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Tribunal Pénal International pour l'ex-Yougoslavie

STATEMENT

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PRESIDENT

The Hague, 3 June 2015

Address to the U.N. Security Council
Judge Theodor Meron
President, International Criminal Tribunal for the former Yugoslavia
President, Mechanism for International Criminal Tribunals
3 June 2015

Mr. President, Excellencies, Ladies and Gentlemen:

I am grateful for the opportunity to appear before you to report on the work of the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals. My remarks supplement the written reports that the ICTY and Mechanism recently submitted, and I hope they serve to further elucidate both successes and challenges these institutions have faced over the last half year.

However, before turning to these points, I would like to congratulate Malaysia on its assumption of the Presidency of the Security Council. I also wish to underscore my gratitude to the Security Council's Informal Working Group on International Tribunals, and especially to Chile for its role in leading this group. Last, but certainly not least, I am grateful for the crucial assistance provided to the ICTY and the Mechanism by the Office of Legal Affairs. The Legal Counsel, Mr. Miguel de Serpa Soares, is an outstanding leader in the cause of international justice; he is ably supported by the Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias.

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I first turn to the ICTY. The Tribunal has faced a number of challenges which, to my great regret, have caused delays in cases. The specific lengths and causes of these delays are outlined in the completion strategy report submitted in May.

Certain of these changes to previous forecasts are caused by factors outside our control—such as the health of accused individuals and the discovery of new evidence. In particular, the trial of Mr. Goran Hadžić has been temporarily adjourned for reasons relating to his health. In addition, the trial of Mr. Ratko Mladić has been reduced to four sitting-days per week, following medical advice, and the Prosecution case in that trial has been reopened following discovery of new evidence. Finally, I note that Mr. Vojislav Šešelj's health continues to be a great concern of the Tribunal.

Adverse health developments concerning accused persons and the discovery of new evidence are, by their nature, factors that are very difficult to predict or, when they arise, to ignore. I can assure you, however, that the Judges sitting on the benches in the affected cases make every effort to limit delays linked to these factors, while ensuring that the Tribunal meets its obligation to provide detainees with appropriate medical care and allow relevant evidence to be presented in court.

Perhaps the most widespread cause of delays to particular cases is, however, staff attrition, particularly among mid-level and senior-level members of the legal drafting

teams assigned to support the work of the Judges. As those of you who have followed our reports over the last years are no doubt aware, the Tribunal has been warning of the problems such attrition can cause for a long time. We have taken all steps we were permitted in order to address this problem, including obtaining waivers to particular staff rules and undertaking initiatives to improve staff morale.

These efforts have been effective up to a point—but they have not been enough. In the last reporting period, a number of mid-level and senior-level staff members with extensive case-specific experience have accepted positions at other institutions able to guarantee longer-term employment. The Tribunal acted swiftly to replace them as soon as possible—but inevitably, new staff members are not able to immediately match the extensive case-specific knowledge of those who depart after spending years immersed in the evidentiary context and procedural history of individual cases.

In conjunction with the Council's Working Group, the Office of Legal Affairs, and the Office of Human Resources Management, the Tribunal continues to examine all steps we are able to take in order to stem attrition in these critically important final years of the Tribunal's life. On a personal level, from the moment I realized the potential for delays in cases, I led efforts to identify problems and potential means of resolving them or minimizing their impact. In particular, I insisted that the Registrar provide key drafting teams with all possible resources—for example, in the Prlić appeal which is forecast to be completed in the latter part of 2017, I doubled the membership of the drafting team.

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Mr. President, Excellencies, I very much regret the fact that I am not in a position to provide only positive news to you today. As the President of the Tribunal, I accept responsibility for these delays. I urge you, however, to consider the delays I have just discussed in their broader context.

Of course, it is absolutely clear that the Tribunal must continue and redouble its efforts to adopt strategies that reduce any delays in ongoing cases to a minimum— this obligation implicates both the rights of defendants and the resources of the international community. I can assure you that Judges and staff are working diligently to complete judicial work as rapidly as possible, while maintaining our commitment to procedurally just trials and appeals.

At the same time, however, considered through broader lenses, the Tribunal continues to make significant progress. During the reporting period, the ICTY rendered two major appeal judgements: in the large, multi-accused Popović et al. case, and in the complex Tolimir case. By the end of this year, the forecasts provided by presiding Judges indicate that the ICTY will have completed its work on all but two trials and two appeals. While various cases have suffered delays, these can each be counted as a matter of months, and the last cases are still expected to be completed in 2017, as predicted in the ICTY's previous forecasts.

Even more significantly, the Tribunal's contributions to ending impunity for international crimes continue to serve as a momentous symbol of the international community's commitment to bringing justice for crimes committed in the Yugoslav wars, and to the laudable aim of preventing grave crimes, like those that hang so heavily in any historical account of the past century, from being committed again.

