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Tribunal Pénal
International pour
l'ex-Yougoslavie

STATEMENT

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PRESIDENT

The Hague, 7 December 2011

ICTY President's Address to the United Nations Security Council on the Completion Strategy

It is a great honor for me to appear before you today as President of the International Criminal Tribunal for the former Yugoslavia and to do so under the Presidency of the Russian Federation. I congratulate Ambassador Churkin for his able management of the Security Council.

As you may be aware, I assumed the Presidency of the Tribunal on 17 November 2011; the report that was submitted to you earlier this month details the work of the Tribunal under the leadership of my distinguished predecessor, Judge Patrick Robinson. I would like to pay tribute to his outstanding achievements, which have significantly strengthened the ICTY. In particular, I would underscore his initiative to establish a Victim's Trust Fund, a plan which has my full support. I am pleased to note in this regard that the International Organization for Migration has secured funding to carry out a comprehensive assessment study.

Before I turn to the current state of the Tribunal, I believe it is fitting to underscore the significant successes we have achieved. The recent arrests of indictees Goran Hadžić and Ratko Mladić mean that there are no outstanding fugitives - all living persons indicted by the Tribunal have been or will be tried in a court of law, either at the Tribunal, or in the courts of national jurisdictions.

With respect to legal doctrine, the greatest achievement of the Tribunal, and its sister court, the ICTR, has been their contribution to developing substantive, procedural, and evidentiary international criminal law. This corpus of jurisprudence outweighs by far that of Nuremberg.

I would also underscore that the Tribunal has made tremendous strides in assisting national judiciaries of the region of the former Yugoslavia through the War Crimes Justice Project and its outreach offices, as well as through its assistance in creating the War Crimes Chamber of Bosnia-Herzegovina. Partly due to the example and assistance of the Tribunal, national judiciaries in the former Yugoslavia are successfully prosecuting war crimes cases. In that respect, I am pleased to note that the Statute of the Residual Mechanism provides for assistance to be given to national judiciaries in response to their requests.

Let me now turn to the current state of affairs at the Tribunal. I note that the report of President Robinson gives details with respect to all cases currently pending before the Tribunal and my comments in that regard can therefore be brief.

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Media Office/Communications Service

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

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

The Tribunal continues to work as rapidly as possible, given the constraints imposed by limited resources and the need to assure the highest standards of procedural fairness. Proceedings are ongoing against 35 persons - 18 at the trial level in seven cases and 17 at the appellate level in six cases. It is anticipated that judgements in six trials will be issued in 2012, with the Karadžić judgement issued during 2014. It is still impossible to predict when judgements in the recently arrested Mladić and Hadžić trials will be issued. One appeal judgement is expected to be delivered in 2012, with a further five delivered in 2013, including the two multi-accused cases of Šainović et al. and Popović et al.

I am acutely aware of Security Council Resolution 1966's requirement that the Tribunals do all in their power to ensure the completion of all cases by December 2014. I would note that Resolution 1966 was passed prior to the arrests of Messrs. Mladić and Hadžić. All efforts will be made to complete their trials prior to December 2014, but appeals emanating from them will fall under the aegis of the Residual Mechanism. It is also my duty as President to draw your attention to the charts attached to President Robinson's last completion report, which indicate that the Tribunal may not be able to conclude appeals emanating from the Tolimir, Šešelj, and Prlić cases by December of 2014. Further, according to the charts recently presented by the ICTR the appeal, if any, of Ngirabatware, may go to the Residual Mechanism because the notice of appeal would miss the July 2012 deadline. In addition, I am advised that the completion report's estimate for the translation of the Prlić case must be corrected, and is actually 21 months, reflecting an anticipated 4,000 or more judgement sized pages. That said, the Tribunal will do its utmost to ensure that its proceedings are completed as expeditiously as possible, while ensuring that fair trial rights of the accused are fully respected.

In line with this commitment, among my first acts as President was reviewing the Tribunal's activities to identify possibilities to reduce the time needed to complete appeals. On the basis of this review, I identified translation of judgements as a potential area for exceptional measures. It is estimated that one ICTR trial judgement will take eighteen months to translate. At the ICTY, the eventual judgement in one ongoing ICTY trial case is currently projected to take twenty-one months, while those in two others are each projected at nine months. Despite our resort to embedded translators in judgement drafting teams, the translation time represents a considerable impediment to a timely appellate process, with the risk of running beyond the target dates set by the Security Council.

As President of the ICTY and the ICTR Appeals Chambers, I have instructed the Registrars of both the ICTR, Mr. Adama Dieng, and the ICTY, Mr. John Hocking, to take immediate and exceptional measures to bolster the number of staff assigned to judgement translation and make every effort possible to expedite translations, even if it means reverting to outside contractors. As I see it, after the various reforms already carried out, judicial work must run its course, or else the principle of judicial independence and fairness would be compromised. But I can certainly address the logistical question of translations, with the object of drastically reducing the time allocated to them through exceptional measures. My goal is to halve the translation time in the cases of Butare, with its seven appellants, Prlić, with its six potential appellants, Šešelj, and Tolimir - and I am pleased to report that both Registrars have committed to that goal.

