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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

STATEMENT

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

PRESIDENT

The Hague, 5 December 2012

Remarks to the U.N. Security Council
Judge Theodor Meron
President, International Criminal Tribunal for the former Yugoslavia
President, Mechanism for International Criminal Tribunals
5 December 2012

Mr. President, Your Excellencies, Ladies and Gentlemen:

It is an honour to appear before you today both as the President of the International Criminal Tribunal for the former Yugoslavia, and as the President of the Mechanism for International Criminal Tribunals. I congratulate His Excellency Ambassador Mohammed Loulichki of Morocco for his country's assumption of the Presidency of the Security Council and wish him much success in the management of the Council's activities during this very busy period.

As just noted, I appear before you today in two capacities and I will accordingly give two reports: one on the progress made in relation to the Completion Strategy of the ICTY and another on the launch of the Mechanism. Written reports concerning both institutions were presented to the Council last month. Accordingly, in my remarks today, I hope to highlight certain key issues, rather than repeating the contents of those reports in detail.

However, before addressing specific successes and challenges facing the Tribunal and the Mechanism, I would like to take this opportunity to express my deep appreciation for the efforts and dedication of the Security Council working group on the ad hoc Tribunals, which operates under the able leadership of Guatemala. I would also like to recognize the guidance and considerable assistance provided to the ICTY and the Mechanism by the Office of the Legal Counsel. The sustained support and invaluable advice provided by both of these bodies has been instrumental to the continuing progress of the ICTY and the Mechanism.

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I now turn first to the Completion Strategy of the ICTY.

As Council members will have seen in my written report, the Tribunal is making excellent progress in completing its work.

At the trial level, the judgement in the Haradinaj *et al.* re-trial was issued just a few days ago, on 29 November 2012. The Tolimir trial judgement is scheduled for delivery on 12 December 2012, in keeping with previous estimates, and we still hope that the Karadžić trial will conclude by 31 December 2014. The first estimates for the Hadžić and Mladić cases forecast those trials finishing by 31 December 2015 and 31 July 2016, respectively.

There have also been some delays in certain trials. More specifically, we currently estimate that the trials of Prlić *et al.*, Stanišić and Župljanin, and Stanišić and Simatović

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will not be completed until March 2013, and the Šešelj trial is now expected to conclude no earlier than July 2013. Still, once the Šešelj trial judgement is delivered, all trials will have been completed save for those of the three late-arrested accused—Messrs. Karadžić, Hadžić, and Mladić.

With respect to appellate work, I note that the judgement in the Gotovina and Markač case was delivered on 16 November 2012, nearly nine months ahead of the original schedule, and the judgement in the Lukić and Lukić case was delivered yesterday, 4 December 2012. It is anticipated that the judgement in the Perišić appeal, which was heard on 30 October 2012, will be delivered early in 2013, at least three months earlier than previously forecast. Other appeals are progressing more or less as anticipated. The Popović *et al.* case is anticipated to be completed by July 2014, four months earlier than previously forecast, and the Đorđević appeal is on schedule to conclude by October 2013. The Šainović *et al.* appeal has suffered a delay of five months and is now anticipated to be completed by 31 December 2013.

In short, there have been significant advances in the estimated completion dates for several appellate cases, while almost all others are on track to meet previously reported forecasts.

At the same time, the Tribunal continues to face a myriad of challenges in meeting the estimated completion dates for some of its cases, and my written report details the reasons for delays in trials and on appeal that I have just mentioned. As President of the Tribunal for the second time, I am well aware of the frustrations that Council members may feel when faced with shifts in forecasted completion dates, particularly when updated forecasts fall short of expectations. I share that frustration. However, I must underscore that predicting the completion dates for trial and appellate proceedings is more akin to an art than a science, and the forecasts the Tribunal provides must be understood in this context.

As Council members are all too aware, the Tribunal is situated far from where the conflicts took place in the former Yugoslavia. The geographical scope of the indictments and the number of charges alleged can surpass the most complex of national proceedings, and the number of crime sites and crimes alleged are often of unparalleled scale. The documentary and other evidence adduced to establish or defend against the charges at stake runs in most cases to tens of thousands of pages, and witnesses must be flown from various parts of the world to give evidence in the proceedings.

