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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, 4 June 2009

Statement by Judge Patrick Robinson, President, International Criminal Tribunal for the former Yugoslavia to the Security Council on 4 June 2009

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 Turkey. I congratulate Turkey on its membership in the Security Council and thank the President for the attention he has given to the matters that the Tribunal currently has pending before the Council.

My remarks today will be brief, as the details of the measures the Tribunal has undertaken to complete its mandate are set out in my written bi-annual report, which has been duly submitted to you.

Since my last presentation before you, the Tribunal has continued to focus its energy on completing its work as expeditiously as possible. Three appeal judgements have been rendered - including in some of our most complex cases - and seven trials are being heard simultaneously in our three courtrooms.

Of the remaining case load, the trial of two accused, Stanišić and Simatović, has just begun and that of Karadžić will commence in late August 2009. Both Tolimir, and the final case of Mićo Stanišić and Stojan Župljanin, will commence in September 2009.

Our current estimates suggest that all but three of our trials will conclude in 2010, two more in early 2011, and the final trial, that of Karadžić, in early 2012.

As you can see, our trial activity is entering the final stretch. However, one serious hurdle remains - the continued flight from justice of Ratko Mladić and Goran Hadžić. If these two men are not brought to justice, it will leave a stain on the Security Council's historic contribution to peace-building in the former Yugoslavia. I also wish to note that their immediate arrest would obviate the need for a residual trial function for the ICTY. In particular, should Mladić be arrested now, his case may be joined with Karadžić.

Let me turn to the current projection of the remaining appeals, including those anticipated from the ICTY and our sister tribunal, the ICTR, it being recalled that the two Tribunals share an appellate function. Following a detailed analysis, the Tribunal estimated that, absent a redeployment of eight trial judges to the Appeals Chamber upon the completion of their trial work, the ICTY/ICTR Appeals Chamber would be occupied with appellate work into 2015. However, with the redeployment of four ICTY and four ICTR Judges, most appellate work would be completed by the end of 2012, with four cases spilling into the first half of 2013.

This proposal for deployment was presented in the Tribunal's biennium budget for 2010-2011, as part of the Tribunal's downsizing program, and is a matter that is now formally before the Security Council in the form of a request for an extension of the mandates of the permanent trial and appeal Judges and the Tribunal's ad litem Judges.

Internet address: <http://www.icty.org>

Media Office/Communications Service

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

Tel.: +31-70-512-5343; 512-5356; 512-8752 Fax: +31-70-512-5355

In this respect, I thank the Austrian Chair of the Security Council Working Group on the ad hoc Tribunals, and the Office of the Legal Counsel, for their assistance in expediting the consideration of these proposals to ensure that the work of the Tribunal is not frustrated.

I note, however, that the heavy appellate workload of the Tribunal is in part due to the failure of Rule 11bis transfers from the ICTR to national jurisdictions. Rwanda was found not to have sufficient capacity to try such cases, and in response, the international community is taking measures to address this deficiency. But perhaps more troubling is the lack of capacity or readiness to try such cases present in European countries, where the ICTR had also sought to transfer cases pursuant to Rule 11bis. I consider this a critical issue that needs to be addressed by the international community. Surely, countries with highly developed judicial systems could make a greater effort to accept a limited number of 11bis transfers. By so doing, they would make a real contribution to the international community's efforts to bring the work of the Tribunal to completion in full respect of due process.

It may be that the Security Council's proscription (para 6 of resolution 1534 (2004)) that requested the Tribunal not to try cases involving intermediate and lower ranking accused was inexorably linked to transfer of cases to the States of the former Yugoslavia. With the blessing of the Security Council, however, we could make a renewed effort to transfer to a developed country one major case, which would otherwise implicate a seniority obstacle. That move alone would save one Trial bench 14 months of court sitting, not to count the required time for consideration of an appeal.

While the Tribunal continues to make every effort to expedite its work, it has identified some factors that may cause delays to its schedule, which need to be more extensively addressed. First is the issue of translation. Observing the UN standard of 5.5 pages per day per translator, the need for extensive referencing and indispensable review process to ensure quality, translation requires significant time. The situation is further aggravated by the extraordinary demands made on our limited language resources. Owing to the highly technical and often confidential nature of the legal translation work required, outsourcing translations has necessarily been restricted in scope. Efforts continue to identify ways of minimizing the impact of the need for translation on trial and appeal schedules, and to identify and recruit qualified translators. However, 20 vacancies remain in the language service, and recruitment is hindered by the completion strategy. In most cases, it takes at least 3 to 5 months to recruit a suitable candidate. As the ICTY is facing increasing competition in hiring qualified language staff, without retention incentives, it is likely that the number of translators will decrease rather than increase in the future.

