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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)

PROSECUTOR

New York, 05 June 2014

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.

As forecast in my December address, in this reporting period the Prosecution has finished presenting its evidence in all of the remaining trials. We are now well and truly in the final phase of our work. In Karadžić, the Defence case has closed and the parties are now preparing their final trial briefs and closing arguments for late August and September, respectively. Following the close of the Prosecution's case in both Mladić and Hadžić, the respective Trial Chambers denied the Defence motions for acquittal. The Mladić Defence began presenting its evidence on 19 May and the Hadžić Defence case is scheduled to begin on 3 July. The trial judgement in the Šešelj case is still pending.

The Appeals Division is presently occupied with five appeals. In early December last year, oral arguments took place in the Popović et al. case and the final judgement is scheduled for October this year. Oral hearings in three other appeals - Stanišić and Simatović, Tolimir and Stanišić and Župljanin - are scheduled to take place in the second half of this year and early next year. Briefing will resume in the Prlić et al. appeal once the 2600-page trial judgement issued in May 2013 has been translated into English. In addition to appellate work, Appeals Division staff members have been assisting with trial-related work and, when operational demands permit, legacy and capacity-building work.

Our progress in this reporting period has been possible thanks to the dedication of staff members in my office whose continuing loyalty has meant that we could overcome the considerable challenges flowing from downsizing and staff attrition.

Mr. President, Excellencies

The Appeals Judgements earlier this year in the Šainović et al. and Đorđević cases have established two additional legal precedents with a broad and positive significance for both the Tribunal and for international criminal law. First, in both cases, the Appeals Chamber corrected errors at the trial level that resulted in unduly restrictive approaches to assessing whether the accused could foresee crimes of sexual violence. In correcting these errors, the Appeals Chamber has strengthened the foundations for holding senior officials accountable for sexual violence crimes in the midst of a violent criminal campaign. Second, in the Šainović et al case, the Appeals Chamber confirmed that "specific direction" is not a requirement of aiding and abetting, bringing the Tribunal's case law back in line with customary international law.

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Mr. President, Excellencies

I am pleased to say that day-to-day co-operation between my Office and the countries of the former Yugoslavia continues smoothly. Serbia, Croatia and Bosnia and Herzegovina have responded as required to our requests for assistance and have generally facilitated our work on the remaining trials and appeals. We call upon the national authorities to maintain this good co-operation throughout the next reporting period and beyond.

I am also pleased to note that additional co-operation protocols have been concluded between the countries of the former Yugoslavia on war crimes issues and that information exchanges are taking place. We encourage the national authorities to translate the goodwill enshrined in the protocols into more visible action.

When it comes to implementing the National War Crimes Strategy in Bosnia and Herzegovina, the picture is bleak.

As I have reported over the past four periods, very little progress has been made towards finalizing the remaining Category II cases, the last of which my Office transferred to Bosnia and Herzegovina in 2009. Only one indictment in relation to these investigation files was issued in this reporting period, leaving the other seven files pending with no discernible progress made. In April, I had in-depth discussions with representatives of the Prosecutor's Office of Bosnia and Herzegovina, but I did not receive convincing explanations for the absence of relevant activity on the remaining files. This situation cannot continue. The responsible authorities must commit to a dramatic improvement in processing the Category II cases.

More generally, the National War Crimes Strategy in Bosnia and Herzegovina is considerably delayed and a large backlog of cases remains. According to the Prosecutor's Office, around 350 complex cases will be completed by the end of 2018. This is three years after the originally prescribed deadline. Then there is the far larger backlog of less complex cases, many of which still await investigation. Serious action is required if this large volume of cases is to be completed by the 2023 deadline.

The delay does not arise solely from a lack of resources. There is little commitment by the responsible institutions to prioritise war crimes investigations and prosecutions. Symptomatic of this, in the present reporting period, only four requests for evidentiary material from the OTP's databases were made by authorities working on the entity level cases. While this is an improvement over previous periods where no requests were sent, I encourage authorities working on these cases to make far greater use of the material available from my office.

While more resources alone will not solve some of the fundamental problems with the National War Crimes Strategy, my Office welcomes the EU-funded IPA justice budgetary support aimed at strengthening resources for war crimes processing. My Office also recognizes the efforts of the OSCE mission in Bosnia and Herzegovina to set up a new and more coordinated national training programme for war crimes cases. As emphasized in a report prepared on behalf of my Office last year, a comprehensive and co-ordinated training programme is an essential precondition for successfully implementing the National War Crimes Strategy. My Office remains available to work with the OSCE and other relevant partners to integrate ICTY knowledge and expertise into the programme.

Mr. President, Excellencies

My Office is in the process of finalizing the first edition of a paper recording our best practices and lessons learned with respect to investigating and prosecuting sexual violence crimes. We know that sexual violence crimes occurred in shockingly high numbers

during the conflict in the former Yugoslavia and we know that many of these crimes remain unaddressed. We also know that large scale sexual violence crimes continue to characterize ongoing conflicts around the world. We aim to make available our experience over the past 21 years in navigating some of the distinctive obstacles that arise in sexual violence cases. The paper will be of interest to a range of actors, including national authorities in the former Yugoslavia and other countries around the world.

Our work is also reinforcing other efforts presently underway within the international community to elevate the priority accorded to sexual violence crimes and to improve the guidance available to those investigating and documenting such crimes. One such effort is the United Kingdom's Preventing Sexual Violence Initiative launched in May 2012 by Foreign Secretary, William Hague. Representatives of my Office and I will be present at next week's Global Summit in London and we look forward to sharing our insights and expertise as part of this unprecedented dialogue on conflict related sexual violence.

Mr. President, Excellencies

On a similar theme, we are pleased that, within the constraints of our available capacity, the expertise within my Office is being channeled into rule of law capacity-building efforts across the world. Periodically, we have been called upon to advise and assist in post-conflict accountability processes in the Middle East, Africa and South America. We have also assisted other parts of the UN system, such as the Office of the High Commissioner for Human Rights and UN Women. In this way, we have been pleased to reinforce the operational capacity available within the international community for investigating and prosecuting international crimes. To the extent compatible with our core functions of trial and appellate work, we will remain open to further requests to assist in the future.

Mr. President, Excellencies,

In conclusion, as downsizing continues in compliance with the completion strategy, my Office remains firmly focused on the final trials and appeals, which are among the most important and complex in the Tribunal's history.

We are also taking a deep and reflective look at the practices we have developed and the lessons we have learned over the past 21 years. We know there is increasing interest among many stakeholders in accessing this information and we are committed to sharing it. We will continue encouraging national authorities, especially in Bosnia and Herzegovina, to take full advantage of the resources available to them within my Office to ensure accountability for the crimes committed. More broadly, we know that finding creative and effective new strategies for building national capacity is a priority area if we are to construct a more coherent and complete international justice system. We will ensure that our experience is available as a building block for that process.

Thank you.