

SCHEDULE 1

Article 2

**STATUTE OF THE INTERNATIONAL RESIDUAL
MECHANISM FOR CRIMINAL TRIBUNALS (IRMCT)**

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations to carry out the residual functions of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter “ICTY”) and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter “ICTR”), the International Residual Mechanism for Criminal Tribunals (hereinafter “the Mechanism”) shall function in accordance with the provisions of the present Statute.

Article 1: Competence of the Mechanism

1. The Mechanism shall continue the material, territorial, temporal and personal jurisdiction of the ICTY and the ICTR as set out in Articles 1 to 8 of the ICTY Statute and Articles 1 to 7 of the ICTR Statute, as well as the rights and obligations, of the ICTY and the ICTR, subject to the provisions of the present Statute.

2. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are among the most senior leaders suspected of being most responsible for the crimes covered by paragraph 1 of this Article, considering the gravity of the crimes charged and the level of responsibility of the accused.

3. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute, the persons indicted by the ICTY or the ICTR who are not among the most senior leaders covered by paragraph 2 of this Article, provided that the Mechanism may only, in accordance with the provisions of the present Statute, proceed to try such persons itself after it has exhausted all reasonable efforts to refer the case as provided in Article 6 of the present Statute.

4. The Mechanism shall have the power to prosecute, in accordance with the provisions of the present Statute—

- (a) any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt; or
- (b) a witness who knowingly and wilfully gives or has given false testimony before the Mechanism or the Tribunals.

Before proceeding to try such persons, the Mechanism shall consider referring the case to the authorities of a State in accordance with Article 6 of the present Statute, taking into account the interests of justice and expediency.

5. The Mechanism shall not have the power to issue any new indictments against persons other than those covered by this Article.

Article 2: Functions of the Mechanism

The Mechanism shall continue the functions of the ICTY and of the ICTR, as set out in the present Statute (“residual functions”), during the period of its operation.

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Article 3: Structure and Seats of the Mechanism

The Mechanism shall have two branches, one branch for the ICTY and one branch for the ICTR, respectively. The branch for the ICTY shall have its seat in The Hague. The branch for the ICTR shall have its seat in Arusha.

Article 4: Organisation of the Mechanism

The Mechanism shall consist of the following organs—

- (a) the Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism;
- (b) the Prosecutor common to both branches of the Mechanism;
- (c) the Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor.

Article 5: Concurrent jurisdiction

1. The Mechanism and national courts shall have concurrent jurisdiction to prosecute persons covered by Article 1 of this Statute.

2. The Mechanism shall have primacy over national courts in accordance with the present Statute. At any stage of the procedure involving a person covered by Article 1 paragraph 2 of this Statute, the Mechanism may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the Mechanism.

Article 6: Referral of Cases to National Jurisdictions

1. The Mechanism shall have the power, and shall undertake every effort, to refer cases involving persons covered by paragraph 3 of Article 1 of this Statute to the authorities of a State in accordance with paragraphs 2 and 3 of this Article. The Mechanism shall the power also to refer cases involving persons covered by paragraph 4 of Article 1 of this Statute.

2. After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Mechanism, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State—

- (i) in whose territory the crime was committed; or
- (ii) in which the accused was arrested; or
- (iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

3. In determining whether to refer a case involving a person covered by paragraph 3 of Article 1 of this Statute in accordance with paragraph 2 above, the Trial Chamber shall, consistent with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused.

4. The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

5. The Mechanism shall monitor cases referred to national courts by the ICTY, the ICTR, and those referred in accordance with this Article, with the assistance of international and regional organisations and bodies.

6. After an order referring a case has been issued by the ICTY, the ICTR or the Mechanism and before the accused is found guilty or acquitted by a national court, where it is clear that the conditions for referral of the case are no longer met and it is in the interests of justice, the Trial Chamber may, at the request of the Prosecutor or *proprio motu* and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral.

Article 7: *Non bis in idem*

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the ICTY, the ICTR or the Mechanism.

