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l'ex-Yougoslavie

STATEMENT

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PRESIDENT

The Hague, 8 June 2016

Address to the U.N. Security Council
Judge Carmel Agius
President, International Criminal Tribunal for the former Yugoslavia
8 June 2016

Mr. President, Excellencies, Ladies and Gentlemen:

I am deeply honoured to be addressing the Security Council once again as President of the International Criminal Tribunal for the former Yugoslavia and to do so under the Presidency of France. I would like to thank the President for the attention his country has given, and continues to give, to the matters that the Tribunal currently has pending before the Council.

In the Tribunal's Completion Strategy Report of 17 May 2016, Members will find a comprehensive statement of activity covering the past six months. Further to that report, please allow me to give a brief overview of the current status of the Tribunal and measures undertaken to complete its mandate, as well as to ensure a smooth transition to the International Residual Mechanism for Criminal Tribunals.

We are reviewing the performance of the Tribunal's completion strategy at the best possible time with regard to results. I am pleased to report that, since my last presentation before you in November of last year, every single case scheduled to be completed within the reporting period has been disposed of on time.

Judgements were delivered in the appeal case of Stanišić & Simatović, and in both the trials of Radovan Karadžić and Vojislav Šešelj. In addition, on 14 December 2015, the Judges of the Appeals Chamber delivered the final judgement in the largest appeal case ever from the International Criminal Tribunal for Rwanda ("ICTR"), namely the Nyiramasuhuko et al. case, otherwise known as the "Butare" case.

Following these judgements, only two trial cases, involving two individuals, and two appeal cases, involving eight individuals, are ongoing. One of the appeals, namely the Stanišić & Župljanin case, is scheduled to be finally disposed of on 30 June 2016, as I promised to you in November.

In relation to the trial of Mr. Goran Hadžić, you will recall that on 26 October 2015, the Trial Chamber found, by majority decision, that the accused was fit to stand trial but decided to stay the proceedings for an initial, renewable period of three months and to continue his provisional release. The Prosecution appealed that decision and, on 4 March 2016, the Appeals Chamber granted the appeal in part. The Appeals Chamber invited, inter alia, the Trial Chamber to reassess as promptly as possible the accused's fitness to stand trial. On 24 March 2016 (with a public redacted version filed on 5 April 2016), the Trial Chamber found, by majority decision, that the accused was unfit to stand trial and stayed the proceedings indefinitely.

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I can share with members of the Security Council that I have been monitoring the developments of the Hadžić case throughout this entire period, mainly due to the advanced stage of the accused's illness. There have, however, been developments since the Completion Strategy Report that I would like to update you on. First, concerning the judges on the Bench, I reported to you in May that one judge was transferred as of 1 May 2016 to the International Criminal Court to assume his functions as judge there, while remaining available at the ICTY for any pending matter on the Hadžić case. At the same time, the two other judges on the Bench indicated their readiness to explore cost-neutral solutions to their remuneration during the indefinite stay of trial. Arrangements were in the process of being made with both judges when, on 19 May 2016, the Prosecutor filed a motion for formal termination of the proceedings in the Hadžić case. The Defence has responded and also agrees that the case should be terminated. I expect the Trial Chamber to issue a decision soon, hopefully before the end of this month.

Following the delivery of appeal judgements in the Stanišić & Župljanin case and the likely termination of the Hadžić case, the terms of office of four judges will come to an end and the Tribunal will be left with a total of seven judges. In line with existing downsizing plans, staff members assigned to these cases will either depart the Tribunal following the completion of the cases or be reassigned to other cases.

Regarding the Mladić trial, I am very pleased with its progress and can confirm that the existing forecast of November 2017 remains unchanged. In relation to the Prlić et al. appeal, I again wish to draw to your attention that this case is the most voluminous appellate case in the history of the Tribunal, and will require not only time, but adequate, uninterrupted resources. I can assure you that the Appeals Chamber, with myself as Presiding Judge, remains fully committed to completing this case by November 2017. I am pleased to note that the projected completion date of November 2017 has remained unchanged since it was first reported back in the November 2012 Completion Strategy Report and confirmed in all subsequent reports.

Let me now move on to contempt matters. As you are aware, following the arrests of Ratko Mladić and Goran Hadžić in 2011, there are no outstanding ICTY fugitives charged with serious violations of international humanitarian law. However, in a pending contempt case, there are currently three ICTY indictees whose arrest warrants are yet to be executed: Petar Jojić, Jovo Ostojić, and Vjerica Radeta. I emphasise that the arrest warrants were issued over 16 months ago, on 19 January 2015. On 18 May 2016, the Representative of the Republic of Serbia informed the Trial Chamber of a first instance ruling of the same date, issued by a single judge of the War Crimes Chamber of the High Court in Belgrade, which held that the conditions for surrendering and arresting the accused had not been met. This ruling was confirmed on 18 May by a chamber of three judges of the same Court, and the Republic of Serbia communicated both rulings to the Tribunal on 20 May 2016.

