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for the former
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Tribunal Pénal
International pour
l'ex-Yougoslavie

STATEMENT

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

PRESIDENT

The Hague, 6 June 2011

Statement by Judge Patrick Robinson, President of the International Criminal Tribunal for the former Yugoslavia, to the Security Council on 6 June 2011

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 His Excellency, the Representative of Gabon. I would also like to take this opportunity to express my sincere appreciation to Portugal as the Chair of the Security Council's Informal Working Group on International Tribunals—as well as to the Office of Legal Affairs—for their cooperation with the Tribunal in respect of preparations for the commencement of the Residual Mechanism and the transfer of the residual functions of the Tribunal to the Mechanism.

At the close of the reporting period, 16 persons are in appeal proceedings, 14 persons are on trial, and four are at the pretrial stage. One accused—Goran Hadžić—remains at-large. To date, the Tribunal has concluded proceedings against 126 of the 161 persons indicted by the Prosecutor.

On 26 May 2011, Ratko Mladić was arrested in Serbia, having evaded justice for 16 years. Mladić was indicted in 1995 by the Office of the Prosecutor for genocide, crimes against humanity, and war crimes allegedly committed from 1992 to 1995 during the conflict in Bosnia and Herzegovina. On 31 May, Mladić was transferred to The Hague, where he will face trial. The arrest of Mladić is a milestone in the Tribunal's history and brings us closer to the successful completion of our mandate, with Goran Hadžić remaining the sole fugitive. The Tribunal has spearheaded the fight against impunity, by the corpus of law that it has developed, both in the substantive and procedural areas of international humanitarian law and international criminal law. With the trial of Mr. Mladić, the Tribunal will be removing yet another brick in the wall of impunity. Questions have been asked about the impact of the trial of Mr. Mladić on the completion strategy. That there will be an impact is clear, but it is too early to say with any certainty what the precise impact will be.

During the reporting period, the Tribunal faced unprecedented challenges, but also achieved unprecedented advancement in the implementation of its completion strategy. The Tribunal conducted proceedings in nine trials concurrently by doubling-up Judges and staff so that they were working on more than one case at a time. The *Đorđević* trial and the *Gotovina et al.* trial were brought to a close. The *Perišić* trial is anticipated to be completed this year. Six trials are anticipated to conclude in 2012, and the *Karadžić* trial should be completed in 2014.

Following the criticism of the progress of the Tribunal's trials made by members of the Security Council during my last visit to the United Nations in December of last year, I wrote to the Judges and convened a plenary to discuss the matter. I stressed the need for every measure to be taken to expedite the work of the Tribunal and to ensure that there was no slippage in the schedule. I am pleased to report that in three cases—the *Đorđević* case, the *Stanišić and Simatović* case, and the *Stanišić and Župljanin* case—the estimates from the last report have been maintained. In the context of the challenges facing the Tribunal, in particular those related to staffing, the maintenance of the estimates in

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these three trials is a remarkable achievement worth mentioning. The detailed reasons for the delays in the remaining six trials are set out in my report.

During the reporting period, one Judgement on review was issued. Appeals from four trial Judgements are currently pending before the Appeals Chamber. And the Judges of the Appeals Chamber remained fully engaged in appeals from the International Criminal Tribunal for Rwanda, rendering two Judgements and hearing three cases in Arusha.

The Tribunal continues to take all measures possible to expedite its trials, without sacrificing due process. Over the years, the Tribunal has continually kept its procedures under review and has introduced a variety of reforms in order to improve its work. These reforms are detailed in my report and include the use of e-Court and e-Filing, amendments to the Rules of Procedure and Evidence, and case management techniques.

We face a particular problem with staffing in the Appeals Chamber, which is responsible ultimately for writing the law of the Tribunal. For some time now, staff have been diverted to the Trial Chambers, in an effort to complete the Tribunal's trial proceedings. This was, and is, entirely reasonable in light of the pressure to complete all trials, but it has necessarily resulted in the Appeals Chamber being extremely understaffed. The appeal schedule presented in my report has been revised in light of a number of factors relevant to the pace of the Tribunal's appeal proceedings. Most significantly, the staffing crisis—which persists at the Tribunal—has led to revisions in the estimated times for the completion of all appeal proceedings.

