UN Establishes Residual Mechanism for Tribunals

On 22 December 2010, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations decided, through Resolution 1966 (2010), to establish a single International Residual Mechanism for the two ad-hoc Criminal Tribunals which shall continue the material, territorial, temporal and personal jurisdiction of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), respectively, as set out in their Statutes.

While no decision has yet been made as to the location of the Mechanism itself, it has however two branches, one branch for the ICTY and one branch for the ICTR, respectively. The branch of the ICTY shall have its seat in The Hague, The Netherlands. The branch for the ICTR shall have its seat in Arusha, Tanzania.

The Arusha-based Mechanism shall commence functioning, on 1 July 2012 and The Hague-based one on 1 July 2013. The ICTR and the ICTY have been requested to take all possible measures to expeditiously complete all their remaining work no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the Mechanism, through the preparatory work of the advance teams.

As of the commencement date of each branch, the mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, subject to the provisions of the Resolution and the Statute of the Mechanism, and all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR, shall remain in force mutatis mutandis in relation to the Mechanism.

The Mechanism shall operate for an initial period of four years from the first commencement date, and to review the progress of the work of the Mechanism, including in completing its functions, before the end of this initial period and every two years thereafter, and further that the Mechanism shall continue to operate for subsequent periods of two years following each such review, unless the Security Council decides otherwise.

Member States of the United Nations have been requested to cooperate with the Tribunals and the Mechanism, including the obligation of States to comply with requests for assistance or orders issued by the Mechanism, pursuant to its Statute. The Member States, especially where fugitives are suspected to be at large, have been urged, to further intensify cooperation with and render all necessary assistance to the Tribunals and the Mechanism, as appropriate, in particular to achieve the arrest and surrender of all remaining fugitives as soon as possible.

The Tribunals and the Mechanism...
have also been urged to actively undertake every effort to refer those cases which do not involve the most senior leaders suspected of being most responsible for crimes to competent national jurisdictions in accordance with their respective Statutes and Rules of Procedure and Evidence.

Furthermore, Member States have been called upon to cooperate to the maximum extent possible in order to receive referred cases from the Tribunals and the Mechanism.

The Mechanism shall consist of the following organs:

- The Chambers, comprising of a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism. The Secretary-General of the United Nations shall, after consultation with the President of the Security Council and the judges of the Mechanism, appoint the President from among the judges of the Mechanism.

- The Prosecutor common to both branches of the Mechanism. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General of the United Nations. He 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.

- The Registry common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor. The Registrar shall be appointed by the Secretary-General of the United Nations 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.

ICTR Judicial Activities

- Work of the Trial Chambers and the Appeals Chamber in December 2010 and January 2011

**Trial Chamber I**

The work of this Trial Chamber has been completed.

**Trial Chamber II**

Ongoing Trials

**Ndirabatware**

The Defence case continued through 14 December 2010. On 6 December 2010, the Chamber directed the Prosecution to begin its cross-examination of the Accused that day, but deferred the cross-examination on the newly raised alibis until 17 January 2011. On 17 January, the Chamber decided, on an oral request of the Defence, to adjourn the proceedings pending a session by the Bureau on a Defence Motion filed 5 January 2011 to Disqualify the Judges of the Chamber. On 25 January, the Bureau issued its Decision denying the Defense Motion for Disqualification. On 26 January, the Chamber issued an Order for the Resumption of Trial starting 31 January. During the reporting period, the Chamber issued five written or oral decisions.

**Trials in Judgement Drafting Phase**

**Nyiramasuhuko et al. (“Butare”)**

Deliberations and judgement drafting continued.

**Nidilyimana et al. (“Military II”)**

Deliberations and judgement drafting continued.

**Bizimungu et al.**

Deliberations and judgement drafting continued.

**Trial Chamber III**

Ongoing Trials

**Nzabonimana**

The Trial Chamber issued four decisions during this period. It heard no evidence due to Judges in the Chamber sitting on other cases.

