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Tribunal Pénal
International pour
l'ex-Yougoslavie

STATEMENT

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PRESIDENT

The Hague, 18 June 2010

Statement by Judge Patrick Robinson, President of the International Criminal Tribunal for the former Yugoslavia, to the Security Council on 18 June 2010

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 Mexico. I congratulate Mexico on its assumption of the Presidency 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 biannual report, which has been duly submitted to you.

As President of the Tribunal, this is my fourth appearance before the Security Council to report on measures we have taken to implement the Completion Strategy.

As the report bears witness, the Tribunal has continued to work as efficiently and expeditiously as possible in accordance with the highest standards of international due process. The Tribunal has now commenced all of the trials pending on its docket and conducted proceedings in ten trials simultaneously in its three court rooms. The Tribunal has managed to do this by, *inter alia*, doubling-up Judges and staff so that they are working on more than one case simultaneously. Nevertheless, there has been significant slippage in the trial schedule. There are valid and unavoidable reasons for this slippage, and the report clearly identifies all the factors in relation to each trial that have led to revised estimates of completion. It will not surprise you to learn that the doubling-up of Judges and staff are contributory factors. Scheduling of hearings, deliberations, and consultations have been complicated by the need to take into account the obligations of Judges and staff to other cases.

It must be underscored that the trial schedule produced by the Tribunal is not akin to a bus schedule. It is, at most, a forecast subject to constant change depending on the course a trial takes. The anticipated completion dates in the trial schedule are estimated based on factors within the Tribunal's control. However, unforeseeable factors beyond the control of the Tribunal do emerge, resulting in unavoidable delays. For example, it would have been impossible to anticipate the death of lead counsel in *Stanišić and Simatović*; the *volte face* of Šešelj in deciding at this stage to raise a defence; the extensive litigation in *Gotovina et al.* resulting from the investigations carried out by the Croatian Government; or an application by the Prosecution to amend the indictment to add significant new charges on the eve of trial, as happened in the *Tolimir* case. But most significantly, the *Prlić et al.* case, the *Stanišić and Simatović* case, the *Stanišić and Župljanin* case, the *Karadžić* case, and the *Šešelj* case could not have foreseen the discovery of new evidence by the national authorities of Serbia, namely 18 military notebooks of Ratko Mladić allegedly written during the period of 1991 to 1995. The discovery of this new evidence has the potential to impact substantially upon the projected completion dates of seven of the nine ongoing trials. Thus, I must emphasise that the schedule which I present to you today is a forecast subject to change.

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Yet another very significant reason for slippage in the Tribunal's trial schedule is the alarming rate of staff attrition, coupled with the fact that the Tribunal has, throughout the reporting period, been running ten trials simultaneously with the staff levels appropriate for six trials. This has created a tremendous burden on both staff and Judges, and has become even more onerous with the constant departure of the Tribunal's highly experienced staff for more secure employment elsewhere. Staff attrition, and the desperate need for urgent action in stemming that flow, is a factor that I have repeatedly stressed to the utmost degree in my previous presentations to the Security Council and the General Assembly. I am quite frankly at a loss as to what more might be done or said on my part to turn your attention to this issue. I reiterate that staff *are* leaving the Tribunal in droves—3 in every 5 days—for greater job security with other institutions, often within the United Nations. I must therefore warn you that this factor, as the report demonstrates, is impacting adversely upon the expeditious completion of all but one of our trials. And it will worsen. Our trials will be further delayed by staff attrition.

There are measures that can be taken. The first is the granting of permanent contracts to our staff, which would provide them with an incentive to remain with the Tribunal until the completion of their work. They would have the security of knowing that, if the United Nations cannot place them in another position by the time their posts expire, they will nonetheless be compensated and that compensation will buy them the time they need to find another position. I know from talking to staff that the grant of a permanent contract would be a tremendous incentive for them to stay at the Tribunal until the completion of their work. But while many of our staff have accrued the right to be considered for permanent contracts under the rules and regulations of the United Nations, I have had to fight exceedingly hard to ensure that that right is respected. It had first been posited that our staff be excluded on the grounds that they are staff of a UN institution with a finite mandate and not staff of the United Nations as such. Following extensive lobbying on my part against this discrimination towards our staff, their right to be considered for permanent contractual status is now being respected. But I fear that our staff will, at the end of the day, still suffer discrimination and be denied permanent contracts on discriminatory grounds. I urge the Security Council to assist the Tribunal in ensuring that this does not happen. Not only will it be of great detriment to our staff, but it will have profound effects on the Tribunal's ability to complete its mandate as expeditiously as possible, because staff will continue to leave.

A second measure that can be adopted is the enforcement of General Assembly Resolution A/RES/63/256 of December 2008, which authorised the Tribunal to offer contracts to staff in line with planned post reductions and the prevailing trial schedules. This was a measure adopted by the General Assembly to allow the Tribunal to offer a measure of job security to staff. The background to this Resolution was that the Tribunal had proposed a staff retention bonus. This was rejected, and instead General Assembly Resolution 256 incorporated a non-financial measure. Yet, it has not been implemented because the budgetary authorities at United Nations Headquarters do not consider that the Tribunal can offer contracts to staff that are not tied to approved budgetary submissions. As I explain in the report, when this Resolution was brought to my attention by the Tribunal's Staff Union, I went to the International Civil Service Commission—which was involved in the process leading up to the adoption of the resolution—and to members of the Fifth Committee and asked them to explain to me what the Resolution meant. I was advised by every person I consulted that it allowed the Tribunal to offer contracts in-line with the trial schedules. On its face, this is clearly what the Resolution authorises, but the Tribunal cannot implement it without a clear authorisation from the Controller's Office, because fiscal responsibility to the Registrar is only delegated authority. How can the principal organ of a body like the UN, the General Assembly, whose membership is world-wide, adopt a resolution unambiguous in language and purpose and on the basis of which constituent bodies such as the Tribunal make plans—only to be told by the budgetary authorities in New York that the resolution does not mean what it clearly says?

