement and disagreement between the parties; and Making greater use of the power to sanction a party for failure to comply with disclosure obligations.

Fourth, Trial Chambers are ensuring increased efficiency of the trial proceedings by: Shortening the Prosecution's case by determining the number of witnesses the Prosecution may call, limiting the time available for the presentation of evidence, and fixing the number of crime sites or incidents charged; Making greater use of written witness statements in lieu of examination-in-chief; and Exercising greater control over cross-examination of witnesses.

The second topic that I wish to raise before your Excellencies concerns the Tribunal's ad litem Judges who have continued to be an invaluable asset for realizing the objectives of the Completion Strategy. During the reporting period, five new ad litem Judges, including one Reserve Judge, were assigned to two cases.

In this connection, I wish to express again my extreme gratitude to the Council for having adopted resolution 1660 (2006), which amended our Statute to allow for the assignment of ad litem Reserve Judges. The presence of Reserve Judges will avoid having to restart the large, multi-accused trials should one or more of the Judges on the Bench be unable to continue sitting on a case.

My third topic detailed in the report concerns the referral of cases of intermediate and lower ranking accused from the Tribunal to competent national jurisdictions pursuant to Rule 11bis of our Rules. To date, six accused have been referred to the Special War Crimes Chamber of Bosnia and Herzegovina and two accused have been referred to Croatia for trial before its domestic courts. If all of the pending motions are successfully referred under Rule 11bis, 10 cases involving 16 accused will have been removed from the Tribunal's docket. However, no other cases are earmarked for referral as they do not involve intermediate or lower level accused. I wish to note that, for those referrals to the Bosnia and Herzegovina State Court to be successful it is imperative that sufficient resources, including detention facilities meeting international standards, be made available to the Court. If that Court does not receive the support needed to conduct fair trials, the international community faces the possibility that referred cases may have to be deferred back to the International Tribunal under Rule 11bis.

Turning now to my fourth topic, the cooperation of States with the International Tribunal, I emphasize that the success of the Tribunal in completing its mandate within the Completion Strategy dates hinges upon such cooperation. Primarily, the assistance of all States, and specifically those in the region, is needed for bringing the six remaining high-level accused, in particular Radovan Karadžić and Ratko Mladić, to the Tribunal's jurisdiction without delay. Additionally I take note that Lukić was transferred from Argentina last February and that Zelenović has not been transferred so far.

The final topic that I bring to the attention of the distinguished Members of the Council is an update on the prognosis for the Tribunal's implementation of the Completion Strategy. As in my last report to the Council, I confirm that trials will indeed run into 2009 and reiterate that the estimate of all trials finishing by that date may hold provided that the multi-accused trials run smoothly; the cases referred to the former Yugoslavia are not deferred back to the International Tribunal; the new amendment to Rule 73bis is effectively implemented such that indictments are more focused; and the six remaining high level fugitives are transferred to the jurisdiction of the International Tribunal very soon.

In conclusion, notwithstanding the challenges encountered in the last six months, the International Tribunal pressed on full-speed with its work, resulting in a productive period in the International Tribunal's history. I stress that, as demonstrated by the concrete measures taken during this reporting period, the Tribunal is absolutely committed to doing all within its power to meet its obligations under the Completion Strategy while upholding norms of due process. In looking to the future, the International Tribunal will make every effort to develop additional tools to improve the efficiency of its trial and appeals proceedings. In addition, the International Tribunal will intensify its ongoing efforts to contribute towards building judicial capacity in the former Yugoslavia. The effective continuation of the International Tribunal's historic work by national jurisdictions in the region will be a key component of the Tribunal's legacy.

Madame President, Your Excellencies, I thank you for the attention and time you have given me today.