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

STATEMENT

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PRESIDENT

The Hague, 8 December 2016

Address to the United Nations Security Council

Judge Carmel Agius

President of the International Criminal Tribunal for the former Yugoslavia
8 December 2016

Muchas Gracias Señor Presidente:

Quisiera comenzar expresando mis sinceras felicitaciones al representante de España por haber asumido la Presidencia del Consejo en el mes de diciembre. Su país, Excelencia, es conocido por su incansable apoyo a la justicia internacional y fue, como Miembro del Consejo de Seguridad en 1993, una fuerza indispensable en la creación del Tribunal.

Mr President:

I take this opportunity to thank you and your country, along with Angola, Malaysia, New Zealand and Venezuela, all outgoing members of this distinguished body, for their resolute support to the Tribunal. At the same time, I warmly welcome the incoming Security Council members, who will see the Tribunal through to the end of its mandate. I look forward to working with you during 2017. I would also like to thank the Security Council Informal Working Group chaired by Uruguay, as well as the Office of Legal Affairs.

On behalf of all the Judges and staff members of the ICTY, I wish to commend the Security Council for its prompt reaction to the Tribunal's urgent request concerning the composition of the Appeals Chamber. Resolution 2306 (2016), which amended the Statute of the Tribunal, was not only passed in a very short period of time, it also demonstrated the Council's readiness and commitment to support the Tribunal.

The Completion Strategy report (S/2016/976) before you demonstrates that the Tribunal has continued to work vigorously and diligently since its last report. With only one trial, one appeal and one contempt case remaining, the Tribunal's mandate is nearly complete - though it is not over and we face some formidable challenges in the coming year.

You will note that, during the current reporting period, the Stanišić & Župljanin appeal was delivered, and I can confirm that we are still on track to deliver judgements in both the Mladić trial and Prlić et al. appeal by November 2017. In addition, proceedings in the Hadžić case were terminated following the death of the accused. The Tribunal's ongoing progress is due to the relentless

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Media Office/Communications Service

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands

Tel.: +31-70-512-8958; Fax: +31-70-512-5358

efforts of all staff and Judges, to whom I express my heartfelt thanks for their outstanding work and dedication.

In light of the projected completion dates of these cases, I have recently submitted a request for a final extension of the terms of office of the Judges. I use the term “final”, precisely because I am confident that the Tribunal will close its doors at the end of 2017. I remain hopeful that this request will be favourably considered by the Security Council.

Mr President:

You will also find that the above-mentioned report contains a special section on the Office of Internal Oversight Services (OIOS) evaluation, and in accordance with Resolution 2256 (2015) sets out the Tribunal’s implementation of the OIOS recommendations. I wish to assure all Security Council Members that the Tribunal took the evaluation and recommendations very seriously. Everything that could feasibly and appropriately be done, was done, bearing in mind our mutual interest that the Tribunal stays on course to complete all judicial work by 30 November 2017. The Tribunal’s best efforts must therefore be measured against the context and purpose of this important commitment.

I draw your attention to OIOS’s third recommendation, which the Tribunal has partially implemented. A Code of Professional Conduct for Judges of the Tribunal was adopted unanimously at the Plenary of Judges on 6 July 2016, with immediate effect. In relation to a disciplinary mechanism, the Tribunal did not implement this recommendation, bearing in mind the lack of time and resources, although the Judges considered it to be desirable. Judges are not above the law; they are custodians of the justice system and ought to be held accountable for any breaches of their ethical or professional duties. Our report also identifies the lack of a disciplinary mechanism as a systemic issue that affects other courts and tribunals and a wide number of United Nations high-level and non-staff officials. The Tribunal therefore suggests that the General Assembly address this more comprehensively at an organizational level.

