Mandate of the International Criminal Tribunal for the former Yugoslavia

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The Committee on Foreign Affairs unanimously adopted an own-initiative report by Annemie **NEYTS-UYTTEBROECK** (ALDE, BE), on the proposal for a European Parliament recommendation to the Council on the mandate of the International Criminal Tribunal for the former Yugoslavia. It recalls that the a new decision of the UN Security Council is needed in order to extend the mandate of the Tribunal, since the latter has indicated that it will be unable to complete the first-instance trials before late 2009, partly because of the great number of appeals. The Tribunal has devised a "completion strategy", and the current goal is to complete all proceedings (trials and appeals) by 2011, with a slight spill-over into 2012. In order to achieve these results, the Tribunal is focussing on the most senior leaders suspected of being responsible for crimes committed within its jurisdiction, and has transferred cases brought against intermediate and low-level accused to competent national jurisdictions. Whilst the referral of cases has had a substantial impact on the overall workload of the Tribunal, factors beyond its control have caused delays and further unforeseen delays cannot be ruled out.

The two remaining indictees, Ratko Mladi and Goran Hadži, must be brought to justice, and their apprehension will depend on the mandatory cooperation of States. The committee notes that outstanding cases must be tried without being subject to unrealistic time pressures, since such pressures might prejudice the right of the accused to a fair trial.

In view of these factors, certain recommendations are addressed to the Council, the principal points being as follows:

- the Tribunal’s work will not be fully achieved unless on-going trials can be concluded without undue haste and the two remaining indictees, Ratko Mladi and Goran Hadži, are brought to justice and tried;
- the quest for increased speed of proceedings should not be pursued at the expense of due process. The legacy of the Tribunal will be measured not only by whether it succeeds in judging those responsible for the most serious crimes but also by whether it does so in accordance with the strictest standards of fairness;
- the date fixed for achievement of the completion strategy contributes to the productivity of the Tribunal, but, if the trial of Ratko Mladi et Goran Hadži is to proceed, that date cannot in any way constitute a deadline for the activities of the Tribunal;
- the Council is asked to examine whether a 2 -year extension of the mandate of the Tribunal should be envisaged and whether this would be sufficient;
- the UN Security Council should be encouraged to commit itself to providing sufficient resources and support to the Tribunal through the general budget of the UN until the end of the Tribunal's mandate;
- the Council should continue to support the Tribunal's efforts to get the countries in question to expedite efforts to capture the two remaining indictees, as well as to clarify with the UN that the two remaining fugitives must be tried by either the Tribunal or by the residual mechanisms, therefore avoiding any suggestion of impunity;
- the Council should raise with the Croatian authorities the apparent lack of co-operation in handing over key documents vital for the prosecution of General Ante Gotovina, Mladen Marka and Ivan Cermak;
- recalling the Copenhagen criteria, the Council should set clear norms for evaluating the performance of the judiciary in the countries of the Western Balkans after the Tribunal's term comes

to an end. Members call on the EU to increase its support for domestic war crime investigations and trials;

- Members call on the Council to consider an increase in its support for the continuation strategy of the Tribunal, and call for increased cooperation between the judicial and prosecutorial bodies in the Western Balkans, in particular in cases involving extradition and mutual legal assistance;
- the Council is invited to pursue, within the appropriate UN structures, the procedures envisaged for a mechanism for dealing with the residual functions, such as witness protection, and contempt of court issues. A proposal should be put to the UN Security Council for the possible setting-up of a joint office to deal with the future residual functions of the Tribunal and of the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone;
- the EU should take a particular interest in securing the legacy of the Tribunal by ensuring that its archives are safely stored, possibly in the region of the Western Balkans, that documentation is accessible on the world-wide web;
- the legacy of the Tribunal should also be linked to the overall reconciliation process. The committee calls on the Western Balkan states and the EU to support the work of non-governmental organisations and other institutions that aid victims, promote inter-ethnic dialogue, and aid the pursuit of truth and reconciliation.