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Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

STATEMENT

(Exclusively for the use of the media. Not an official document)

PRESIDENT

The Hague, 6 December 2010

ICTY President's Address to the United Nations Security Council on the Completion Strategy

It is an honour for me to appear before you today in my capacity as President of the International Criminal Tribunal for the former Yugoslavia—and to do so under the Presidency of the United States. I would also like to express my sincere appreciation for the support shown for the work of the Tribunal by the outgoing members of the Security Council—Austria, Japan, Mexico, Turkey, and Uganda. In particular, the Tribunal is grateful to Austria as the Chair of the Security Council's Informal Working Group on International Tribunals for the substantial progress that has been made in the development of a Residual Mechanism. My remarks today will be brief, as the details of the measures the Tribunal has undertaken to complete its mandate are set out in the written biannual report, which has been duly submitted to you.

At the close of the reporting period, 13 persons are in appeal proceedings, and 18 persons are on trial. Two accused—Ratko Mladić and Goran Hadžić—remain at-large. To date, we have concluded proceedings against 125 of the 161 persons indicted by the Tribunal.

During the reporting period, the Tribunal conducted proceedings in ten trials concurrently by doubling-up Judges and staff so that they are working on more than one case at a time. The second of the Tribunal's three multi-accused trials—*Prosecutor v. Popović et al.*—was brought to a close. *Đorđević, Gotovina et al., Perišić*, and the *Haradinaj* partial re-trial will conclude in 2011. Five trials are anticipated to conclude in 2012, *Prlić et al., Šešelj, Stanišić and Simatović, Stanišić and Župljanin*, and *Tolimir*. And the final case—that of *Karadžić*—should be completed at the end of 2013.

Two Appeal Judgements were rendered, and appeals from three trial Judgements are currently pending before the Appeals Chamber. All appeals are still scheduled to be completed by the end of 2014, although the recent, unavoidable delays in the *Karadžić* case suggest that this date will have to be re-assessed at an appropriate time. The Judges

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of the Appeals Chamber also continued to work at maximum capacity on appeals from the International Criminal Tribunal for Rwanda.

The Tribunal continues to take all measures possible to expedite its trials, without sacrificing due process. In this regard, I must tell you that the Judges have reported feeling extreme pressure to expedite the work of the Tribunal. This troubles me. Judges are entitled to work in an environment free from all external pressures, so that their independence is not compromised, or appear to be compromised.

Despite Herculean efforts to expedite our proceedings, some estimates from the last reporting period have had to be amended. Although the trial schedule is estimated by reference to factors that are within the Tribunal's control, there are important influences upon the schedule that are not within our control, such as witness intimidation, the failure of witnesses to appear, the illness of accused, the death of defence counsel, the complexities associated with self-represented accused, the discovery of new evidence, and staff attrition.

On the issue of our debilitating staff attrition, I would like to sincerely thank the Security Council for responding to the pleas of the Tribunal for assistance by passing Resolution 1931 in June of this year, which *noted* the importance of the Tribunal being adequately staffed to complete its work expeditiously and *called upon* the Secretariat and other relevant United Nations bodies to continue to work with the Registrar to find practicable solutions to address this issue as the Tribunal draws to a close. But this resolution must be translated into action, and unfortunately it has not. The confusion that started with General Assembly Resolution 63/256 not being implemented due to budgetary constraints continues.

Most recently, in June 2010, the Staff Management Coordination Committee—a body comprised of the Office of Human Resource Management (OHRM), Staff Unions, and UN Administrators—made two recommendations regarding the Tribunals, which were approved by the Deputy Secretary-General on behalf of the Secretary-General. One of those recommendations was that our staff be given two-year fixed-term appointments, subject to another extension of two years. Following consultation at New York Headquarters in October, OHRM clarified that it was fully within the authority of the Registrar to issue contracts to staff for a period of two years, regardless of approved budgetary funds—a position contrary to its view that General Assembly Resolution 63/256 only authorises contracts in conformity with approved budgetary funds. OHRM also told us that the purpose of the Staff Management Coordination Committee's recommendation was to provide an incentive to staff by way of

an indemnity payment if and when contracts were terminated prior to expiration. But it was OHRM's position that such indemnity had to be covered by the Tribunal's existing resources and that no request for additional funding to cover indemnity payments could be made. And herein lies the problem. The Tribunal does not have the resources, nor can it find them, to implement General Assembly Resolution 63/256. Again, the Tribunal is offered a measure that on its face seems to provide a way of stemming the rapid tide of staff attrition, but in reality it is meaningless.