Another matter which had a negative impact on the expeditious progress of trials, in particular, is contempt proceedings. I need only mention the Šešelj trial, which has been adjourned since March 2009. That adjournment was granted at the request of the Prosecutor, who was concerned about the effect of certain alleged conduct upon the integrity of the proceedings. Those allegations are currently being investigated by another Trial Chamber. In light of the impact of contempt proceedings on the completion of our trials, I established a working group to examine ways in which contempt may be dealt with, without delaying proceedings. That report will be submitted to me shortly, and I am hopeful that it will contain concrete measures that Judges may adopt when faced with contempt issues during their trials.

Additionally, the Rules Committee is considering the adoption of a rule to allow the admission of written statements of witnesses who are kept away from trial through intimidation. Should the Rules Committee find that rule worthwhile it will be presented to the Judges for their approval.

Let me return to the issue of staff retention - it is a difficulty which cuts across all areas of the Tribunal's operations. In the last three months we have lost 82 staff members, that is a rough average of 27 per month. Much has been said about the need for highly qualified personnel for the orderly completion of our work. Past Presidents and I have called upon the Secretariat, the Security Council, and the General Assembly to assist us in implementing strategies to retain staff. Unfortunately, there has been little response to these calls. I appeal to you to exercise foresight so that concrete measures can be implemented now to retain our staff. The only measure thus far adopted by the General Assembly is a resolution at its 63rd Session on 22 December 2008. In that resolution, the General Assembly requested the Secretary-General

“To use the existing contractual frameworks to offer contracts to staff in line with dates of planned post reductions in accordance with the relevant prevailing trial schedules, in order to remove uncertainty with regard to future employment with the aim of ensuring that the Tribunals have the necessary capacity to complete their respective mandates effectively.”

It is my intention to ensure the implementation of the resolution as soon as possible, but I doubt that this will be enough. I do not want to return here in six months and be berated by the Security Council for a report that indicates substantial delays in the anticipated schedule I am presenting to you today due to the continuing departures of our uniquely qualified and experienced staff. I have a very genuine fear that we will soon find ourselves without sufficient staff, but it appears to me that Member States who are in a position to assist have adopted an attitude of disinterestedness towards the matter. I am not normally given to histrionics or hyperbolic comments but if we continue to lose staff at the rate of 27 per month it is not an exaggeration to say that one day the Judges may come to work and find themselves alone. The Tribunal is doing all it can to retain its staff, but without appropriate assistance and concrete measures, it will not be successful. This is a matter that I will continue to raise with the Secretary-General, the Office of Human Management and Resources and the Controller, and your active support in this matter would be very helpful. That said, I note that all indications are that our request for extensions of our judges consonant with our remaining work load will not be granted by the Security Council and that at most all Judges will be granted an extension until 31 December 2010. That is a political decision taken by the Security Council, but I cannot impress on the Security Council enough the signal such a piecemeal approach to extensions of the mandates of our Judges send to our staff.. Such an approach only operates to enhance their anxiety to secure other employment as soon as possible. I would ask the Security Council to seriously reconsider the wisdom of their approach to this issue.

I must thank the Security Council Working Group on the ad hoc Tribunals, and the Austrian Chair, for their work on the residual mechanism. The Tribunal is grateful to the Office of the Legal Counsel for the extensive opportunities it gave the Tribunal to provide input on the report of the Secretary-General on the budgetary and administrative aspects of the residual mechanism.

With respect to the residual mechanism, the Tribunal recognises that most of the decisions to be made are political decisions: for example, whether there will be one or two mechanisms, or one mechanism with two branches; where the seat of the mechanism will be situated and what its functions will be; whether the archives will be located within the mechanism or elsewhere; and the start date of the mechanism. In determining the answers to all of these issues, the Tribunal asks the Security Council to ensure that the decisions it makes guarantee the long term integrity of the Tribunal's work. For example, if all residual functions are not to be exercised by the residual mechanism, the Tribunal asks the Security Council to ensure that the designated receiving body has the competence to exercise the delegated function.

While primarily focusing on its core business, the Tribunal has also been diligently working towards the strengthening of competent national judicial systems of the former Yugoslavia, in accordance with the direction of the Council contained in resolutions 1503 and 1534. Many concrete steps have been initiated and successfully completed, such as the production of a manual that describes in detail how the Tribunal operates, in order to assist other institutions grappling with challenges similar to the ones that we have had over the last 15 years. Together with our partner organisations, some of which are other UN bodies, we are planning the implementation of further capacity building priorities, identified in direct consultation with our colleagues in the former Yugoslavia.

Let me close my remarks by referring to the words of Henry Wadsworth Longfellow:

“Great is the art of beginning, but greater is the art of ending.”

In the very near future, our cases will be completed. Provided that the Security Council ensures that the Tribunal is given sufficient resources to complete its work expeditiously and fairly, and provided that sufficient incentives are adopted immediately to retain staff, great indeed will be the art of our ending.

Thank you for your kind attention today.
