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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

Arusha, 2 July 2012

Remarks of President Theodor Meron

Opening of the Arusha Branch of the Mechanism for International Criminal Tribunals

2 July 2012

Excellencies, Dear Colleagues, Ladies and Gentlemen:

Thank you all once again for joining us to mark the commencement of the first branch of the Mechanism for International Criminal Tribunals.

Today's opening of the Mechanism's first branch would simply not have been possible without the tremendous dedication of our colleagues at the Office of Legal Affairs, the Principals and staff of the ICTR, the Tanzanian government, and, of course, the Prosecutor and Registrar of the Mechanism itself. I thank them all very much for their tireless efforts to date and for all that they will continue to do to ensure a smooth transition in the days and months ahead.

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The Mechanism for International Criminal Tribunals is not the first international judicial institution to commence operations here in Arusha, of course. Nearly two decades ago, following the horrifying waves of violence that swept through Rwanda in 1994, the United Nations Security Council established the ICTR to bring to justice persons responsible for

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genocide and other serious violations of international humanitarian law, and thus to contribute to ensuring that such violations are halted and effectively redressed.

The ICTR's founding itself came little more than a year after the creation of the International Criminal Tribunal for the former Yugoslavia—the first, truly international criminal court of the modern era, and the substantive expression of the international community's aspiration that justice—not retribution or impunity—should be the response to grave atrocities.

While the founding of the ICTY represented a watershed moment, the establishment of the ICTR was no less significant. On its own, the ICTY would have been a brave but isolated experiment; the creation of the ICTR made resoundingly clear that ending impunity was not a passing interest for the international community, but rather an enduring principle that would lead to sustained, concrete action. Put differently, if the ICTY opened the door, it was the ICTR that confirmed that the world had entered a new era of accountability.

In the years that followed their founding, the ICTR—together with the ICTY—have demonstrated through dozens of trials and appeals that it is possible to bring to justice those accused of terrible crimes, to apply international criminal and humanitarian law in actual cases—and to do so fairly and impartially.

Time and again, the trials before the ICTR have shown that no person—however high or powerful a leader he or she once was—is beyond the reach of justice.

And through its patient and methodical consideration of case after case—of courageous witness testimony, reams of evidence, and hours of argument—the ICTR has helped to

construct a powerful and poignant record of the agonizing horror—of the genocide—that engulfed Rwanda in 1994.

Indeed, it is thanks to both the ICTR and ICTY that the world—and in particular those men, women, and children who lived through the almost indescribable tragedies in Rwanda and the former Yugoslavia—has a fuller understanding of what happened there. With an understanding of this history, we are all better prepared for the fight to ensure that such atrocities never happen again.

More broadly, it is thanks to both the ICTR and the ICTY—and the hundreds of decisions and judgements issued by the Tribunals in the last two decades—that the contours of international humanitarian law have become far clearer than they once were.

There is now no question that rape and other forms of sexual violence may amount to genocide—a principle first articulated by the ICTR in the ground-breaking *Akayesu* judgement. It is now well established that not just senior military leaders but civilians and political figures may be held accountable for the actions of their subordinates and that heads of state can and will be brought to justice for serious crimes committed under their authority. And there can no longer be any debate that fundamental humanitarian principles which underlie international humanitarian law as a whole are applicable even when an armed conflict is waged within the borders of a single State.

In sum, through their achievements—both inside the courtroom and in myriad other ways—these two pioneering tribunals have served as important models and, together, they have laid vital legal, procedural, and institutional groundwork for the other international criminal courts and countless national judicial initiatives that have followed.

Indeed, without the success of the Tribunals it is unlikely that a permanent International Criminal Court would have received the necessary political support to become the reality that it is today. Without a doubt, the establishment of both the ICTR and the ICTY led to a profound change in the landscape of international criminal justice.

All that has been achieved by both Tribunals is due in large measure to the dedication and idealism of their Judges and staff. Without doubt, it is the staff of the ICTR who have provided the backbone of its activities, both here and in Kigali. And as the ICTR moves towards the completion of its mandate, I pay tribute to all of those staff who have been central to its success and who are continuing to support the mission of the ICTR so faithfully and well.

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It is very fitting that we pause and reflect upon these achievements of these two, great Tribunals as we celebrate the opening of the Mechanism for International Criminal Tribunals today. And it is particularly appropriate that we recall all that the ICTR and the ICTY have accomplished in light of the challenges they faced at the time of their creation.

These two Tribunals were called upon to establish comprehensive, functional, and fair judicial systems from the ground up. They were required to build cooperative relationships with States, to resolve problems related to the gathering of evidence from afar, and to develop effective means to protect victims and witnesses. They also had to find ways to ensure adequate legal representation of accused persons and to articulate and apply fair rules of procedure and evidence so as to ensure just proceedings.

Today, as the Mechanism for International Criminal Tribunals assumes responsibility for certain key functions of the ICTR, it faces some of the same challenges that the ICTR

confronted in its early years, as well as new and special challenges. It is, after all, a new type of institution—a new experiment in international criminal justice.

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Foremost among the key functions of the ICTR which is being transferred to the Mechanism is the maintenance of protections granted to victims and witnesses by the ICTR.