Furthermore, the second recommendation of the Staff Management Coordination Committee has also been rendered meaningless. This recommendation was that Tribunal staff be given priority in consideration of eligibility for conversion to permanent contracts. However, OHRM has advised that no such priority will be given. Indeed, it has referred all recommendations for permanent contracts by the Tribunal to a central review board on the basis that it did not agree with any of them. OHRM made no secret of the fact that the recommendations are likely to languish with the review board for some time. Somewhat surprisingly, the Secretary-General's Bulletin on the consideration of permanent contracts provides for no such review procedure.

Turning to other matters, I would like to bring to your attention again the need to compensate the victims of the armed conflicts in the former Yugoslavia. In order to build a lasting peace, justice must not only be retributive—it must also be restorative. The International Criminal Court and the 114 states that have ratified the Rome Statute accept the importance of compensation to victims of war crimes, crimes against humanity, and genocide—and the United Nations must do the same. I therefore call upon you to support the establishment of a victims' trust fund in order to complement the Tribunal's criminal trials by providing victims with the necessary resources to rebuild their lives.

In making this proposal, the Tribunal is extremely sensitive to the financial difficulties being experienced by Member States. And it has not escaped our notice that, lately, the importance of the concept of justice has come under fire. But it is precisely in difficult times that we must be the most vigilant in safeguarding the role of justice in our society. We must not lose sight of the reason why the Security Council created the Tribunal in the first place. It was the German philosopher Immanuel Kant who posed the issue in the starkest of terms, stating that

[t]he greatest problem for the human species is that of attaining a civil society which can administer universal justice.

Although Kant said this over two hundred years ago, we are engaged in the same struggle today. Courts are vulnerable institutions because they are dependent upon other governmental entities for their very existence. What ultimately safeguards the ability of courts to function is the consensus of the community that justice is a quality worth protecting in its purest form. In carrying out that function, every staff member is committed to playing his or her part to the very best of his or her ability. It is simply wonderful to witness the United Nations working as a family to put into practice the ideal of justice upon which the UN was founded.

I travel to New York twice per year to give you an assessment of the progress of our work. But it really is a shame that the Members of the Security Council do not have the opportunity to see the ICTY that I see when I arrive at work in the morning. When I enter the Tribunal in the early hours of the morning, I pass a security officer from the United States reverently raising the UN flag. I say hello to a financial analyst from China who is working on our next budget submission to the General Assembly. I walk past a prosecutor from the UK who is nervously practicing her oral argument outside the courtroom. Inside the courtroom, a defence counsel from France is consulting with her client before the hearing begins. As I near the corridor of the Judges, I peek in on a legal officer from Russia working hard to complete a Judgement that is to be rendered soon.

I see faces of the young and the old; men and women; people from the East and from the West. Despite their differences, they are all interconnected by a common thread: *they are all ... ministers of justice*. Theirs are the varied faces of the ICTY that you never get to see. They all came to the Tribunal because they wanted to be a part of the bold new era ushered in by the Security Council in May 1993. They came to the Tribunal to work in a place where they could use their skills to build a more just world—where the guilty are punished, the innocent go free, and the victims have their day in court. In short, they wanted to help fashion a world where each person gets what he or she deserves—which is the very character of justice. And if they are the ministers of justice, then the Members of the Security Council are the *architects of that justice*, for it is you who created the Tribunal in order to stamp out impunity and bring justice to the former Yugoslavia.

And this brings us to why justice matters. Justice matters because in a world without justice, right would be determined by might, and the weak would be at the mercy of the strong. None of us would want to live in a world where people do not get what they deserve but what they are able to take. All of our lives would be much darker without the light of justice to guide us on our way.

We at the Tribunal are fully aware of our ad hoc and temporary status. I know I speak for all of us at the Tribunal when I say that, no matter what we do in our future professional lives, we will always look back with a bit of nostalgia tinged with gratitude and pride at the ICTY, as a time when we were able to make a modest difference in the world—as a time when we were privileged to be a positive force in the universe. *But our work is not finished yet.* Those of us at the Tribunal who go to work each day and who have faithfully remained at our posts desperately need our parent, the Security Council, *to stand by us* until we complete the work that you started back in 1993. We need you *to stand by us* as we implement *your* vision of a world that is ruled not by might, but by right.

I promise you that future generations will not look back at the work of the Security Council and the Tribunal and wonder why the completion of a particular trial was delayed. Rather, our children and grandchildren will admire the Members of the Security Council, the Tribunal, and indeed the UN as a whole for our willingness to be bold to change the world, to transform it into a safer and more just place to live and to achieve our greatest potential as human beings. What will be remembered is the justice that was achieved, and the courage of those who were willing to do what was necessary to make justice a living and breathing reality.

Thank you very much for your kind attention here today.

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