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

STATEMENT

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PRESIDENT

The Hague, 15 October 2012

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

Mr. President, Your Excellencies,

It is an honour for me to appear before you today to present the Tribunal's nineteenth Annual Report to the General Assembly.

Mr. President, I would also like to take this moment to congratulate you on your country's assumption of the Presidency of the General Assembly, and to wish you well for the myriad responsibilities that accompany that role.

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Your Excellencies, as you may be aware, this is my second term as President of the ICTY, my first term having been in the years 2003 to 2005. With my new term come the same obligations to the international community that were present with the first: chief among them, the need to expeditiously complete the mandate of the Tribunal while according full respect to the due process rights of the accused and due regard to the protection of victims and witnesses.

As you will know from my report, the Tribunal is very close to the completion of its mandate and all efforts are being expended to ensure the orderly completion of the Tribunal's work within the time-lines set by the Security Council.

But, as the international community has learned over the years, the international criminal trial process is inevitably subject to the vagaries common to all criminal law proceedings, such as late disclosures of exculpatory material. Our trials are further complicated, however, due to the inherent complexity of international criminal proceedings, including the geographical scope of the underlying allegations, the number of incidents charged, and the fact that the trials are conducted far from the territory on which the crimes were committed. Unforeseen circumstances also arise that impact upon the expeditious conduct of both trials and appeals, such as the illness of an accused, the death of counsel, delays caused by the right of the accused to have materials translated into his or her own language, and delays in State cooperation or in the securing of witnesses. In addition, the progress of cases may be adversely impacted by the loss of experienced and talented Tribunal staff in Chambers as well as by the commitments of both Judges and staff to other, simultaneous proceedings, including both trials for core crimes and trials for contempt.

These factors create a myriad of challenges for the Tribunal and underscore the fact that predicting the length of proceedings at the Tribunal is an art—and not a science. Despite these challenges, however, the Tribunal remains steadfast in its commitment to

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satisfying the desire of the international community that the Tribunal bring its proceedings to a close, and my colleagues and I continue to seek out new and innovative means to increase our efficiency without sacrificing our commitment to quality and due process.

We are already making tremendous progress. Within the next 12 months, it is anticipated that all trials, other than those of the late-arrested accused, will be completed and the bulk of the Tribunal's work will be on appeals. Most of those appeals will be completed by the Appeals Chamber by December 2014. Others will fall to the competence of the International Residual Mechanism for Criminal Tribunals—now known simply as the Mechanism for International Criminal Tribunals—which is the institution established by the Security Council to assume responsibility for core functions of the ICTY and ICTR as those first two pioneering tribunals bring their work to a close. The Arusha branch of the Mechanism commenced operations on 1 July 2012, in full conformity with Security Council Resolution 1966, and I expect that the launch of the Hague branch of the Mechanism on 1 July 2013 will go just as smoothly.

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Mr. President, Your Excellencies, as I noted at the outset, this is the Tribunal's nineteenth Annual Report to the General Assembly, and next May we will be celebrating twenty years since the Security Council took the vitally important step of establishing the ICTY. In light of this milestone, I think it only fitting to focus for a moment on the remarkable achievements of the Tribunal during the intervening years—achievements that have not only contributed to bringing peace and reconciliation to the countries of the former Yugoslavia but have resonated far beyond that region, leading to the creation of other international courts and tribunals and forging a new international culture of accountability.

I need not remind this Assembly that following the closure of the Nuremberg and Tokyo Tribunals after World War II, the idea of international criminal justice—of holding those who are alleged to commit the worst of crimes accountable—was all but forgotten. With the creation of the Tribunal in 1993, however, came a new awakening.

Admittedly, when it was first established, the Tribunal was little more than an ideal—an expression of the outrage of the international community at the atrocities that were being broadcast on television screens as the conflict raged throughout the former Yugoslavia. At the time, there was little real faith or real comprehension about what the Tribunal could actually achieve as a measure to bring justice or even restore peace. It was just hoped that the Tribunal could do something.