In this context, even the most robust management of cases cannot always guard against delays. Setbacks can arise from the departure of staff members who are experienced in the workings of the Tribunal and deeply familiar with the factual record of the particular cases, or when the accused or counsel become ill. Witnesses may refuse to appear to testify, embroiling the proceedings in ancillary contempt matters. States may be slow in cooperating with requests for material due to insufficient legislative frameworks or claims of national security interests. The translation of materials into a language that the accused or counsel understands may take longer than anticipated. All the while, the Tribunal's cases are inevitably subject to the vagaries—the unexpected twists and turns—common to all criminal law proceedings.

These are daily challenges in the work of the Tribunal. I assure you, however, that they are challenges that are met with tenacity by the Judges and staff of the Tribunal, whose commitment to ensuring the completion of the Tribunal's work in as timely a manner as possible is extraordinary—and deserves your recognition.

Indeed, despite some delays in the completion of the Tribunal's trials and appeals, there is no doubt that the work accomplished by the Tribunal so far, and the legacy that it will

leave, are already of profound significance. The Tribunal has established a robust and authoritative body of jurisprudence on customary international humanitarian and criminal law, addressing everything from crimes of sexual violence, to international criminal procedure, to the erosion of the traditional distinction between the laws applicable to international and internal armed conflicts. In doing so, it has transformed the face of international justice forever, all the while paying full respect to the rights of the accused and the principle of legality. Indeed, the Tribunal has been instrumental in bringing about a new era of accountability and a new commitment to justice within the international community at large.

Mr. President, Your Excellencies, these accomplishments are priceless, and should not be forgotten. While frustrations may arise due to delays in the completion of trials and appeals—and while my colleagues and I will continue to seek out new ways to avoid further delays—I encourage Council members to view such challenges in their proper context and from the perspective of the Tribunal's broader achievements, the salutary effects of which will be felt for many years to come.

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Before turning to my briefing on the Mechanism, I wish to raise two final issues with respect to the Tribunal.

First, I note that with the end of all but three trials in 2013, the focus of the Tribunal's work will have moved firmly to the Appeals Chamber. Indeed, during the critical period between January 2013 and December 2014, it is anticipated that the ICTY and ICTR Appeals Chambers will be seised with up to 16 appeals from judgement as well as any number of additional interlocutory appeals and other requests.

This change in focus is hardly unexpected. In Security Council resolution 1877 (2009), the Council recognized that the workload of the Appeals Chamber was expected to increase upon completion of trial proceedings and accordingly amended the Tribunal's Statute to authorise the enlargement of the Appeals Chamber through the redeployment to the Appeals Chamber of up to four additional ICTR trial Judges and up to four additional ICTY trial Judges.

While I am very pleased to note that three ICTR trial Judges have since been re-deployed to the Appeals Chamber and that the fourth is expected by March 2013, unfortunately only one ICTY trial Judge is now expected to be available for such re-deployment and this will occur no earlier than July 2013, following the conclusion of the Šešelj trial. This is because all other available ICTY trial Judges have been assigned to either the cases of two late-arrested accused, Messrs. Mladić and Hadžić, which are expected to go past 2014, or to the Karadžić case, which will not be completed until 31 December 2014—the date by which the Security Council would like to see the Tribunal complete the bulk of its work.

Finally, I note that in my letter to the Secretary-General of 29 October 2012, I signalled the necessity of extending the terms of office of the Tribunal's permanent Judges and certain ad litem Judges. As set forth in this letter—which I trust has been shared with the members of the Council—the extensions requested vary in length according to the expected time-lines of the cases to which each Judge is assigned. Notably, no extensions are presently sought beyond 31 December 2014, although several cases—most notably, the Mladić and Hadžić trials and possible appeals in some cases, as discussed in my written report—are expected to go beyond that date. These cases obviously cannot be halted mid-stream. I will seek any relevant extensions of the terms of the Judges involved in these cases at a later date but wished to bring this matter to the attention of the Council now in the interests of transparency.

In view of the fact that the Judges' current terms of office are due to expire at the end of this month, I would be most grateful to the Council for considering this matter expeditiously.

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I would now like to turn to my report on the work of the Mechanism, which commenced operation at the Arusha branch on 1 July 2012, in full conformity with Security Council resolution 1966 (2010).

Notwithstanding the short time between the appointment of its principals and the launch of its first branch, the Mechanism is fully functional. It has begun issuing orders and decisions in areas under its competence. It has taken over the provision of witness support and protection for those witnesses who have testified in completed ICTR cases and assumed responsibility for the enforcement of ICTR sentences. It is engaged in monitoring the ICTR cases transferred to national jurisdictions for trial. It is also actively providing assistance to States for domestic investigations and prosecutions.