**Karemera et al.**

In the Karemera et al. case, the Chamber issued 4 written decisions in December 2010 and 3 oral decisions in January 2011. The Defence of Matthieu Ngirumpatse resumed on 10 January 2011. Three witnesses were heard on the first two days of the session. Matthieu Ngirumpatse has been on the witness stand since 17 January and his examination-in-chief ended on Friday 28 January.

**Ndahimana**

The Defence case commenced on 17 January 2011. The Chamber heard 10 witnesses by the end of the reporting period. The Trial Chamber issued three decisions.

**Trial in Judgement Drafting Phase**

**Gateote**

Deliberations and judgement drafting continued.

Ongoing Trials

**Nizeyimana**

The Chamber issued twenty-two decisions and two corrigenda during the months of December 2010 and January 2011. The trial commenced on 17 January 2011 before Judges Muthoga (presiding), Park and Fremr. As of 28 January 2011, the Chamber has heard the complete testimony of twelve Prosecution witnesses.

**Pre-Trial**

**Uwinkindi**

The referral Chamber composed of Judges Arrey (presiding), Short and Fremr assigned by the President to decide on the Prosecution's request to transfer the Uwinkindi case to Rwanda pursuant to Rule 11 bis, issued two decisions during the reporting period.
Kayishema
The referral Chamber, composed of Judge Joensen (presiding), Kam and Rajohnson rendered one decision in each of the instances deferring the referral proceedings until a final decision is reached in the Uwinkindi referral procedure or until the accused persons are arrested.

Sikubwabo
The referral Chamber, composed of Judge Joensen (presiding), Kam and Rajohnson rendered one decision in each of the instances deferring the referral proceedings until a final decision is reached in the Uwinkindi referral procedure or until the accused persons are arrested.

Appeals Chamber
In December and January, the Appeals Chamber issued 1 decision on an appeal in the Nsengimana case, as well as 18 pre-appeal decisions or orders.

Currently, the Appeals Chamber is seized of 15 matters, including 8 cases involving appeals from judgement.

In the Renzaho case the Trial Judgement was rendered on 14 July 2009, the briefing in this appeal concluded on 5 May 2010, and the appeal was heard on 16 June 2010. Deliberations and Judgement drafting are in progress.

The Trial Judgement in the Muvunyi case was rendered on 11 February 2010. The briefing of the appeals was completed at the end of July 2010 and the appeals were heard on 21 October 2010. The Appeal Judgement will be delivered on 1 April 2011.

The Bagosora et al. Trial Judgement was pronounced on 18 December 2008 and issued in writing on 9 February 2009. Theoneste Bagosora, Aloys Ntabakuze, and Anatole Nsengiyumva appealed. The briefing in respect of the appeals was completed at the end of July 2010 and the appeals are being prepared for a hearing.

The Trial Judgement in the Setako case was rendered on 25 February 2010 and issued in writing on 1 March 2010. Both parties filed notices of appeal and the briefing was completed in November 2010. The appeals are being prepared for a hearing.

The Trial Judgement in the Munyakazi case was rendered on 30 June 2010 and issued in writing on 5 July 2010. Both parties filed notices of appeal in August 2010 and the briefing was completed in January 2011. The appeals are being prepared for a hearing.

The Trial Judgement in the Ntawukulliyayo case was rendered on 3 August 2010 and issued in writing on 6 August 2010. Dominique Ntawukulliyayo filed his notice of appeal on 6 September 2010 and the briefing is in progress.

The Trial Judgement in the Kanyarukiga case was rendered on 1 November 2010 and issued in writing on 9 November 2010. Both parties filed notices of appeal in December 2010 and the briefing is in progress.

The Trial Judgement in the Hategekimana case was rendered on 6 December 2010 and has not yet been issued in writing. The Appeals Chamber confirmed that Ildephonse Hategekimana will have 30 days from the filing of the written judgement to file his notice of appeal.

In addition to these appeals, the Appeals Chamber is seized of two interlocutory appeals in the Karemera & Nzigirumugira cases, two requests for review in the Kamuhanda and Karera cases, as well as three other requests in the Niyitegeka, Nshogoza, and Karemera & Nzigirumugira cases.