The Tribunal has been severely prejudiced by this misstep in the United Nations Organisation. It cannot offer contracts in-line with prevailing trial schedules, and therefore critical staff cannot be retained. In effect, the odd result is that the UN will not be implementing the Resolution of the GA in accordance with its plain interpretation. This must have a consequence for management and efficiency of the Organisation as a whole. What we are now being told from high authority is that all that the Resolution means is that the Tribunal can offer contracts, but that this must be done within the envelope of funds that have been appropriated under the budget. But the Tribunal was always able to do that, and a resolution of the General Assembly is not necessary to tell the Tribunal that it can do something that it has always been able to do. This state of confusion would be delightfully risible, did it not have such painful and dire consequences for the running of the Tribunal at this critically important stage of its life. What is needed now is a pragmatic solution to extricate ourselves from the institutional muddle into which we have been immersed by the differences between the GA and the administration. I ask the Security Council to assist the Tribunal as much as it can in resolving the interpretation and implementation of this General Assembly Resolution—for what is certain is that, in the absence of the implementation of a measure of the kind set out in the Resolution to assist in the retention of staff, the dates for the completion of the Tribunal's work will stretch further and further into the future.

A third measure that can be adopted to assist the Tribunal in retaining its staff—and thus completing its work—is the end of service grant recommended by the International Civil Service Commission, which is still pending with the Fifth Committee.

Finally, resolution of the new continuing contractual regime—and the inclusion of Tribunal staff in that regime—would have a tremendously beneficial impact upon the Tribunal's retention of its essential staff.

These are all matters that I, as President of the Tribunal, have been fighting for. But, to be successful, the Tribunal needs strong political support. I urge the Security Council to take measures now and to ensure that action is taken on these issues. I can only repeat my warning that a failure to take action immediately on the rate of staff attrition at the Tribunal will have profound effects on the ability of the Tribunal to complete its mandate as expeditiously as possible. The situation will worsen.

In the face of the slippage in the trial schedule, the Tribunal has taken immediate measures to try as much as possible to mitigate that slippage.

I reconstituted the Working Group on Speeding-Up Trials to undertake a third review of the Tribunal's practices in order to assess whether further improvements could be implemented into our work. The Working Group submitted its report on 21 May 2010 and recommended a number of reforms to the Tribunal's procedures, which the Judges discussed on 7 June 2010 at an extraordinary plenary session convened expressly for this purpose. The Judges are now actively integrating these reforms into their ongoing trials.

I note that so serious is the problem of staff attrition that in its report the Working Group expressed its greatest concern over the effect that staff turn-over has on the speed of trials and on the Chambers' ability to process the evidence and motions in their cases. The Working Group recommended that the management of the Tribunal do all that it can to keep experienced staff.

The Working Group on Contempt, the Rules Committee, and the Judges have all worked together in order to adopt a new rule of procedure and evidence—Rule 92 *quinquies*—in order to regulate the admission of evidence in a trial where witnesses have been made unavailable due to intimidation and bribery. This procedural innovation will

enable core proceedings to go forward even where there are attempts to interfere with the administration of justice.

The Appeals Chamber has also striven to expedite its proceedings by organising Judgement drafting in multi-accused cases according to subject-matter rather than individual appeals, in order to avoid repetitive tasks and analysis; by more effectively liaising with the Conference and Language Services Section on a continual basis in order to assess progress and determine the need for requesting prioritisation of specific translations; and by creating a redeployment plan for the number and levels of staff needed on appeals through 2014.

Another matter that I again bring to your attention is that of compensation to victims. In order to contribute to a lasting peace in the former Yugoslavia, justice must not only be retributive—it must also be restorative. The International Criminal Court and the 111 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 take action and establish, as the ICC has, without further delay, a trust fund for victims of crimes falling within the Tribunal's jurisdiction, to complement the Tribunal's criminal trials, by providing victims with the necessary resources to rebuild their lives.

The final issue that I wish to bring to your attention is the mandate of the Judges, a matter currently pending before you. Just as staff need job security, so do our Judges. And I urge you to bear in mind the benefits to the Tribunal's Completion Strategy of granting mandates to the Judges in-line with the projections I have provided you through my letter to the Secretary General—up to 2013, in respect of those Judges whose trial and appeals will be ongoing at that time, and up to 2014 for the remaining appeal Judges. It is simply not rational to assign Judges to cases that will last longer than their mandates. Denial of job security to Judges does not motivate Judges to work any harder than they already do. Rather, it is more likely to result in Judges seeking professional opportunities elsewhere, where they are treated with more respect and dignity.

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. We at the Tribunal have accepted this responsibility from the Security Council because we believe in this mission. However, we need more support from our parent organ, you, the Security Council. We are hanging by a thread, and we need you to throw us a lifeline. And I have to say this to you very bluntly: not helping us with staff retention measures is counter-productive because trials will take longer, appeals will take longer, and the life of the Tribunal will be much longer.

I 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 ways I have mentioned here today.

Thank you very much for your kind attention.

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