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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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PROSECUTOR

The Hague, 5 December 2013

Address of Mr. Serge Brammertz
Prosecutor, International Criminal Tribunal for the Former Yugoslavia
to the United Nations Security Council

Mr. President, Excellencies,

Thank you for this opportunity to address you on our progress towards the completion of our mandate.

In this reporting period, we have advanced significantly towards the conclusion of our remaining three trials. In the Karadžić case, the defence is in the final phase of presenting its evidence. In the Hadžić case the Prosecution has finished presenting its evidence and is preparing for the Rule 98bis hearing later this month. And in the Mladić case, the Prosecution is in the final stages of presenting its evidence and expects to finish by the end of this year. This means that, by early 2014, the Prosecution will have finished presenting its evidence-in-chief in all trials before the Tribunal. I acknowledge the tremendous effort of staff members across my Office, which has facilitated the expeditious presentation of evidence in our final cases. The trial teams, with essential support from the Appeals Division, have coped with a staggering workload and successfully confronted many challenges throughout the reporting period.

Contrasting with this positive progress, the Šešelj case suffered a serious setback. The delivery of the trial judgement, scheduled for 30 October 2013, was postponed following the disqualification of a judge from the Šešelj Trial Chamber. Concerns raised by the Prosecution and by members of the Šešelj Trial Chamber regarding the validity of the disqualification decision were dismissed. A new judge was appointed on 31 October 2013 and the parties await the Trial Chamber's further directions about the finalization of the case.

Mr. President, Excellencies

The Tribunal is now 20 years old. But events during this reporting period remind us that many people in the former Yugoslavia are still waiting for answers about the fate of their loved ones. In particular, since September this year, the International Commission on Missing Persons, along with national authorities, has been exhuming the recently discovered Tomašica mass grave in North-Western Bosnia and Herzegovina. It is one of the largest graves uncovered with more than 474 bodily remains so far exhumed. That number is expected to rise before work on the grave is complete. The size of the grave and the calculated planning that obviously informed its design, underscore the extent of the tragedy in Bosnia and Herzegovina.

The Tomašica grave is also a timely reminder that efforts to resolve the issue of persons still missing from the conflicts in the former Yugoslavia must be accelerated. In this regard, I express my full support for the International Commission on Missing Persons, which is working hard to provide families of the missing with long awaited and desperately needed information, thereby helping to advance the reconstruction of communities. We

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endorse the idea of establishing the Commission as a permanent institution so that its expertise can be made more systematically available in other regions of the world where work is needed on missing persons.

Mr. President, Excellencies

When it comes to cooperation between the Tribunal and the countries of the former Yugoslavia on day-to-day matters, I am pleased to say there are no problems. Serbia, Croatia and Bosnia and Herzegovina have responded as required to our requests for assistance and have facilitated our work on the remaining trials and appeals. We thank the national authorities for their cooperation and we call upon them to maintain this positive approach in the next reporting period.

We remain seriously concerned, however, about the progress of national war crimes cases in Bosnia and Herzegovina. The main issues are three-fold.

First, very little progress has been made towards finalizing nine of the 13 Category II cases transferred by my Office to Bosnia and Herzegovina between 2005 and 2009. In October this year, I met with the Chief Prosecutor in Sarajevo to review the outstanding case files. I received an undertaking that a decision would be made on the status of each case before the end of this year and I await a further update.

Second, the National War Crimes Strategy is floundering. Measures taken to relieve the bottleneck of cases before the State Court have not yet been matched with essential resources for the entity level courts receiving the cases. Nor is there currently an effective strategy for training national personnel for war crimes cases. As set out in an expert report prepared on behalf of my Office, a comprehensive national training program implemented by officially designated central bodies is urgently required. My Office appreciates the support of our international partners, particularly the OSCE, the EU and the UNDP, in working to improve the coordination and quality of training for war crimes cases in Bosnia and Herzegovina. We hope there will be visible progress in the next reporting period.

Third, implementation of the European Court of Human Rights' decision in the Maktouf and Damjanović case by the judicial system in Bosnia and Herzegovina has raised a number of issues. Among them is the unconditional release from custody of 12 persons convicted by the State Court of serious crimes including in some cases genocide, pending correction of their sentences. The release of these prisoners poses a threat to the proper conclusion of the cases and undermines public confidence in the administration of justice. The significance of the issue is reinforced by the fact that up to 40 additional convicted persons have appealed their verdicts and sentences before the Constitutional Court of Bosnia and Herzegovina. We encourage all concerned to urgently find coherent ways of addressing the fairness issues identified in the Maktouf and Damjanović ruling, while at the same time safe-guarding the proper administration of justice in war crimes cases.

When it comes to regional cooperation between Croatia, Serbia and Bosnia and Herzegovina on war crimes issues the picture is mixed. We are pleased to note that, following the recent conclusion of cooperation protocols, regular meetings are taking place and information on cases is being exchanged. However, further reforms are still needed to resolve on-going coordination problems, especially the legal barriers that remain to extradition.

Mr. President, Excellencies

When we survey developments in the field of international criminal law over the past few years, it is clear that the future of international justice is, increasingly, national justice.

While international courts will always be needed to provide an accountability safety-net, building the capacity of national systems to effectively handle crimes under international law is the lynch-pin of the justice system. In this respect, the former Yugoslavia provides an important precedent. There are lessons to learn from the different models and structures adopted by countries of the former Yugoslavia who have assumed responsibility for war crimes cases. And there are also lessons to learn from the process by which the Tribunal has transferred expertise and helped to build capacity nationally. This is an on-going process. Within the limits of our resource constraints, my Office remains engaged in several innovative capacity building projects.

Mr. President, Excellencies,

In conclusion, 20 years after the Tribunal opened its doors we are yet to fully deliver on our promise of justice for victims and survivors of atrocities in the former Yugoslavia. Their expectations are high - and rightly so. In coming forward to testify in proceedings before our Tribunal and elsewhere, many have confronted deep seated fears and trauma. Without their courage and commitment to the Tribunal's success, we would have achieved very little. At the same time, we are conscious that recent developments have seriously strained the Tribunal's relationship of trust with victims and survivors. My Office reiterates its commitment to using the last phase of our work to address these concerns.

Thank you.