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Tribunal Pénal
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l'ex-Yougoslavie

STATEMENT

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

PRESIDENT

The Hague, 3 December 2009

Statement by Judge Patrick Robinson, President of the International Criminal Tribunal for the former Yugoslavia to the Security Council on 3 December 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 Burkina Faso. I congratulate Burkina Faso on its membership in the Security Council and thank the President for the attention he has given to matters pertaining to the Tribunal.

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 energies on completing its work as expeditiously as possible. Of the 161 accused indicted by the Tribunal, only a single accused remains in the pre-trial stage awaiting the commencement his trial, and that trial will start on 17 December 2009. A total of 24 accused are presently on trial in nine cases, and another 13 accused have appeals pending. Five trials are expected to be completed during the course of 2010, three during the first half of 2011, and the remaining case—that of Radovan Karadžić—is currently estimated to be completed in late 2012.

With the re-deployment of resources to the Appeals Chamber, we anticipate that all appeals will be completed in 2013, except for the Karadžić appeal, which is estimated at this time to be finished in February 2014. This re-deployment of resources from trials to appeals is part of the Tribunals' overall downsizing strategy that has already commenced. While these are our currently anticipated dates for completion, all possible measures will be taken to speed up our proceedings and shorten these anticipated times.

To ensure that all possible measures are being taken to expedite our proceedings, I recently reconvened the Working Group on Speeding up Trials. The recommendations of that Group will be presented in my next Completion Strategy Report.

I reported to you last time that contempt proceedings were sapping the strength of the Tribunal and diverting us from our main objective: the fair and expeditious completion of our trials and appeals. I am happy to inform you that we have made progress on this front, rendering two contempt trial Judgements and two contempt appeal Judgements. We have also amended the Rules of Procedure and Evidence to expedite contempt proceedings.

As can be seen, our efforts to implement the Completion Strategy are coming to fruition, and the end of all trials is in sight. 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 tarnish the Security Council's historic contribution to peace-building in the former Yugoslavia. I also wish to stress that their immediate arrest would obviate the need for a residual trial function for the ICTY. It is not too late to arrest and

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try these fugitives, and I hope that the Security Council and Member States will act decisively to achieve that goal.

The other major issue on which I request your assistance today is staff retention. It is a matter that requires immediate attention. We are currently losing, on average, about one staff member per working day to more secure employment, many times to other judicial institutions in The Hague, such as the International Criminal Court and the Special Tribunal for Lebanon. In a recent survey of 451 staff members, 57% stated that they were actively seeking employment elsewhere. If we consider the results from one specific group of critical staff members—the legal support staff of the Office of the Prosecutor and Chambers—70% were actively seeking employment elsewhere. 24% stated that they felt exhausted by their current work load, and close to 50% stated that they felt they have to work too fast. The reality of the situation is that there is a very real risk to the Tribunal's ability to conduct its work as expeditiously and fairly as possible during the remaining years of its mandate.

I acknowledge the efforts made by the General Assembly to assist the Tribunal through General Assembly Resolution A/RES/63/256 of 24 December 2008, which authorises the Tribunal to offer critical staff longer contracts, thereby alleviating some of their job insecurity. But more needs to be done. There are two areas in which we could really use your help.

First, the International Civil Service Commission has recommended an end of service grant applicable to those staff separating from the organisation upon completion of their contracts, provided they have served continuously for ten years. Many of our staff have served over ten years, and the end of service grant would provide them with a concrete incentive to remain until the completion of the Tribunal's work. Second, of great benefit to our staff would be their inclusion in the regime of continuing contracts, which is currently on the General Assembly's agenda. Continuing appointments will offer some of the stability that we sorely need, and I urge you to ensure that this new regime, if adopted, is made applicable to Tribunal staff.

The consultations I have had this week have left me uneasy. It would be wrong, completely wrong for a body like the United Nations to abandon the staff members of an institution that it had set up in a time of crisis to assist in the restoration of justice, peace and democracy in a troubled region, and which has on any reasonable assessment rendered invaluable and path-breaking service not only to that region but to the international community as a whole; it would be especially wrong for the United Nations to distance itself from the needs of the staff of such an institution when it is in the final stages of its work on formalistic grounds based on the so called separateness and temporary character of that institution for that approach would itself result in the kind of injustice that is not only antithetical to the broad and noble purposes of the United Nations organisation itself but also to the inspiring objectives of that very institution.

I appeal to the international community to exercise foresight by assisting the Tribunal with measures to retain its staff and reduce the burden on the institution of constant staff recruitment.

As you are no doubt aware, during my recent address to the General Assembly, I proposed the establishment of a claims commission to compensate the victims of crimes committed during the wars in the former Yugoslavia. Since I became President of the Tribunal, I have had occasion to meet a multitude of victim groups, which have expressed anguish at the failure of the international community to provide any kind of compensation for their suffering. They feel that they have been forgotten.