I am requesting the Registrars to ensure that these extraordinary measures do not significantly slow down translations of other judgements. Even with these efforts,

however, I must underscore that the four appeals I have referred to may still not be completed by the target date of 31 December 2014.

A second measure I am considering is directed towards minimizing the disruption caused to our substantive caseload by contempt proceedings. There are currently 10 outstanding contempt cases. The burden of those cases is, for the most part, borne by the Tribunal's eight permanent trial judges. Some of these judges are currently sitting on seven or eight contempt cases in addition to their substantive cases. This situation represents a real obstacle to the efficient completion of the Tribunal's substantive cases.

In this circumstance, it is my intention (unless I hear objections from the Security Council requiring additional steps) to depart from the previous practice of the Tribunal, which precluded assignment of the nine ad litem judges to contempt cases not arising from their trials, and assign them to any contempt cases which a fair and efficient distribution of the work load warrants. Of course, these assignments would not trigger extension of service beyond the cases to which an ad litem judge has already been formally assigned.

Another serious matter that may severely impact the efficiency of our proceedings is the issue of staff retention. This problem was repeatedly raised by President Robinson, most recently and fully in his report to the Council of November 15, and was referred to in your last three Security Council resolutions (Resolution 1931 in June 2010, Resolution 1954 in December 2010, and Resolution 1993 in June 2011) concerning the Tribunal, where you requested that the Secretariat assist the Tribunal in addressing this challenge. However, no progress was made in the meetings in November with the Secretariat by President Robinson and separately by Registrar Hocking for our modest proposals for a retention bonus in the form of a small termination indemnity of the type that is paid under staff rules to staff whose contracts are terminated or abrogated prior to the expiry of their term. Nothing is thus done to remedy the grave problem of large scale departures of often our most talented staff, including some critically needed legal officers from trial and appeals teams. All of this impacts on the right of the accused to a fair and expeditious trial and on the prospects for the timely implementation of the completion strategy.

I am grateful for the efforts undertaken by the United Nations Office of Human Resource Management to assist Tribunal staff in obtaining employment in other areas of the United Nations. Although this helps foster good morale of the staff, I am aware of the inherent tension between helping staff find other employment and encouraging people to stay until the work of the Tribunal is complete.

I would have hoped that even at this late hour the United Nations Secretariat would develop a business model for addressing the vital sui generis needs of institutions facing an approaching closing, one based on flexibility and "can do" solutions. In these circumstances, the Tribunal has resorted to such measures as doubling up of judges, and additional measures outlined by me today, but unless something is done to help us with staff retention, I agree with President Robinson that we cannot guarantee that estimates for the completion of core work of the Tribunal will not be further revised.

While a termination indemnity may assist the Tribunal in retaining such critical long-serving staff, it will not prevent staff departures, particularly with regard to the junior professionals in Chambers, a category critical for judicial work, where we have

already suffered serious attrition. In the Tribunal's view, many problems would be remedied if it were allowed to hire its most talented interns directly to open posts. In cases where an intern has participated in a trial for some time, allowing him or her to replace a departing staff member can ensure that retraining which might cause months of delay is rendered unnecessary. However, General Assembly Resolution 51/226 is currently interpreted as preventing these interns from being employed by the Tribunal for a period of six months following the completion of their internships. Without an interpretation or authorization for the Registry, the Tribunal will be prevented from implementing this solution. I would urge the Council to request the Secretariat to revisit the matter and come up with a pragmatic, flexible solution. Given the limited life of the Tribunal, the fact that it is not fully integrated in the Secretariat, and the interest of the Organization in the completion strategy, I believe that the case for a narrowly focused green light is compelling. I would therefore be grateful for your explicit support of this proposal and for your assistance in obtaining the necessary assent for this cost-free measure, which would, in any event, only apply to a very small number of interns.

Finally, I would note that President Robinson has already drawn your attention to the difficulty in finding additional places appropriate for convicted persons to serve their sentences. I would find it most helpful if the Security Council could reiterate the request it made in Resolution 1993 of 29 June 2011, asking states to cooperate with requests by the Tribunal relating to the enforcement of sentences.

Having reviewed the Tribunal's past successes, and described our current work and challenges, I turn briefly to the future. The establishment of the Residual Mechanism, with judges whose remuneration will be per day of work only and who will be allowed to hold outside occupations, will inevitably present many challenges for the Tribunal. We are moving into uncharted territory. I personally am committed to making the transition to the Residual Mechanism and its functioning as smooth as possible.

Before I conclude, I would like to express how honored I am to serve for a second time as President of the ICTY. I am privileged to follow in the footsteps of my two predecessors, Judges Patrick Robinson and Fausto Pocar. Their outstanding efforts have greatly strengthened the Tribunal.

Born in the darkness emanating from Yugoslavia's breakup, the Tribunal faced particularly difficult challenges in its early years. While the Tribunal will soon cease to exist, it will leave a world transformed, and its legacy will be an indelible testament to the international community's commitment to justice: the noblest of human ideals. Thank you.

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