During 2010, the Appeals Chamber delivered 5 Judgements (one of which concerned contempt), 11 interlocutory appeal decisions, 11 decisions on review or other post-appeal requests, and issued 123 pre-appeal orders or decisions. To date, the Appeals Chamber has delivered 27 Judgements, concluding the appellate proceedings in respect of 33 persons.

- Trial of Idelphonse Nizeyimana Commences

The trial of Idelphonse Nizeyimana, former second-in-command in charge of intelligence and military operations at ESO (Ecole des Sous Officiers) began on 17 January 2011 before Trial Chamber III composed of Judges Lee Gacuiga Muthoga, presiding, Seon Ki Park and Robert Fremr.

The Prosecution, in its opening remarks, told the Trial Chamber that it will present evidence to prove that the accused was among key officers of the Rwanda Armed Forces who played crucial roles in the implementation of genocide from its inception through to its conclusion.

Senior Trial Attorney Drew White told the Trial Chamber that the accused could have exercised his authority and his influence to save lives of Rwandan citizens, but he chose otherwise. That choice was premised on his individual acceptance of a collective genocidal philosophy that extended throughout Rwanda. In that philosophy of genocide the accused did not act alone. “And you are going to hear evidence as to who participated with him and how he cooperated with other persons,” the Prosecution stated.

In response, Defence Counsel John Philpot (Canada) told the Trial Chamber that he will contest all the factual allegations against the accused. He added that Nizeyimana was not influential as alleged and was not the de facto Commander of ESO. Actually he said the war in Rwanda was not a war against Tutsi, and it has never been. Rather the war was with an army with a political mission.

Nizeyimana, who was initially jointly charged with two others, Tharcisse Muvunyi (sentenced to 15 years)
and Idelphonse Hategekimana (sentenced to life imprisonment), is facing four counts of genocide, or in the alternative complicity in genocide, crimes against humanity (rape) and crimes against humanity (other inhumane acts).

According to the indictment, Nizeyimana, through the chain of command, is alleged to have exercised authority over soldiers and personnel at the camp and was perceived as a member of the elite inner circle (Akazu) of the late President Habyarimana.

Nizeyimana is alleged to have planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning, preparation of executions he is charged with. He is also alleged to have known, or had reason to know, that his subordinates were preparing to commit or had committed one or more of the crimes and failed to take the necessary and reasonable meassurers to prevent the said acts from being committed or to punish those who were responsible.

Nizeyimana was arrested in Kampala, Uganda on 5 October 2009 and was transferred to UN Detention Facility in Arusha on 6 October 2009.

- Sikubwabo and Kayishema Referral Cases to Rwanda Deferred

Trial Chamber III of the UN International Criminal Tribunal for Rwanda on 17 January 2011 decided that proceedings in relation to motions filed, under Rule 11 bis, by the Prosecution for referral of cases against Charles Sikubwabo and Fulgence Kayishema to the authorities of the Republic of Rwanda, including the appointment of Counsel for the accused, shall be deferred until the Accused are arrested or until a final decision has been made in relation to another request in the case of Jean-Bosco Uwinkindi, whatever comes first.

The Trial Chamber, composed of Judges Vagn Joenssen, presiding, Gberdao Gustave Kam and Mparany Rajohnson made the ruling when issuing a scheduling order in the cases.

On 4 November 2010, the Prosecution filed three applications seeking the referral to Rwanda of the cases of Uwinkindi, former Pastor in Charge of Pentecostal Church in Kanzanze, Sikubwabo, former Bourgmestre of Gishyita, Kibuye Prefecture and Kayishema, former Inspector of Police in Kivumo commune.

In the ruling the Trial Chamber recalled that Sikubwabo and Kayishema were still at large. Therefore the matter pending before the Trial Chamber was not particularly urgent as long as the accused had not been arrested.

The Chamber said it considered that information that will be gathered in relation to the referral request concerning Uwinkindi, who is presently in custody of the Tribunal, and the outcome of that case, particularly in the event of an appeal, is likely to impact on the issues that will be raised in relation to the other referral requests.

