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

STATEMENT

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PRESIDENT

The Hague, 8 October 2010

Address of Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia, to the United Nations General Assembly

Your Excellencies,

Mr. President, first allow me to congratulate you on your assumption of the Presidency of the General Assembly and to express my gratitude to you for your country's steadfast support of the work of the International Criminal Tribunal for the former Yugoslavia.

It is an honour to appear before you today in my capacity as President of the Tribunal and to present to the General Assembly the Tribunal's seventeenth Annual Report.

During the reporting period, the Tribunal faced unprecedented challenges, but also achieved unprecedented advancement in the implementation of its Completion Strategy. Ten trials were conducted simultaneously in the Tribunal's three court rooms, and the second of the Tribunal's three multi-accused trials, *Prosecutor v. Popović et al.*, was brought to a close. The Tribunal has succeeded in conducting proceedings in ten trials concurrently by doubling-up Judges and staff so that they are working on more than one case. In addition, the Tribunal also handled three contempt cases, disposing of two.

Currently there are nine trials ongoing, with a tenth case being returned to the pre-trial stage following the Appeal's Chamber's decision to grant the Prosecution's request for a re-trial in the case of *Haradinaj et al.* It is anticipated that the *Haradinaj* re-trial will commence in the new year.

Judgements are anticipated to be delivered in the *Dorđević* trial next month and in the *Gotovina et al.* trial the following month. An additional two trials—that of *Perišić* and the final multi-accused case of *Prlić et al.*—will conclude in 2011. Five trials, including the *Haradinaj* re-trial, are anticipated to conclude in 2012, and the final case, that of *Karadžić*, should be completed towards the end of 2013.

All appeals are still scheduled to be completed by the end of 2014, although the recent, unavoidable delays in the *Karadžić* case suggest that that date has become exceedingly optimistic and will have to be re-assessed at an appropriate time.

In total, the Tribunal has completed proceedings in relation to 126 persons overall, with 13 cases remaining to be completed.

The Tribunal continues to take all measures possible to expedite its trials, without sacrificing due process. However, as these anticipated completion dates show, the estimates for the completion of trials from the last reporting period have had to be substantially amended. This is the result of unforeseen factors not immediately within the

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Tribunal's control, including witness intimidation, failure of witnesses to appear, illness of accused, the complexities associated with cases of self-represented accused, and staff attrition. These factors are fully detailed in my report to the Security Council of May 2010.

It must be underscored that the trial schedule produced by the Tribunal is a forecast only. It is estimated by reference to factors identified as falling within the Tribunal's control. However, there are important influences upon the trial schedule that are not within the Tribunal's control. To give but one example, earlier this year, the national authorities of Serbia discovered new evidence that is relevant to at least six of the Tribunal's cases, namely 18 military notebooks of Ratko Mladić allegedly written during the period from 1991 to 1995. The discovery of this new evidence has the potential to delay all of these trials and could not have been foreseen when the trial estimates were generated. For the most part it is not possible to ascertain the precise impact of this new evidence, but it would seem that the minimum delay would be a period of about three months.

But more generally, it has to be understood that assessments that are made prior to the commencement of a trial are really nothing more than guesstimates. For example, the Trial Chamber in the *Karadžić* case, in assessing the time it would take to complete the trial, considered it a fair assessment to allocate to Karadžić the same time for cross-examination of Prosecution witnesses as it allowed the Prosecution for its own examination of its witness. However, the unprecedented volume of written material tendered through these witnesses has necessitated a significant increase in the time allotted to Karadžić for cross-examination, and this could not have been anticipated at an early stage of the proceedings. This is the nature of trials, particularly trials of the complexity that are heard at the Tribunal. It is often the case that assessments made with the best of intentions prior to the commencement of a trial are shown to have been overly-optimistic once the trial has commenced. There is nothing unusual about this. It is the nature of the trial process itself that makes anticipating the length of a trial an exceedingly difficult process. As I have said on many previous occasions, the estimation of the length of trial and appeal proceedings is more an art than a science. This is something that the international community needs to respect.

It has occurred to us at the Tribunal that the misunderstanding that Member States have in respect of the time taken to complete the Tribunal's mandate is partially, if not wholly, due to the novelty of the exercise in which the United Nations is now involved in relation to the Tribunal. In the past, the United Nations has wound up administrative bodies such as peace-keeping operations. The United Nations has therefore developed a practice and a culture with regard to the exit strategy for such bodies, but the Tribunal is not an administrative body. It is a court of law, and as such it will always be prone to a certain degree of unforeseeability, which is a natural element in most kinds of judicial work, and particularly in trials as complicated as those at the Tribunal. The Tribunal cannot be wound up as though it were a bakery producing bread. It can only be wound up properly with appropriate sensitivity to the judicial character of its work. To apply to the Tribunal in this, the final stages of its life, the mindset and culture that is relevant to the closure of administrative bodies like peace-keeping operations is wholly wrong and what is more, is bound to have an effect, as will become apparent in the following, on the Tribunal's capacity and indeed duty to deliver justice in a fair and impartial manner.