The judgements of the ICTR would not have been possible without the bravery of the victims and witnesses who gave evidence. These individuals, who believed that justice must be done and were courageous enough to come before the Tribunal, gave evidence against those accused of the most horrendous crimes, often persons who once enjoyed high political standing in their communities. In return, the ICTR undertook to ensure that these victims and witnesses would continue to receive protection from retribution for their testimony.

This undertaking is of profound importance—not just for the individuals involved and for their families, but for international criminal justice as a whole—and the Mechanism will carry out its responsibilities toward protected victims and witnesses without interruption. The Mechanism will ensure that adequate support networks are provided to all protected victims and witnesses and that any person who attempts to interfere with those victims and witnesses will be brought to account.

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Building upon the important work of the ICTR, the Mechanism is also assuming responsibility for the critical task of ensuring that the remaining three ICTR fugitives whose cases have not been referred to national jurisdictions are called to account. We cannot afford to let those accused of the most horrific of crimes wait out criminal justice.

We cannot afford to let the remaining fugitives—or anyone else—assume that the passage of time signals indifference or the weakening of the international community’s resolve to ensure accountability for the worst of crimes. If impunity is allowed to flourish once more, many of our achievements over the past two decades will be fundamentally undermined.

As President of the Mechanism for International Criminal Tribunals, I pledge to do my utmost to ensure—together with Prosecutor Jallow—State cooperation in the arrests and trial of outstanding fugitives. The Mechanism must—and will—work with States to ensure that individuals who have been indicted by the ICTR but not yet arrested will be brought to justice.

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When—not if, but when—this occurs, the Mechanism stands ready to try these remaining cases, in accordance with the terms of its Statute.

It likewise is prepared to hear any appeals from judgements or sentences issued by the ICTR that fall within the Mechanism’s competence as well as any requests for review of judgement, as mandated by the Security Council.

And it is now the responsibility of the Mechanism—and specifically of the Mechanism’s President—to supervise the enforcement of sentences imposed by the ICTR and to decide on requests for pardon or commutation of sentence, including from convicted persons already serving sentences.

Importantly, in conducting these proceedings—as well as all other matters that come before the Mechanism—the Mechanism will act in accordance with a Statute and Rules of Procedure and Evidence that hew closely to those of the ICTR.

Such normative continuity is not simply a matter of convenience or efficiency. It is, rather, in service to the principles of due process and fundamental fairness—principles that have been at the core of the judicial work of both the ICTR and ICTY for nearly two decades, and will be central to the judicial work of the Mechanism for International Criminal Tribunals for years to come.

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Of course, as we are all too aware, the ICTR was never intended or equipped to try the cases of all persons accused of the commission of horrendous crimes during the Rwandan genocide. The Mechanism will ensure that the valuable assistance to national jurisdictions long supplied by the ICTR continues unabated by, among other things, granting access to evidence and providing assistance with the tracking of fugitives whose cases have been referred to national authorities.

Similarly, those cases that the ICTR has referred to national judiciaries will not be forgotten by the Mechanism. As it commences its operations, the Mechanism takes over the competence of the ICTR to monitor the progress of those cases and assumes the important responsibility of ensuring their fair and impartial adjudication.

In this respect, I note the recent referrals of eight cases by the ICTR to Rwanda and, in particular, the great strides that have been taken by the Rwandan authorities in amending their legislation to ensure the competence of the Rwandan courts to hear these cases in accordance with the highest standards of due process in their conduct.

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The cases of the ICTR have left an undeniable and indelible imprint on international law. But the essential building blocks upon which the ICTR's trials were based—the documentary and testimonial evidence at the foundation of every case—and the judgements and decisions issued at trial and on appeal make an equally important contribution to the historic record.

The fact that the Security Council envisaged the preservation and management of the ICTR's archives as one of the essential functions that should pass to the Mechanism and should continue even after the ICTR closes its doors only serves to underscore this importance.

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As I conclude my remarks, let me emphasize that in gathering here today we are not mourning the replacement of one institution by another. The ICTR will continue to carry out its mandate in accordance with both its Statute and with the terms of Security Council Resolution 1966, and the Mechanism will work alongside it, benefiting and learning from the tremendous efforts and experience of the Judges and staff who continue to devote themselves so selflessly to the ICTR's mission.

Instead, today is about renewal.

Today we mark the renewal of the international community's commitment to the fundamental and unwavering principle that impunity for the worst of crimes may never be allowed to reign.

We mark the renewal of the international community's commitment—and the commitment of both the ICTR and ICTY—to ensuring that national jurisdictions which are

ready and able to investigate and prosecute serious crimes receive the assistance needed to do so.

We mark the renewal of the commitment undertaken by the ICTR to protect those victims and witnesses who gave evidence in its proceedings.

We mark the renewal of our commitment that those individuals who stand accused or who have been convicted will be treated in accordance with the highest standards of procedural and substantive fairness.

And we mark the renewal of our collective commitment to ensure that the evidence, testimonies, and other materials gathered by the ICTR—a valuable part of the history of the Rwandan genocide—will remain available and accessible for the people of Rwanda and of the world, and for generations to come, so that they may never forget why it was that the ICTR was created. And so that we may learn from our past and ensure that atrocities like those that occurred in Rwanda in 1994 never happen again.

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