2. A person covered by Article 1 of this Statute who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the Mechanism only if—

- (a) the act for which he or she was tried was characterised as an ordinary crime; or
- (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Mechanism shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 8: Roster of judges

1. The Mechanism shall have a roster of 25 independent judges (“judges of the Mechanism”), not more than two of whom may be nationals of the same State.

2. A person who for the purposes of membership of the roster could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

3. The judges of the Mechanism shall only be present at the seats of the branches of the Mechanism as necessary at the request of the President to exercise the functions requiring their presence. In so far as possible, and as decided by the President, the functions may be exercised remotely, away from the seats of the branches of the Mechanism.

4. The judges of the Mechanism shall not receive any remuneration or other benefits for being on the roster. The terms and conditions of service of the judges for each day on which they exercise their functions for the Mechanism shall be those of the judges *ad hoc* of the International Court of Justice. The terms and conditions of service of the President of the Mechanism shall be those of the judges of the International Court of Justice.

Article 9: Qualification of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Particular account shall be taken of experience as judges of the ICTY or the ICTR.

2. In the composition of the Trial and Appeals Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

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Article 10: Election of judges

1. The judges of the Mechanism shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner—

- (a) the Secretary-General shall invite nominations for judges, preferably from among persons with experience as judges of the ICTY or the ICTR, from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
- (b) within 60 days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in Article 9 paragraph 1 of the Statute;
- (c) the Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than 30 candidates, taking due account of the qualifications set out in Article 9 paragraph 1 and adequate representation of the principal legal systems of the world;
- (d) the President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect 25 judges of the Mechanism. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected. Should more than two candidates of the same nationality obtain the required majority vote, the two who received the highest number of votes shall be considered elected.

2. In the event of a vacancy in the roster, after consultation with the President of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of Article 9 paragraph 1 of the Statute, for the remainder of the term of office concerned.

3. The judges of the Mechanism shall be elected for a term of four years and shall be eligible for reappointment by the Secretary-General after consultation with the Presidents of the Security Council and of the General Assembly.

4. If there are no judges remaining on the roster or if no judge on the roster is available for appointment, and if it is not possible to assign a judge currently serving at the Mechanism, and all practical alternatives have been explored, the Secretary-General may, at the request of the President of the Mechanism and after consultation with the Presidents of the Security Council and of the General Assembly, appoint a person meeting the qualifications of Article 9 paragraph 1 of the Statute, to serve as a judge of the Mechanism.

Article 11: The President

1. After consultation with the President of the Security Council and the judges of the Mechanism, the Secretary-General shall appoint a full-time President from among the judges of the Mechanism.

2. The President shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

Article 12: Assignment of judges and Composition of the Chambers

1. In the event of a trial of a case pursuant to paragraphs 2 and 3 of Article 1 of this Statute, or to consider the referral of such a case to a national jurisdiction, the President shall appoint three judges from the roster to compose a Trial Chamber and the Presiding Judge from amongst their number to oversee the work of that Trial Chamber. In all other circumstances, including trials pursuant to

paragraph 4 of Article 1 of this Statute, the President shall appoint a Single Judge from the roster to deal with the matter.

2. The President may designate a duty judge from the roster for each branch of the Mechanism, who will be available at short notice, to serve as a Single Judge and to whom indictments, warrants, and other matters not assigned to a Trial Chamber, may be transmitted for decision.

3. The President of the Mechanism shall be a member of the Appeals Chamber, appoint the other members and preside over its proceedings. In the event of an appeal against a decision by a Single Judge, the Appeals Chamber shall be composed of three judges. In the event of an appeal against a decision by a Trial Chamber, the Appeals Chamber shall be composed of five judges.

4. In the event of an application for review in accordance with Article 24 of this Statute of a judgment rendered by a Single Judge or by a Trial Chamber, the President shall appoint three judges to compose a Trial Chamber on review. In the event of an application for review of a judgment rendered by the Appeals Chamber, the Appeals Chamber on review shall be composed of five judges.

5. The President may appoint, from among the judges of the Mechanism, a reserve judge to be present at each stage of a trial and to replace a judge if that judge is unable to continue sitting.

Article 13: Rules of Procedure and Evidence

1. The judges of the Mechanism shall adopt Rules of Procedure and Evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.

