

**Security Council**

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Letter dated 17 June 2002 from the Secretary-General addressed to the President of the Security Council

I am attaching for your consideration and for the consideration of the members of the Security Council a letter, dated 10 June 2002, from the President of the International Tribunal for the Former Yugoslavia, Judge Claude Jorda (see annex).

Attached to President Jorda's letter is a report that has been jointly prepared by the President, the Prosecutor and the Registrar of the International Tribunal and that has been considered and approved by its judges (see enclosure).

In the report, the International Tribunal outlines certain measures that it believes that it must take if it is to be in a position to achieve the objective of completing all trial activities at first instance by 2008.

The first measure is to concentrate on the prosecution and trial of the highest-ranking political, military and paramilitary leaders who are suspected of being responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

The second measure, which is complementary to the first, is to transfer cases involving mid-level accused, that is, accused who, while they were not the principal political, military and paramilitary leaders, are nevertheless alleged to have exercised a measure of leadership or control, to national courts for prosecution and trial.

It is envisaged that the cases against several accused who are currently detained under the authority of the International Tribunal might possibly be transferred to national courts for prosecution and trial in this way, as well as cases involving some further 50 individuals against whom the Prosecutor anticipates submitting indictments by the time she has completed the investigatory part of her mandate, in 2004.

In view of the location where the crimes concerned are alleged to have been committed, all of these cases would be referred for prosecution and trial to the national courts of Bosnia and Herzegovina.

However, the Tribunal emphasizes that it would be in a position to refer cases to a State for prosecution and trial only if it were known that its courts would be able to handle those cases effectively and consistently with internationally recognized standards of human rights and due process.

The Tribunal notes that, according to information at its disposal, the judicial systems in Bosnia and Herzegovina exhibit a number of serious shortcomings in these respects. The Tribunal is consequently of the view that it would not be possible for it to refer cases to the national jurisdictions of that State as they are currently organized and function.

At the same time, the Tribunal considers that the newly established State Court of Bosnia and Herzegovina has the potential to be an appropriate forum to which it might refer cases for prosecution and trial.

To that end, the Tribunal recommends that a division be created within the State Court with specific responsibility for the conduct of cases involving serious violations of international humanitarian law in Bosnia and Herzegovina. It further recommends that, at least for an initial period, this division should be composed of both international and national judges. The Tribunal also outlines certain measures that would need to be adopted within the Bosnian legal system, as well as certain practical arrangements that would need to be put in place, before any transfers of cases could occur.

If these recommendations were implemented and these measures and arrangements put in place, the Tribunal considers that it would then be in a position to transfer cases against mid-level accused to the State Court of Bosnia and Herzegovina for prosecution and trial.

The Tribunal seeks the endorsement of the Security Council for this broad programme of action.

Should the Security Council confer such endorsement, the Tribunal would then proceed to adopt the necessary amendments to its Rules of Procedure and Evidence.

Transfers of cases to the State Court of Bosnia and Herzegovina would commence once it had been verified that all necessary corresponding measures had been adopted within the Bosnian legal system and all necessary practical arrangements put in place.

I would be grateful if you would bring the present letter and its attachments to the attention of the members of the Security Council.

(Signed) Kofi A. **Annan**