- Hategekimana Convicted and Sentenced to Life Imprisonment

Trial Chamber II of the United Nations International Criminal Tribunal for Rwanda composed of Judges Arlette Ramaroson, Presiding, Taghrid Hikmet and Joseph Masanche, on 6 December 2010 convicted Idelphonse Hategekimana, former Commander of the Ngoma Camp for crimes of genocide and crimes against humanity and sentenced him to life imprisonment.

Hategekimana, who was a Lieutenant in Rwanda Armed Forces, was found guilty on three counts of genocide for killing of Tutsi at Ngoma Parish and at Maison Généralice as well as crimes against humanity for murdering several others and raping one Nura Sezirahiga. The accused was acquitted of one count of complicity in genocide.

The trial Chamber explained that the sentence was reached after considering the gravity of each of the crimes for which the accused had been convicted as well as the aggravating and mitigating circumstances mentioned by the parties. The accused will remain in the custody of the Tribunal pending transfer to the state where he will serve his sentence.

Hategekimana’s trial commenced on 8 March 2009 and closed on 6 October 2009. Over the course of forty-three days, the Prosecution and the Defence called a total of forty witnesses.

Hategekimana was arrested on 16 February 2003 in Congo Brazzaville, and was transferred to the UN Detention Facility in Arusha on 19 February. He made his initial appearance on 28 February 2003 during which he pleaded not guilty to all the charges preferred against him. He was represented by Counsel Jean de Dieu Momo from Cameroon and the Prosecution was led by William Egbe from Cameroon.

Activities of the ICTR Principals

- ICTR Prosecutor, Justice Hassan Bubacar Jallow Visits Rwanda

The Prosecutor, Justice Hassan B. Jallow, undertook a mission to Kigali, Rwanda from Tuesday 18 January 2011 to Monday 24 January 2011. He was accompanied by Mr. Cheickh Bangoura, Policy Coordinator and his Personal Assistant, Ms. Caroline Otieno.
On arrival, the Prosecutor was welcomed by Mr. Alfred Kwendé, Chief, of Investigations Section who was accompanied by Mr. Mohamed Ayat, Senior Legal Adviser, Mr. Apollo Kagwa, Admin Officer and other senior officers.

The Prosecutor held separate work sessions with the management of ICTR Investigation Team Leaders in the course of which progress as well as challenges were reviewed in respect of the OTP workload.

The Prosecutor’s program also included meeting with individual staff members. He held a general meeting with OTP staff where he briefed staff and answered questions on the Completion Strategy, the transition to the Residual Mechanism, staff contracts and other matters.

The Prosecutor held separate consultations with the Rwandan Prosecutor General, Mr. Martin Ngoga as well as the Attorney General and Minister of Justice, Mr. Tharcisse Karugarama. Pending issues of assistance and cooperation were discussed as well as the referral of cases to Rwanda and the transition to completion.

On Friday 21 January 2011, the Prosecutor assisted by Senior OTP officials in Kigali met with a delegation from Holland to discuss the referral and extradition of accused to Rwanda for trial.

The final day of the mission was marked by a briefing/meeting for the diplomatic community organized at ICTR Kigali. The following representatives of 18 diplomatic missions accredited in Kigali were present: Germany, USA, RDC, Tanzania, Russia, Suisse, Belgium, EU, Vatican South –Africa, Uganda, France, Canada, Kenya, Sweden, Egypt, Great Britain and the AU.

Justice Jallow briefed the diplomatic community on the status of trials at the ICTR, the prospects for conclusion of the ICTR mandate, tracking of fugitives, referrals of cases and the transition to the Residual mechanism. He thanked the member States for their continuous support for the ICTR particularly in the provision of the resources required for efficient completion and called upon them to maintain that support at this crucial stage of the ICTR mandate.

The diplomatic community thanked the Prosecutor for his briefing and the ICTR for its important work. They indicated their strong desire to visit the ICTR in Arusha. The Prosecutor assured them that they were welcome and that a formal invitation would follow.

On Saturday, 22 January 2011, the Prosecutor was received by H. E. President Paul Kagame for brief discussions on the margins of the finals of the CAF Under 17 Soccer championships which both had attended.