Interference with the administration of justice strikes at the heart of what, together, we have painstakingly endeavoured to build since the birth of the Tribunal, and undermines the Tribunal's ability to carry out its work efficiently and fairly. Significantly, the single Judge in Serbia who has now decided that the conditions for transfer of the three indictees have not been met, is the same judge who eight years ago in the case of Petković decided exactly the opposite. Something is not right. Significantly also, and contrary to its own previous decisions, the High Court in Belgrade has now - to my enormous surprise - affirmed that Serbia has no duty to cooperate with the Tribunal on matters of contempt. This is very troubling and makes it imperative for me to express my serious concerns. I consider this development to be a grave step backwards in matters of cooperation with the Tribunal and an unacceptable disregard of the primacy of Tribunal law over the domestic law of Serbia as intended by the Security Council.

The Republic of Serbia has a duty to fully cooperate with the Tribunal in accordance with Security Council resolutions and the Statute of the Tribunal, which as I said establishes primacy over Serbian domestic law. This means that Serbia has the duty to take any measures necessary to implement the provisions of both Security Council resolutions and the Statute, including the obligation to comply with requests for assistance or orders issued by Trial Chamber under Article 29 of the Statute. Concluding these contempt proceedings is of utmost importance for the Tribunal. I repeat that interference with the administration of justice undermines the integrity of our entire system. I remain hopeful that if there is good will, a solution can and will be found which will ensure compliance. On the Tribunal's part everything is ready to ensure a speedy and fair trial once the three indictees are transferred to the Tribunal.

Turning to other matters, as you can see our trial and appeal activity is in the final stretch. Given the Tribunal's results in the last reporting period, any concerns about the Tribunal's commitment to concluding proceedings by the end of 2017 should be put to rest. At the same time, one serious hurdle remains - the matter of staff retention. As previously reported, this is an enormous challenge, which cuts across all areas of the Tribunal's operations. While we are fully committed to the downsizing process, I must again stress the urgent need for the Tribunal to be able to retain our experienced and specialized staff members in order to complete our work. In our penultimate year of operation, experienced staff members continue to leave the Tribunal to take up more secure employment, and there is no doubt that the rate of attrition will increase as the end draws near.

The Tribunal is doing all it can to retain its staff, but without appropriate assistance and concrete measures it may face serious problems. The impact of staff attrition will be particularly damaging, especially in the second half of the final year of the Tribunal. Past Presidents and I have called upon the Secretariat, the Security Council, and the General Assembly to assist us in implementing strategies to retain staff. I again call upon you to assist us, before we reach the point of no return. As President of the Tribunal, I have the ultimate responsibility of ensuring that all cases are concluded and that the Tribunal itself is closed on time. I also have the responsibility to ensure that our highly qualified administrative and judicial staff are working in motivating conditions that are also satisfactory at the contractual level. Affording the Tribunal appropriate predictability - through providing staff with incentives such as an end-of-service grant - is a necessity, if we are to maintain a high quality of staff and the capacity to conclude all judicial work on time. This last chapter of the life of the Tribunal presents exceptional operational circumstances that call for or require exceptional remedies.

I take this opportunity to acknowledge the sterling work of my colleagues, the judges of the Tribunal, as well as the immense contribution made by the Tribunal's staff in ensuring that cases are finished in time. In particular, I would like Security Council members to be aware of the critical role staff members have played towards meeting the completion dates in the Stanišić & Simatović, Butare, Karadžić, and Šešelj cases during the reporting period. I also want to thank the staff members in the Stanišić & Župljanin appeal, over which I preside, who have been working literally around the clock to ensure that the 30 June 2016 target date is met. While this will not be the last hardworking team at the Tribunal, I wish to go on record on behalf of my colleagues on the Stanišić & Župljanin Bench, in praising the team's tireless efforts and personal sacrifice in the name of international justice. We have been very fortunate to work with such dedicated and loyal staff. For everyone working at the Tribunal, our work does not represent just a paid service, but is the fulfilment of an ideal; a contribution to justice and the promotion of peace and security in the former Yugoslavia.

Mr. President,

As President of the Tribunal I am determined to strengthen and consolidate the Tribunal's image, particularly throughout the former Yugoslavia. In order to ensure that the Tribunal has a truly lasting impact, its work must be complemented by outreach and capacity building efforts to increase local communities' access to information about its achievements, and to promote a greater understanding of the Tribunal's work and its contribution to peace and justice in the region. While primarily focusing on its core business, the Tribunal has also been diligently working on these matters. It is my intention to highlight and increase these efforts during the Tribunal's final biennium.

The Tribunal is engaged in an historic endeavor and must continue to be supported until the very end. We have come a long way in cementing the rule of international law and safeguarding fundamental principles of peace and justice. Despite the challenges that the Tribunal is facing, we stand committed with the Security Council to ensure the efficient and orderly closure of this institution by the end of 2017.

Let me conclude by expressing, on behalf of all the judges and staff members of the ICTY, our sincere appreciation for the continuous support of the esteemed Governments represented on the Council. I would also like to thank the United Nations Secretariat for its invaluable advice and support, especially the Office of Legal Affairs.

Our joint efforts to bring to justice those who committed the most atrocious crimes in the former Yugoslavia are sending a powerful message to the world. Even if more than two decades have passed, and even if it has been a time-consuming and laborious process, we must and we will continue to fight against the culture of impunity and for accountability and justice.

Thank You.