From its very first trial, the Tribunal demonstrated to the international community that it could do much more. In judgement after judgement, the Tribunal not only patiently and painstakingly considered the evidence and testimony concerning crimes alleged to have occurred during some of the worst conflicts in a generation. The Tribunal also breathed life into laws that had hitherto rarely been applied and began the vital process of elucidating and defining the contours of international humanitarian law, all the while paying full respect to the rights of the accused and the principle of legality.

Indeed, from the very beginning, the Tribunal made great strides in articulating a coherent and robust body of customary international humanitarian law and great advancements, particularly in relation to crimes of a sexual nature, which had been predominately untouched by the Tribunal's World War II predecessors. Through its judgements, the Tribunal clarified that the crime of rape could also constitute the crime of torture and the crime of genocide. The Tribunal determined that lack of evidence of resistance to a sexual crime could not be the basis to infer consent during times of armed

conflict and that the uncorroborated evidence of a single witness, if found reliable and credible, could be sufficient to support a conviction for rape. In doing so, the Tribunal led the way for a new focus by the international community on crimes of sexual violence during armed conflict and motivated the United Nations to take action in support of women and other victims the world over.

In addition, the Tribunal led the way in finding that State immunity was not a bar to prosecution in an international tribunal, a finding confirmed by the International Court of Justice in the *Arrest Warrant* Case. The rulings of the Tribunal helped to make it possible for other courts, such as the Special Court of Sierra Leone, to bring charges against former Heads of State and other key leaders, and for adoption of a provision in the Statute of the International Criminal Court removing the protection of Head-of-State immunity.

The Tribunal also played a fundamental role in highlighting the dissolution of the traditional distinction between laws applicable to international armed conflicts and those applicable to internal armed conflicts. The Tribunal found that the same rules could, and should, be applied in both international and non-international conflicts, as civilians everywhere were entitled to the same protections no matter the legal characterisation of an armed conflict. The Tribunal also clarified what it meant to be a protected person under the Geneva Conventions, finding that allegiance and effective protection were the guiding criteria and not nationality (a factor which offered no protection where inter-ethnic violence was concerned).

The Tribunal's achievements are not limited to substantive law, however. Indeed, the ICTY has also made extremely significant contributions to international criminal procedural and evidentiary law. The Tribunal has successfully moulded the best aspects of the adversarial and civil law procedures, creating an international body of procedural law that provides not just for expeditious trials but for trials that are consistent with the highest international standards of due process and accord due respect for the human dignity of the accused. It is telling that the Tribunal's Rules of Procedure and Evidence have formed the basis of the rules of procedure and evidence adopted at all international criminal courts that followed.

At the same time, the Tribunal has also had a profound impact on the development of the legal systems of the countries of the former Yugoslavia and has made great contributions to the capacity of these countries to take ownership of cases involving alleged atrocities on their territories and to bring to justice those who remain to be prosecuted. Among other things, the Tribunal has assisted in the establishment of the Special War Crimes Chamber in Bosnia, shared its experience and expertise with judges from Serbia, Croatia, and Bosnia, and demonstrated its faith in the professional competence of its counterparts in the region through the transfer of its lower-level and intermediate accused for prosecution.

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In sum, the Tribunal has truly been a success story. But if I have referred today to the Tribunal's many accomplishments, it is equally clear to me that these are truly all of your achievements as well.

Without the substantial support that Member States have long afforded the Tribunal, none of what we have accomplished would have been possible. Because of your cooperation and commitment, the Tribunal and the success of its work over the past two decades have had a profound impact on the landscape of international criminal justice. So, while the international community understandably wishes to bring the Tribunal's work to a close as expeditiously as possible, I hope that you will also reflect with justifiable

pride upon the extraordinary benefits that have accrued from the international community's initial investment in the Tribunal and from your support in the years that followed. Over the course of the nearly two decades of its existence, the Tribunal has established the feasibility and enforceability of international criminal justice, blazed the trail for a host of new international courts and tribunals, and pioneered the framework of what is effectively a new world order—a world order in which all alleged perpetrators of gross violations of human rights in times of armed conflict may be held responsible for their actions, and a world order in which the questions is not if but when and where they will be called to account. I congratulate you on this accomplishment, and extend to you my deepest thanks for your abiding faith in our work.

Thank you very much.