On 23 January 2011, the Prosecutor attended a dinner hosted by the Prosecutor General, Mr. Martin Ngoga and attended by the Minister for Foreign Affairs of Rwanda Mrs. Louise Mushikiwabo. He returned to Arusha on the following day.

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ICTR Registrar, Mr. Adama Dieng Participates in Advisory Group of Eminent Persons, Geneva

The Registrar was invited by the United Nations High Commissioner for Refugees (UNHCR) to be part of the Advisory Group of Eminent Persons from 07-08 December 2010 in Geneva. Because of his expertise and experience, the Registrar was selected to a collective review being set in train by the UNHCR in the run up to milestone anniversaries of international legal instruments for the protection of persons under the mandate of this office.

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ACABQ and Fifth Committee, New York

The Registrar, along with the Deputy Prosecutor, the Chief of DASS, the Special Assistant to the Registrar and the Budget Officer, attended the ACABQ and Fifth Committee meetings held in New York on 30 November and 13 December 2010, respectively. The meetings were fruitful and resulted in the adoption of the ICTR biennium revised estimates budget 2010-2011 totalling US$ 257,804,100 gross (US$ 235,327,400 net).
ICTR Hosts Regular Coordination Meeting with the Management of Kilimanjaro Airport Development Company Ltd (KADCO)

At the initiative of the Witnesses and Victims Support Section, on 14 December 2010, a joint forum was organised between the ICTR and the Management of Kilimanjaro Airport Development Company Ltd (KADCO), in order to enhance the existing bilateral cooperation between the two Institutions.

The meeting is held every three months and is hosted on an alternate basis. This forum brings together key players from both institutions whose duties are related to the movement and security of staff, witnesses, detainees and VIP. The key ICTR operations departments concerned are: WVSS, ERSPS, SSS, UNDF, Travel Unit and DASS as Chair of the ICTR delegation. The KADCO Management includes, Immigration, Customs and Police Departments, under the Chairmanship of the Managing Director of KADCO. Activities are coordinated by appointed Focal Points from both parties.

The forum gives an opportunity to both parties to report on issues that need to be discussed and redressed, and also for both parties to be updated on any developments.

Points discussed during the coordination meetings are mainly based on operational issues of mutual interest affecting both institutions which include, movement and escort of ICTR witnesses, UN Beechcraft and its pilots, Airport Security control, Management of Special privileges accorded to UN staff (diplomatic status and immunities), status of residence permits and other travel documents.

The next meeting which is scheduled for March 2011 will be hosted by KADCO.

ICTR Interns’ Corner

- Respect cultural diversity, interns told by Gills Msiska-- ERSPS Intern

The registrar of the UNICTR, Mr. Adama Dieng, has called upon all the interns to respect the different racial groups that exist at the tribunal. Mr. Dieng made the call during the opening ceremony of the Interns’ Orientation Seminar which was held on 17 January 2011 in Room S-355.

In his address, Mr. Dieng observed that the Tribunal is made up of a community of people from different cultural backgrounds and that peaceful coexistence in such a situation can only be possible if the cultural differences are observed and respected.

Apart from this, Mr. Dieng also advised interns to follow all the rules and regulations of the Tribunal. “You are not UN members but you should follow all the etiquettes as normal staff,” advised Mr. Dieng. He also gave a short history of the Tribunal saying that, “This is the first time genocide laws are being applied.”

The one-day long orientation seminar was organized in order to induct new interns and researchers and to brief them on the work of the Tribunal in general and the various Sections in particular. Chiefs from the Tribunal’s different Sections were invited to speak on the work of their departments. At the end of each briefing, the interns were given an opportunity to ask questions. There are a total of 70 interns serving in the various sections at the Tribunal.

Meanwhile, the interns, under the leadership of the Internship Coordinator, Ms Felicia Madigane, have unanimously passed a resolution to establish an interns’ working committee which has been named “Security Council for ICTR Interns” (SCICTRI). The main duty of the council will be to coordinate activities of interns at the Tribunal.