In response, a new, more empirical methodology has been applied to appeal projections. Although this approach has led to the revised estimates in the current report, the long-term aim of the revisions is to present the Security Council with timelines that it is hoped will largely remain the same until the end of the work of the Tribunal. In order to counter-balance these revised estimates, the Appeals Chamber has been employing—and will continue to employ—a variety of efficiency measures to expedite its proceedings, including the limitation of amendments to grounds of appeal, the organisation of Judgement drafting, and the prioritisation of work.

Having summarised the present status of our cases, I would now like to discuss three areas in which the Tribunal needs the support of its parent body, the Security Council.

The first area in which we need the support of the Security Council is the retention of our highly-qualified staff. The most serious challenge to the completion of the work of the Tribunal is the perpetual departure of our uniquely experienced staff for more secure employment elsewhere. It would be irresponsible of me, as President of the Tribunal, not to raise this issue with our parent body, the Security Council. And I must tell you frankly that the staffing problem is so bad that it can now be described as CHRONIC ... SYSTEMIC ... and ... ENDEMIC. We are in a staffing crisis ... C-R-I-S-I-S. The stark reality is that, because the Tribunal is closing down, staff members are leaving.

In a five-week period in April and May, eight members of the Chambers staff alone tendered their resignations. In the space of three days, three staff tendered their resignations. Those who are left behind witness their colleagues leaving for secure employment in other UN organs and institutions.

To make matters worse, those who are left behind have to pick up the extra work of those who have left and must train replacement staff members—which only increases their workload and exacerbates the problem. Moreover, when staff members leave, it often takes many weeks until a new staff member can be recruited in order to fill the remaining gap. The staffing crisis has required me to become personally involved, in an unprecedented way, in specific staffing decisions on a weekly basis. Judges bring their

Chambers' staffing problems to my attention. As a result, I have obtained an immense knowledge that might equip me some day for a career in human resources. But it may be questioned whether this is my proper role at the Tribunal.

The Security Council responded to the pleas of the Tribunal for assistance in stemming the alarming rate of departures by passing Resolution 1931 in June 2010 and Resolution 1954 in December 2010, which *noted* the importance of the Tribunal being adequately staffed to complete its work expeditiously and which *called upon* the Secretariat and other relevant United Nations bodies to continue to work with the Registrar of the Tribunal in order to find practicable solutions to address this issue as the Tribunal approaches the completion of its work. However, following these two resolutions, although there has been improvement in some areas, more robust action is required.

I realise that the Security Council does not deal directly with staffing issues, but it must be acknowledged that the Security Council is composed of influential Member States who are also members of the General Assembly and its Fifth Committee. With this in mind, I implore the Member States of the Council to use that influence in order to support three, specific measures for the Tribunal.

The first measure is a limited payment to staff members with more than five years of continuous service who remain until the abolition of their posts. Recognising the economic benefit that a measure of this kind would be to the Institution, the ACABQ had recommended a similar proposal in 2008. In the long run, the retention of experienced staff is clearly the most efficient and cost effective approach for the Tribunal because the cost of replacing staff who leave is greater than that associated with providing the proposed retention incentive. This measure for the Tribunal to retain its staff in an example of where we are actually spending to save.

The second measure is the endorsement of the Tribunal's stand that OHRM should reverse its position and approve our recommended list of staff members who should be converted to permanent contracts. The Tribunal could then proceed with the issuance of permanent contracts immediately, which would have a direct and dramatic impact on our staff retention. It has been almost a year since the Registrar submitted a list of personnel to be converted to permanent contracts. To date, no decision has been taken on the matter. In the meantime, staff members who are on that list have left. The delay in dealing with this matter may affect the rights of the individuals concerned. And the Central Review Panel, to which the requests have been referred, must issue a decision as soon as possible.

