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Ⓢ URGENT

To: Deputy Secretary-General,

Please find attached for the Secretary-General's approval the report presenting options to the Security Council on the residual mechanism for the ICTY and ICTR, as requested by the Security Council presidential statement of 19 December 2008, S/PRST/2008/47. Also attached is a transmittal letter to the President of the Security Council for the Secretary-General's signature.

The Report, drafted by OLA, has been closely consulted with the members of the Security Council Working Group considering this matter. It is requested that the report be cleared by 22 May 2009 in order for Security Council members to consult with their capitals prior to the next meeting of the Principals of the two Tribunals before the Security Council on 4 June 2009.

Nicholas Haysom
18 May 2009

cc. VN, KWS

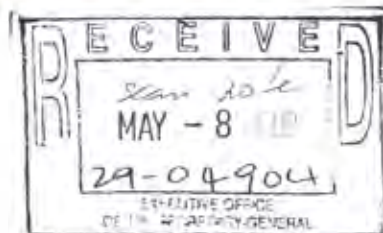
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Approved
Ashraf Raza
19 May 09

ACTION
COPY

Note to the Secretary-General

Through Mr. Nambiar



Draft Report on the Administrative and Budgetary Aspects of the Options for Possible Locations for the Archives of the ICTY and the ICTR and the Seat of the Residual Mechanism

1. This Note is to seek the Secretary-General's approval of the attached draft Report to the Security Council. It is a lengthy draft dealing with complex issues, which are outlined below. I would be very grateful if the draft Report could please be cleared by 22 May 2009 if at all possible. The Security Council members will need time to digest the content of the Report and to consult their capitals before the Principals of the two Tribunals appear before the Council on 4 June 2009.
2. The draft Report concerns the establishment of a "Residual Mechanism" or "Residual Mechanisms" to replace the International Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR") after their closure, to carry out various residual functions that will continue beyond the life of the Tribunals. Those functions include: trial of fugitives, trial of contempt cases, protection of witnesses, review of judgments, referral of cases to national jurisdictions, enforcement of sentences, assistance to national authorities and management of the Tribunals' archives.
3. The specific request by the Security Council (presidential statement of 19 December 2008, S/PRST/2008/47) is for a report on the administrative and budgetary aspects of the options for possible locations for the Tribunals' archives, and for the seat of the Residual Mechanism(s). This issue is being considered in detail by the Security Council's Informal Working Group on International Tribunals ("Working Group"). The draft Report can only go a certain way at this stage in answering the request put in the presidential statement because: (i) there are a number of key decisions yet to be made by the Security Council that will impact on the administrative and budgetary issues; and (ii) detailed consideration of the administrative and budgetary implications falls properly to the General Assembly, not the Security Council.
4. It is agreed among the members of the Working Group that the Residual Mechanism(s) will have jurisdiction to try fugitives indicted by the Tribunals, and that it will be based on a roster, or rosters, of judges. There are two ICTY fugitives and 13 ICTR fugitives. It is not yet decided in the Working Group whether the Residual Mechanism(s) will have jurisdiction over all 15 fugitives, or a list of some of them. If it (they) will have jurisdiction over only some of the fugitives, the Security Council will need to determine how to avoid impunity for the remaining fugitives.

5. The other key decisions that remain for the Security Council to make include: which residual functions should be transferred to the Mechanism(s); whether there should be one Mechanism or two; whether the archives of the Tribunals should be managed by, and co-located with, the Mechanism(s); when the Mechanism(s) should start functioning; what should be the structure of the Mechanism(s), including whether it should be composed of the same organs as the Tribunals; and where the Mechanism(s) should be located.
6. Although the draft Report can only answer the Security Council's request in a preliminary way at this stage, it will give useful guidance to the Working Group by identifying the type and quantity of work generated by each potential residual function, as a means of analysing the necessary size and structure of the Residual Mechanism(s). The draft Report gives some facts and figures about 14 potential locations – 13 United Nations and Specialised Agency offices, and the International Criminal Court ("ICC"). It presents very tentative staffing and costs estimates for a number of illustrative examples of the Residual Mechanism(s) in various configurations.
7. The principal conclusion that emerges from the draft Report is that the number of residual functions transferred to the Residual Mechanism(s) does not affect greatly the staffing and costs estimates. It is the trial of a fugitive by the Residual Mechanism(s) that would have the greatest impact – requiring the Mechanism(s) to move from "dormant" to "active", through activation of a roster of former ICTY and ICTR judges, and a rapid and efficient expansion of staff, Prosecution and Defence Counsel, interpreters and translators. The draft Report further concludes that many considerations point toward the co-location and co-management of the Residual Mechanism(s) and the Tribunals' archives. The interests of the populations who were directly affected by the conflicts, and practical issues concerning, for example, the need for witnesses from the affected countries to attend the Residual Mechanism(s) as witnesses in the event of trials of fugitives, suggest locations in Europe and Africa. This is consistent with the views expressed by both Tribunals.
8. The draft Report makes a number of recommendations, including a series of actions that the Tribunals should take between now and their closure to ensure that the Residual Mechanism(s) does not inherit unnecessary work. The members of the Working Group are clear that the Residual mechanism(s) must be small and efficient, with staffing levels commensurate with the reduced work in the period after completion by the Tribunals.
9. The draft Report has been prepared in close consultation with the ICTY and ICTR, the United Nations Archives and Records Management Section, the Office of the Controller, and the Office of Human Resources Management. The Governments of the countries of the former Yugoslavia and Rwanda were invited to give any comments they wished, and those views have been reflected in the draft Report.

10. Although the Report was originally requested by mid-March 2009, it became clear early on that the importance and complexity of the issues would require detailed and comprehensive consideration. The Chairman of the Working Group has consulted its members, and indicated flexibility for the Report to issue as early as possible during May, and for the usual word-limit to be substantially exceeded. It is important that the Report issues in advance of the next meeting of the Presidents, Prosecutors and Registrars of the Tribunals with the Security Council and its Working Group on 4 June 2009. The members of the Security Council will need some time before that meeting to digest the content of the Report and to consult their capitals. For this reason, I would be very grateful for clearance of the draft Report by 22 May 2009.



Patricia O'Brien
8 May 2009

Approved.
 [Signature]
 19/May/09

**Secretary-General's Report on the Administrative and Budgetary Aspects of the
 Options for Possible Locations for the Archives of the International Tribunal for
 former Yugoslavia and the International Criminal Tribunal for Rwanda and the
 seat of the Residual Mechanism(s) for these Tribunals**

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