Staff Counselling & Welfare Unit News

- Cross-Cultural Communication Training

While the courts went on recess during December, the Staff Counsellor facilitated five sessions of “Cross Cultural Communication Training/ Communication Interculturelle” for the Security and Safety Section, WVSS, CMS and Finance. During the interactive training participants learned about different cultures through practical exercises such how to greet people according to one’s culture, different meaning of the non-verbal language according to different cultures and backgrounds and so on. ICTR has a large concentration of staff members coming from almost 80 different countries. In such a multicultural community, many misunderstandings can take place. The Staff Counselling & Welfare Unit believes that before organising Stress Management Training, staff should familiarise themselves about this “subtle” source of stress. The training focused on awareness of and
respect for diversity in the work place.

Below are some comments from the participants:

“...the multiculturalism is a great source of enrichment for all of us”.

**Why was the training important to you as a UN staff member?**

Because UN is a diverse community where we not only see many faces but cultures, traditions, values and behaviours.

Cultures could be seen as entities interrelated, exchanging views to go beyond stereotypes by understanding different scales and developing a good communication path. The UN community comprises of people from varying social backgrounds and religions, with their own beliefs and speaking different languages. In order to achieve common goals, staff members are made to understand and accept differences as very important resources for peace keepers assisting or educating those people who failed in the world. The workshop was very informative.

The importance of cross-cultural communication is reflected in this era of rapid globalization, more people from different cultures interact to work together every day. This cross-cultural or intercultural communication is very important within United Nations as a unifying organ.

The cross-cultural communication enhances tolerance and patience.

It helps to identify our own behavioural styles and the styles of our co-workers and clients in order to adjust for better communication and helps to overcome hurtful preconceptions (stereotypes).

Generally the workshop enabled me to get a better awareness understanding of the behaviour of people from a variety of cultures and backgrounds.

**What did you achieve from the training?**

Awareness of other cultures and acceptance of the “UN culture” - multicultural, multiracial, multireligious, universality...

Culture is what is left when everything has gone. UN is a big family with colleagues from various parts of the world.

This Cross Cultural communication training helped me to appreciate and accept diversity.

According to the saying “What’s considered true in the Pyrenees is considered false Here”. Keeping this in mind, we will become more tolerant of our colleagues.

- **Welfare Unit**

The next welfare event is being planned during the “International Women’s Day” on 8 March 2011.

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**UNDSS Support to COP 10, Nagoya**

The Fifth meeting of the Conference of the Parties Serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (MOP-COP 5) and Conference of the Parties (COP-10) on the “Convention on Biological Diversity” (CBD) were held at Nagoya Congress Centre (NCC), Japan from 11 to 29 October 2010. COP 10 included a High Level Segment organized by the host country in consultation with the Secretariat and the Bureau from 27 to 29 October 2010. A number of dignitaries participated in the High Level Segment including the President of the UN General Assembly, several Heads of State and Government, Prince of Monaco, President of the World Bank and actor Harrison Ford in his capacity of Vice Chair of Conservation International. The CBD is a linkage of three separate conventions on Climate Change, Biodiversity and Desertification which were derived directly from the 1992 Earth Summit in Rio de Janeiro, Brazil. The CBD devotes its works towards the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising from commercial and other utilization of generic resources.

A team of 19 UNDSS personnel from six different duty stations, namely; UNHQ, UNOG, UNON, ICTR, ESCAP and ESCWA was deployed to provide security for this event in collaboration with Japanese counterparts, under the leadership of Chief, Peter Marshall and Deputy Chief, Bryan Black. Unlike other UN meetings, the security arrangement for these conferences was a hybrid one. With the strength of 160 Aichi Police, 180 ALSOK Security and 19 UNDSS Officers of various ranks, the event proved to be a huge success in regard to the safety and security of staff and participants. A peak of about 8000 participants from 192 countries was reached during the latter segment of the Conference. Given the cultural sensitivities associated with Japanese society, the professional and diplomatic approach as well as the good sense of humor displayed by the DSS Managers - Chief Peter Marshall, Deputy Chief Bryan Black and Lieutenant Nazir Koheeallee, helped to establish a deep sense of mutual trust, respect and excellent coordination in the security operations.