Rules of Procedure and Evidence have been adopted, practice directions have been promulgated, and lines of communication and cooperation between the Mechanism on the one hand and the ICTY and ICTR on the other have been established. The Mechanism currently relies upon its predecessors for a wide range of administrative services and other support, but the Mechanism will be ready to assume those functions and be fully self-sufficient when required to do so.

Preparations are well under way for the launch of the Mechanism's Hague branch, and we have begun to consider the additional challenges that the Mechanism may inherit upon the eventual closure of the ICTY and ICTR, including the vital issue of ensuring the relocation of persons acquitted before the ICTR, should a solution not be found in the meantime.

In sum, the Mechanism is already deeply engaged in fulfilling its mandate.

I am profoundly honoured to have been appointed President of this new institution. The Mechanism offers a unique opportunity to be involved in building an international criminal institution from the ground up. As I have undertaken this work, I have been guided by my experiences of over a decade at the ICTY and by the advice of the Mechanism's Registrar and a team of talented staff—but I have also been guided by an awareness of what are often seen as the failings of international criminal justice, namely, that international trials can be slow and costly. In overseeing the creation and operations of the Mechanism, I thus feel a particular responsibility to demonstrate to the international community that fairness and efficiency are not mutually exclusive concepts. Making international criminal justice sustainable in the long run depends in great part upon demonstrating that it can be an efficient, effective, and affordable proposition for the international community.

The Mechanism's other principals and I—and the Mechanism's staff—are committed to making the Mechanism a model institution. This approach is evident in much of what we have accomplished thus far. For example, last spring, I asked the Judges of the Mechanism to cooperate in ensuring the efficient adoption of the Rules of Procedure by means of electronic communications: this approach avoided both delays and the need to convene a costly plenary meeting. For similar reasons, I appointed President Vagn Joensen of the ICTR as the Mechanism's duty Judge at the Arusha branch. Because President Joensen is double-hatted as a Judge of both the ICTR and the Mechanism, he brings his already considerable experience and understanding to bear on the issues before him, and, in addition, his work for the Mechanism is performed at no cost to that institution. Finally, in assigning Judges to handle the appeal of Mr. Munyarugarama from a decision referring his case to Rwanda, I selected Mechanism Judges who are already serving Judges of the ICTY

and ICTR, in order to benefit from their experience and to avoid incurring unnecessary costs to the Mechanism. I anticipate adopting—to the extent possible—a similar approach in assigning the bench to hear any appeal that may arise from the ICTR’s Ngirabatware trial judgement, which is expected shortly. This would be the first appeal from judgment conducted by the Mechanism.

In relation to appeals, I would note that all notices of appeal from ICTY judgements filed on or after the launch of The Hague branch of the Mechanism on 1 July 2013 will fall within the competence of the Mechanism. We can thus already anticipate that any appeals in the cases of Šešelj, Karadžić, Hadžić, and Mladić will come before the Mechanism. The ICTY Appeals Chamber will continue to operate in the meantime, however, hearing appeals in cases in which the notices of appeal are filed prior to 1 July 2013, potentially including appeals in the Stanišić and Simatović, Haradinaj *et al.*, Tolimir, Stanišić and Župljanin, and Prlić *et al.* cases. Any appeals in the cases of Stanišić and Simatović and Haradinaj *et al.* are predicted to be completed by the end of 2014. The appeals of Tolimir and Stanišić and Župljanin are anticipated to be completed in early 2015 and the Prlić *et al.* appeal in late 2016. This is a situation regarding which the Security Council has previously been apprised.

Although the lion’s share of the Mechanism’s judicial work will be in appeals, the Mechanism nonetheless will be prepared to conduct trials of the three fugitives indicted by the ICTR whose cases are still within the competence of the Mechanism: Messrs. Félicien Kabuga, Augustin Bizimana, and Protais Mpiranya. The arrest and trial of these three fugitives is a top priority for the Mechanism. While the Mechanism has sought—and will continue to seek—the cooperation of States, I call upon the members of this Council in particular to lead by example on this critically important issue.

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In closing, I would like to express my appreciation to the members of the Council for their support of the Tribunal and of the Mechanism, and to urge Council members to reflect on the achievements of the one and the potential of the other.

The ICTY has already had a profound impact on the landscape of international criminal justice, and the Mechanism has the potential to build upon the achievements of its predecessors by creating a model institution that is effective and efficient and represents the international community’s strong commitment to the fight against impunity. I look forward to working with you to turn this potential into a reality.

Thank you very much.

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