Overall, the OIOS evaluation was a valuable experience for the Tribunal. At the same time, the Tribunal regrets that the evaluation was carried out at the very end of its lifespan and, as a result, it was not possible to implement certain recommendations. The Tribunal suggests that, in future, such evaluations be carried out on an ongoing and periodic basis throughout the life of a court or tribunal. Further, the OIOS evaluation focused on efficiency, almost to the exclusion of other factors such as effectiveness and, most fundamentally of all, fairness and due process. This reflected a misunderstanding of the Tribunal’s primary aim and function - which is to deliver justice - and its unique nature as an international judicial institution.

Mr President:

I now turn to another topic. There is a systemic institutional problem with international justice - it is called politics. While the Tribunal appreciates that political sensitivities may arise in certain circumstances as a result of cooperating with the ICTY, these can never constitute an excuse for failing to do so.

Cooperation is a vital responsibility flowing from the Statute of the Tribunal itself, and reflects the collective will of the Security Council in the fight against impunity.

I am of course referring to the pending contempt case of Jojić et al., in which the Republic of Serbia has yet to execute the arrest warrants for three indicted persons, which were issued 22 months ago. It has further failed to file any monthly progress reports since May 2016. The Trial Chamber seized of the case advised me in September of Serbia's continued non-cooperation under Article 29 of the Tribunal's Statute. In addition, one week ago, the Trial Chamber made public international arrest warrants and orders to surrender the three indictees, which it had issued confidentially in October of this year.

I therefore request the Security Council's support on this matter. In particular, I urge this Council to ensure that the Republic of Serbia abides by its duties under Article 29 of the Tribunal's Statute and complies with the Tribunal's orders. Further, the Tribunal calls upon all Member States to execute the international arrest warrants and orders to surrender.

In the past, the Security Council has called on States to cooperate with the Tribunal pursuant to Article 29 obligations. There is no reason why this contempt case should be treated any differently, particularly when what is at stake is the integrity of the Tribunal's administration of justice. Indeed, contempt of court sabotages the Tribunal's ability to conduct fair and efficient legal proceedings. Further, Serbia's past cooperation does not excuse its present non-compliance, or release it from its ongoing obligations.

If the Jojić et al. case is not heard and concluded before the end of November 2017, this will constitute a serious blow to all of the efforts that this honourable body and the Tribunal have made over almost a quarter of a century in pursuing accountability. I trust that the Security Council will take the necessary steps to prevent such a failure for international justice. I wish to assure you that my insistence that the case be heard is not an attempt to extend the duration of the Tribunal. The Tribunal stands ready to dispose of this case expeditiously, in accordance with due process and fair trial rights.

Mr President:

I take enormous pride in closing down an institution of the calibre of the ICTY, however it is by no means an easy job. Indeed, the last point I would like to raise is one you are all most familiar with by now, and which concerns the Tribunal's staffing situation. Let me underscore that my commitment to you to conclude the Tribunal's work on time, is unwavering. However, I feel compelled to continue to raise this issue because it concerns circumstances outside of my control, and because it significantly impacts the functioning of the Tribunal. The reality is that staff attrition will, if left unchecked, increase the risk of the Tribunal not being able to complete the remaining cases by the end of November 2017.

In this connection the Tribunal has developed a proposal for the consideration of the General Assembly, which is being discussed with the

Secretariat. The proposal will, if adopted, help to mitigate the risk posed by staff attrition, and I very much hope that Member States will lend their support in this respect. From the Tribunal's side we have exhausted all available options and we now rely on the Organization to find an adequate solution.

Mr President:

In closing, let us not forget that the development of an international justice system is a long-term project and that, in the grand scheme of things, we are just getting started. The Tribunal, as the first international criminal tribunal since World War II, has played an enormous role in these beginnings. Not only has it changed the way we think about and react to impunity, it has served as a powerful catalyst for the establishment of other international courts and tribunals.

As we approach the Tribunal's final year of operations, there is much to reflect on and be proud of. The Tribunal looks forward to completing its remaining cases and cementing its significant legacy during 2017, and to continue working with the Security Council towards the final conclusion of its mandate.

Thank you.