Third, the Tribunal has been fortunate to be able to attract a number of highly qualified interns. It would be a great benefit to our work if we were able to hire such interns in circumstances where they have become integral members of a trial or appeal team. Unfortunately, under the current regulations, interns cannot be hired within six months of the completion of their internships. We would therefore ask Member States to endorse the position that the Tribunal should be granted a waiver so that it can tap this resource and expand the pool of qualified and experienced candidates. In making this request, I hasten to add that there would be absolutely no financial consequences of waiving the six-month rule, and former interns would have to apply through the regular Inspira staff selection process.

I have raised the details of these matters with Member States last week, and so only mention them now very briefly. The Security Council, the Tribunal's parent body, must heed the call for action. We need your influence and support if we are to complete the work with which you have tasked us. And I must be blunt: if something is not done to alleviate the staffing crisis, the Tribunal will be forever reporting slippages in its work

schedule. The schedule will continue to have to be revised, and international criminal justice will be compromised.

The second area in which we need the support of the Security Council involves the establishment of a victims' trust fund. In my previous reports to the Security Council, I raised the need for the compensation of victims and witnesses. More than 6,900 witnesses and accompanying persons from all over the world have been called to appear before the Tribunal. Without the courage of these witnesses to step forward and give evidence, there would be no trials, and impunity would reign. These victims of the conflict in the former Yugoslavia have a right to compensation under international law for the crimes committed against them. I have previously called upon the Security Council to establish a trust fund for victims of crimes falling within the Tribunal's jurisdiction, and thus to breathe life into the General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29 November 1985.

The Tribunal has been taking initiatives to have established some system for providing assistance and support to victims. And I stress that these initiatives will not impose any obligations upon States to provide funding, but rather contemplate voluntary contributions. This would go some way toward bringing the position of the Tribunal—which after all is the first international criminal judicial institution established by the United Nations—somewhat closer to the ICC, which has a trust fund for its victims. The Tribunal cannot, through the rendering of its Judgements alone, bring peace and reconciliation to the region. Other remedies should complement the criminal trials if lasting peace is to be achieved, and one such remedy should be adequate assistance to the victims for their suffering. I would like to call upon the Security Council to lend its support to those initiatives.

The third area in which we need the support of the Member States of the Security Council is in the enforcement of our sentences. The Tribunal has signed enforcement of sentence agreements with 17 States, most of which have been enforcing our sentences for years. We are very grateful for that. However, some of these States have become hesitant to enforce further sentences and have called for a more equal burden sharing among Member States. Other States have signaled that they would only enforce a fixed number of sentences at any one time, and have declined the Tribunal's requests to receive additional convicted persons. Considering that up to 40 additional sentences may have to be enforced over the next few years, depending upon the outcome of trials and appeals, it has become evident that the Tribunal's current enforcement capacity is rapidly approaching its limit.

The enforcement of sentences is an integral part of the criminal justice system administered by the Tribunal and as envisaged by the Security Council. If sentences pronounced by the Tribunal remain un-enforced, the Tribunal cannot be said to have completed its mission. It is my duty to inform the Council that, at present, there is a significant risk that the Tribunal will not have the capacity required to enforce all its future sentences. Despite the Tribunal's persistent efforts to secure additional enforcement agreements, States have been reluctant to enter into such agreements. The completion of the Tribunal's mandate requires that the enforcement of all sentences be secured before the Tribunal closes. I therefore appeal to the international community to urgently work with the Tribunal in finding a viable solution to the enforcement capacity issue.

In conclusion, I want to emphasise the Tribunal's steadfast commitment to the expeditious conduct of its proceedings in full compliance with due process standards. Everyone at the Tribunal is working as hard as he or she can to complete the mandate that was entrusted to us by the Security Council.

The Tribunal is nearing the end of its mandate, but we still require the support of our parent body in the three areas that I have outlined here today: staff retention, the establishment of a victims' trust fund, and the enforcement of our sentences.

We at the Tribunal have kept faith with the vision of the Security Council. And now we need the Council to reciprocate that faith and to give us the support that we desperately need to complete the work that the Security Council started.