2. Amendments of the Rules of Procedure and Evidence may be decided remotely by the judges of the Mechanism by written procedure.

3. The Rules of Procedure and Evidence and any amendments thereto shall take effect upon adoption by the judges of the Mechanism unless the Security Council decides otherwise.

4. The Rules of Procedure and Evidence and amendments thereto shall be consistent with this Statute.

Article 14: The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons covered by Article 1 of this Statute.

2. The Prosecutor shall act independently as a separate organ of the Mechanism. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor, an officer in charge at the seat of each branch of the Mechanism designated by the Prosecutor, and such other qualified staff as may be required, in accordance with paragraph 5 of this Article. The Prosecutor shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The Office of the Prosecutor shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seats of the branches of the Mechanism. The Office shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required

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to perform its functions. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 15: The Registry

1. The Registry shall be responsible for the administration and servicing of the branches of the Mechanism.

2. The Registry shall consist of a Registrar, an officer in charge at the seat of each branch of the Mechanism designated by the Registrar, and such other qualified staff as may be required in accordance with paragraph 4 of this Article. The Registrar shall be present at either seat of the branches of the Mechanism as necessary to exercise his or her functions.

3. The Registrar shall be appointed by the Secretary-General for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The Registry shall retain a small number of staff commensurate with the reduced functions of the Mechanism, who shall serve at the seat of the respective branches of the Mechanism. The Registry shall maintain a roster of qualified potential staff, preferably from among persons with experience at the ICTY or the ICTR, to enable it to recruit additional staff rapidly as may be required to perform its functions. The Staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 16: Investigation and Preparation of Indictment

1. The Prosecutor shall have the power to conduct investigations against persons covered by Article 1 of this Statute. The Prosecutor shall not have the power to prepare new indictments against persons other than those covered by Article 1 of this Statute.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by Counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as necessary translation into and from the language he or she speaks and understands.

4. Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to the duty judge or a Single Judge designated by the President.

Article 17: Review of the Indictment

1. The indictment shall be reviewed by the duty judge or a Single Judge designated by the President. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 18: Commencement and Conduct of Trial Proceedings

1. The Single Judge or Trial Chamber conducting a trial shall ensure that the trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the Mechanism, be taken into custody, immediately informed of the charges against him or her and transferred to the Mechanism.

3. The Single Judge or judge of the Trial Chamber designated by the President shall read the indictment, ensure that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Single Judge or Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Single Judge or Trial Chamber decides to close the proceedings in accordance with its Rules of Procedure and Evidence.

Article 19: Rights of the Accused

1. All persons shall be equal before the Mechanism.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 20 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality—

- (a) to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
- (b) to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
- (c) to be tried without undue delay;
- (d) to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
- (e) to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- (f) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in the Mechanism;
- (g) not to be compelled to testify against himself or herself or to confess guilt.

Article 20: Protection of Victims and Witnesses

The Mechanism shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses in relation to the ICTY, the ICTR, and the Mechanism. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

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Article 21: Judgments

1. The Single Judge or Trial Chamber shall pronounce judgments and impose sentences and penalties on persons covered by Article 1 of this Statute who are convicted by the Mechanism.

2. All judgments shall be delivered in public and shall be accompanied by a reasoned opinion in writing. Judgments by a Chamber shall be rendered by a majority of the judges, to which separate or dissenting opinions may be appended.

Article 22: Penalties

1. The penalty imposed on persons covered by paragraphs 2 and 3 of Article 1 of this Statute shall be limited to imprisonment. The penalty imposed on persons covered by paragraph 4 of Article 1 of this Statute shall be a term of imprisonment not exceeding seven years, or a fine of an amount to be determined in the Rules of Procedure and Evidence, or both.

2. In determining the terms of imprisonment, the Single Judge or Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia and in those of Rwanda, respectively.

3. In imposing the sentences, the Single Judge or Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

4. In addition to imprisonment, the Single Judge or Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 23: Appellate proceedings

1. The Appeals Chamber shall hear appeals from convicted persons or from the Prosecutor on the following grounds—

- (a) an error on a question of law invalidating the decision; or
- (b) an error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Single Judge or Trial Chamber.