I will soon be travelling to the former Yugoslavia to join commemorations of atrocities committed in Srebrenica and elsewhere. I recognize that the work of the ICTY can only ever offer a small measure of solace to the individuals and broader communities most affected by these heinous acts. But even as all acknowledge the limitations of

international criminal tribunals, we must also appreciate the ground-breaking nature of courts like the ICTY. The fact that the ICTY has accounted for every single individual it indicted is a testament to the power of the rule of law. Indeed, I am convinced that the international community's increasing condemnation of grave crimes, as expressed through the establishment and ongoing support of international criminal tribunals, has materially impacted the conduct of war and, it is my sincere hope, reduced the suffering of those affected by conflict.

When the history of the ICTY is written, it is this legacy, not limited delays in projected delivery dates, that will be remembered and, I believe, celebrated.

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I will now turn to the Mechanism.

I am very pleased to confirm that as set out in its May progress report, the Mechanism continues to serve as an example of best practices, completing its judicial and administrative work to a high standard and in an efficient manner. In these efforts, the Mechanism has been fortunate to receive excellent cooperation from the ICTR and the ICTY as it increasingly assumes responsibility for functions once carried out by these Tribunals.

With respect to judicial work, I can report that in December I presided over the panel that rendered the Ngirabatware appeal judgment. This was the first judgement of the Mechanism, and was delivered with no delays to the ambitious schedule previously reported to the Security Council. The Mechanism's Judges have also issued a number of decisions and orders on motions addressing a variety of issues, including matters related to enforcement of sentences, variation of confidentiality protections, and cooperation with national jurisdictions.

I have every expectation that the Mechanism's Judges and small supporting legal team in Chambers will continue to efficiently process ongoing judicial work. In addition, the Chambers of the Mechanism has established rosters and procedures that will allow us to adjudicate upcoming trial or appeal work both efficiently and in a manner that respects the highest procedural safeguards.

In addition to addressing ongoing work, the Judges of the Mechanism adopted a code of judicial conduct last month. This code sets out core principles that will guide Mechanism Judges on issues like independence, integrity, confidentiality, and outside activities. Adoption of the code is a reflection of Mechanism Judges' commitment to the highest ethical standards.

The Mechanism has also been making great progress in assuming responsibility for other ICTR and ICTY functions. Most notably, the Mechanism has made steady progress in creating a small, self-standing administrative capacity in light of the ICTR's imminent closure and the ICTY's continued efforts to transfer responsibilities. These efforts are complemented by the signing of a host state agreement with the Netherlands and the continued implementation of the parallel agreement concluded earlier with Tanzania. Both these countries and Rwanda have offered important assistance to Mechanism offices based in their respective territories.

In addition, the Mechanism has made significant progress in a number of other areas. Construction of our new Arusha building is continuing and on schedule, with our move there planned for the new year. Our archives section is assuming responsibility for an increasing percentage of the ICTR and ICTY's materials, and our monitoring of cases referred to national jurisdictions was recently strengthened when the Kenya branch of the

International Commission of Jurists assumed responsibility for monitoring cases referred to Rwanda.

As I have stated before, two key challenges continue to face the Mechanism.

The first involves the outstanding arrest warrants for the remaining ICTR indictees who have yet to be apprehended, including three who are expected to be tried by the Mechanism. The fact that the ICTY was able to account for all its indictees is a powerful symbol of the international community's determination to end impunity. It is imperative that all members of the international community continue and, indeed, increase their efforts to apprehend the remaining ICTR fugitives, and the Council's leadership in this regard remains essential.

The second challenge facing the Mechanism is posed by persons acquitted by the ICTR or who have completed the sentences imposed by this Tribunal. The Mechanism assumed responsibility for outstanding relocation issues on 1 January 2015. We have adopted a strategic plan setting out ways to address the challenges posed by the issues of relocation in relation to this group of individuals. Our planning focuses on concrete steps that can promote resettlement and also reduce costs to the international community, in keeping with the Mechanism's commitment to efficiency and cost savings. However, we continue to rely on the good efforts of the international community to provide appropriate opportunities for relocation. As I have stated before, it is a fundamental responsibility and humanitarian imperative to resettle the small number of individuals who have been acquitted by the ICTR or completed the sentences imposed on them. Once again, the continued leadership of the Council on this issue is very important.

I cannot conclude my report on the Mechanism without underscoring again the gratitude of its Judges and staff for the enormous support we have received from the ICTR, ICTY, OLA, other UN agencies, and national governments. As we rise to the challenge of serving as an example of best practices in international criminal justice, we recognize that our efforts are successful only because of this continuing support.

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Mr. President, Excellencies, as always, my report today contains descriptions of both progress and challenges. It is perhaps inevitable that institutions with mandates as audacious as those of the international criminal tribunals will never be able to comprehensively meet all the high aspirations of our many stakeholders. But I can assure you that the Judges and staff of the ICTY and Mechanism strive every day to make progress on the inspiring mission we have been assigned. Together with our partners from all over the globe, the ICTY and Mechanism are committed to continuing the fight to end impunity and, through our work, supporting the strengthening of the rule of law on the international level and around the world.

Thank you.