Currently, there is no effective mechanism by which these victims can seek compensation for their injuries, despite the fact that their right to such compensation is firmly rooted in international law, such as the General Assembly's 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Justice is not only about punishing perpetrators, but also about restoring dignity to victims by ensuring that they have concrete means to rebuild their lives. Clause 13 of the General Assembly's Declaration itself identifies sources of compensation, including the offender or national funds. However, in circumstances where the State is unable to compensate the victim, the Declaration proposes that other funds be established for this purpose. This was a matter that former ICTY President Jorda brought to the attention of the Security Council in November 2000, recommending to the Council and to the Secretary-General that methods of compensating victims of crimes in the former Yugoslavia, notably a claims commission, be considered by the appropriate organs of the United Nations. I would therefore implore you to take official steps to support the establishment of such a claims commission, as a method of complementing the Tribunal's work.

I would now like to turn to another matter, that of the work being done by the Tribunal towards preparation for its transformation as a residual mechanism.

On 21 May 2009, the Secretary-General published his report on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunals for the former Yugoslavia and Rwanda and the seat of the residual mechanism. On 8 October 2009, the Secretary-General advised the Tribunal of the Security Council's endorsement of the recommendations and requested that the Tribunal comply with recommendation (m) in paragraph 259 and report in detail on the Tribunal's implementation of the tasks identified therein. In my written report, we have addressed each of these tasks separately.

There is one task, however, that I wanted to bring to your attention here today. We have been asked to declassify, to the greatest extent possible, all the records of the Tribunal. This is a mammoth undertaking, which we have begun to tackle in a comprehensive and organised declassification project. This project will require significant resources to be properly implemented. To give you an idea of the work involved, the first case being examined is that of Tadić. All of the material has to be examined to identify the confidential hearings, witnesses, filings and exhibits. There are 1,304 pre-trial transcripts pages; 9,300 trial pages; 682 appeal pages; 65 confidential filings; and 126 protected witnesses. All of those witnesses will need to be contacted to determine whether they oppose the lifting of confidential protection orders. Furthermore, hundreds of exhibits will need to be examined for confidential information. While this is an onerous undertaking, when it is considered that the Tribunal has completed proceedings against 120 accused in 86 cases and still has 10 cases to complete against 25 accused, this task will greatly ease the judicial work load of the residual mechanism. The more material that is made public, the less necessity there will be for national jurisdictions to petition the residual mechanism for access to confidential materials and for judges to issue decisions on those requests.

I bring this to your attention in order to assure the Council that we are diligently carrying out its instructions and to inform you that this project will significantly impact the Tribunal's downsizing strategy in the coming years.

While primarily focusing on its core business, the Tribunal has also been diligently working towards the strengthening of competent national judicial systems in the former Yugoslavia, in accordance with Security Council resolutions 1503 and 1534. I am proud to report that the Tribunal recently published a comprehensive report “Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer” evaluating the needs of the domestic judiciaries in the region. This report was prepared jointly with the OSCE and UNICRI and has been very well received in important quarters as groundbreaking. Together with these institutions, we are now preparing an ambitious project to guarantee that the national justice systems in the region have the capacity to deal with their growing war crimes caseload, as the Tribunal heads towards its final days. Generous funding from the European Commission is expected for this timely undertaking. I also urge the Security Council to support the national jurisdictions in the region, as their capacity to continue our work is a key aspect of the Tribunal’s legacy in the former Yugoslavia.

Inspired by broader UN efforts to co-ordinate rule of law activities, the Tribunal will convene a two-day conference in The Hague on 23 and 24 February 2010. The goals of the conference are to consult stakeholders and generate interest and support for the Tribunal’s legacy strategy in the former Yugoslavia; to foster contacts and partnerships between the Tribunal and different players; to share and gather information on what is being done by different actors in relation to capacity building in the region; and to promote the coordination and consolidation of all of these efforts. The conference will also provide an opportunity for countries of the former Yugoslavia and the broader international community to communicate their ideas and expectations of the Tribunal’s Legacy to the Tribunal and the Host Country. This dialogue will result in a report being prepared by the Tribunal at the end of the Conference setting out its comprehensive legacy strategy. It is anticipated that more than 200 persons will participate in the conference, with representatives from the Tribunal, Office of Legal Counsel, the Security Council working Group on the ad hoc Tribunals, the Rule of Law Unit, national jurisdictions in the former Yugoslavia, victim groups, organs of the European Union, and many others. The conference is being funded by voluntary donations.

In closing, I wish to reiterate that we at the Tribunal are dedicated to completing the work entrusted to us—so that peace, justice, and reconciliation may prevail in the region of the former Yugoslavia. However, I re-emphasise that a major obstacle to completing this task is the continuing flight from justice of Ratko Mladić and Goran Hadžić, and I urge the Security Council to seek ways to facilitate their immediate arrest.

The staff retention issue also remains critical to the Tribunal’s capacity to expedite its operations. We therefore again urge the Security Council to actively work with the other relevant organs of the United Nations for meaningful retention measures as a matter of urgency, specifically in the two ways that I have mentioned here today.

Thank you very much for your kind attention.