Article 24: Review Proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Single Judge, Trial Chamber or the Appeals Chamber of the ICTY, the ICTR, or the Mechanism and which could have been a decisive factor in reaching the decision, the convicted person may submit to the Mechanism an application for review of the judgment. The Prosecutor may submit such an application within one year from the day that the final judgment was pronounced. The Chamber shall only review the judgment if after a preliminary examination a majority of judges of the Chamber agree that the new fact, if proved, could have been a decisive factor in reaching a decision.

Article 25: Enforcement of sentences

1. Imprisonment shall be served in a State designated by the Mechanism from a list of States with which the United Nations has agreements for this purpose. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the Mechanism.

2. The Mechanism shall have the power to supervise the enforcement of sentences pronounced by the ICTY, the ICTR or the Mechanism, including the implementation of sentence enforcement

agreements entered into by the United Nations with Member States, and other agreements with international and regional organisations and other appropriate organisations and bodies.

Article 26: Pardon or Commutation of Sentences

If, pursuant to the applicable law of the State in which the person convicted by the ICTY, the ICTR or the Mechanism is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the Mechanism accordingly. There shall only be pardon or commutation of sentence if the President of the Mechanism so decides on the basis of the interests of justice and the general principles of law.

Article 27: Management of the Archives

1. Without prejudice to any prior conditions stipulated by, or arrangements with, the providers of information and documents, the archives of the ICTY, the ICTR and the Mechanism shall remain the property of the United Nations. These archives shall be inviolable wherever located pursuant to Section 4 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

2. The Mechanism shall be responsible for the management, including preservation and access, of these archives. The archives of the ICTY and the ICTR shall be co-located with the respective branches of the Mechanism.

3. . In managing access to these archives, the Mechanism shall ensure the continued protection of confidential information, including information concerning protected witnesses, and information provided on a confidential basis. For this purpose, the Mechanism shall implement an information security and access regime, including for the classification and declassification as appropriate of the archives.

Article 28: Cooperation and Judicial Assistance

1. States shall cooperate with the Mechanism in the investigation and prosecution of persons covered by Article 1 of this Statute.

2. States shall comply without undue delay with any request for assistance or an order issued by a Single Judge or Trial Chamber in relation to cases involving persons covered by Article 1 of this Statute, including, but not limited to—

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons;
- (e) the surrender or the transfer of the accused to the Mechanism.

3. The Mechanism shall respond to requests for assistance from national authorities in relation to investigation, prosecution and trial of those responsible for serious violations of international humanitarian law in the countries of former Yugoslavia and Rwanda, including, where appropriate, providing assistance in tracking fugitives whose cases have been referred to national authorities by the ICTY, the ICTR, or the Mechanism.

Article 29: The Status, Privileges and Immunities of the Mechanism

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the Mechanism, the archives of the ICTY, the ICTR and the Mechanism, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

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2. The President, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. The judges of the Mechanism shall enjoy the same privileges and immunities, exemptions and facilities when engaged on the business of the Mechanism.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this Article.

4. Defence counsel, when holding a certificate that he or she has been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the receiving State of their mission, arrival and final departure, shall enjoy the same privileges and immunities as are accorded to experts on mission for the United Nations under Article VI, Section 22, paragraphs (a) to (c), and Section 23, of the Convention referred to in paragraph 1 of this Article. Without prejudice to their privileges and immunities, it is the duty of defence counsel enjoying such privileges and immunities to respect the laws and regulations of the receiving State.

5. Other persons, including the accused, required at the seats of the Mechanism, shall be accorded such treatment as is necessary for the proper functioning of the Mechanism.

Article 30: Expenses of the Mechanism

The expenses of the Mechanism shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

Article 31: Working languages

The working languages of the Mechanism shall be English and French.

Article 32: Reports

1. The President of the Mechanism shall submit an annual report of the Mechanism to the Security Council and to the General Assembly.

2. The President and Prosecutor shall submit six-monthly reports to the Security Council on the progress of the work of the Mechanism.