But I should also underscore that, when delays are shown to be inevitable and fully justifiable, Judges do not just accept them as part and parcel of the trial process. They proactively devise and implement measures to reduce such delays by, for example, increasing court hearings and reducing the number of witnesses to be heard in a case. For example, in the *Karadžić* case, the Trial Chamber has announced its intention to adopt measures to reduce the slippage resulting from its recent decision to allot more time to

Mr. Karadžić in the interests of fairness. In this regard, I think I should point out that Judges, and in fact all staff at the Tribunal, feel the pressure of the Completion Strategy and of the international community to expedite the work of the Tribunal. And, speaking as a Judge and the President of the Tribunal, I must say that this is troubling to me. Judges are entitled to and indeed must work in an environment free from all external pressures, so that their judicial independence is not compromised or appear to be compromised.

In this regard, I note that motions have been filed by the parties accusing the Judges of taking decisions for the sole purpose of expediting the proceedings in response to the Completion Strategy and not on the basis of the merits of the case and without regard for the fairness of those proceedings.

There are some other obvious causes of delay that cut across all the Tribunal's trials and some of these are simply unavoidable. First is the doubling-up of Judges and staff. The scheduling of hearings, deliberations, and consultations has been complicated by the need to take into account the competing obligations of Judges and staff to other cases. While the Tribunal has increased its trial capacity from six trials simultaneously to conducting ten trials, it has not seen a comparative increase in its resources.

Another factor that has impacted our work is the constant departure of the Tribunal's highly experienced staff for more secure employment elsewhere. Experienced staff continue to leave the Tribunal at an alarming rate. In Chambers alone, the Tribunal has witnessed a 21% attrition rate. The impact of these departures on the expeditious completion of the Tribunal's trials and appeals is profound, and I have consistently warned the Security Council and this Assembly that the work of the Tribunal will be protracted if we are unable to retain staff and are forced to constantly recruit and train new staff. I have called upon the United Nations to assist the Tribunal in devising incentives to retain its highly qualified staff. I have also identified measures that could be taken that would alleviate staff attrition rates. However, to date very little has been achieved.

The General Assembly offered us a measure of hope through its adoption of Resolution 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. However, despite the clear language and intention of the resolution, it has not been implemented because the budgetary authorities at the United Nations Headquarters consider the Tribunal incapable of offering contracts to staff that are not tied to approved budgetary submissions.

In desperation, I made a direct plea for assistance to the Security Council in June of this year, and the Security Council responded by passing Resolution 1931 in June of this year, which *noted* the importance of the Tribunal being adequately staffed to complete its work expeditiously and *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.

In the meantime, the Tribunal is still pressing for action to be taken – as we continue to lose our highly experienced and essential staff, and as the expeditiousness of our proceedings continue to suffer from delays that could be avoided through urgent action by the international community to devise incentives encouraging our staff to remain with the Tribunal until they are no longer necessary.

I should add that the updated trial schedule has resulted in the Tribunal filing a Supplementary Budget before you. In so doing, the Tribunal was extremely sensitive to the economic climate and has only requested that which it considered to be absolutely

necessary in order to ensure that our expeditious operation is not compromised. In that regard, I note that the efficiency and productivity of the Tribunal far surpasses that of any other comparable institution. And this is despite the many challenges it has faced during the reporting period.

One final matter, which I feel compelled to raise before you yet again, is my commitment as President of the Tribunal to ensuring the establishment of a trust fund for victims from the former Yugoslavia. The ICC and the 113 States that have ratified the Rome Statute demonstrate by the establishment of a trust fund for victims that they accept that justice must not only be retributive: it must also be restorative if peace is to be lasting. It is my intention as President of the Tribunal, to take action to end this travesty, and I hope that I will receive your support in doing so.

In closing, I wish to reassure all Member States that the Tribunal's commitment to the Completion Strategy remains steadfast and that we are taking all measures within our power to expedite our proceedings, while still fully respecting the rights of the accused to due process. I would also ask that all Member States reflect for a moment upon the remarkable achievements of the Tribunal. It was not so long ago that international criminal justice was but a dream in the minds of those striving for a safer and more just world. But now the dream has been realised. The Tribunal has demonstrated to the international community that international humanitarian law is an enforceable body of law; that it binds the conduct of the most senior State officials; and that the rule of law is a living, breathing reality that forms part of the fabric of our civilization. The Tribunal represents the aspirations of the international community to ensure that justice prevails over impunity, and this is something in which we all have a stake.

It is for these reasons that the work of the Tribunal, which has been entrusted to us, is not only our work, but in fact the work of everyone here today. I therefore call upon all Member States of the General Assembly to assist us in our commitment to bring the work of the Tribunal to a close expeditiously and fairly.

I thank you for your kind attention here today.