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Nations Unies



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)

PRESIDENT

The Hague, 9 November 2017

Address to UN General Assembly
Judge Carmel Agius
President, International Criminal Tribunal for the former Yugoslavia
9 November 2016

Mr President,

I thank you for giving me the floor, please allow me to begin by extending my sincere congratulations to you on your election as President of this Honourable Assembly. I wish your Excellency a successful tour of duty.

Excellencies, Ladies and Gentlemen,

This is the first time that I appear before the United Nations General Assembly in my capacity as President of the International Tribunal for the former Yugoslavia (“ICTY” or “Tribunal”). It is an immense honour for me to address the distinguished members of this Assembly and it is my pleasure to present to you the Twenty-Third Annual Report of the ICTY.

Almost exactly one year ago I assumed my new functions as President of the ICTY. However, as most of you know, I have been a Judge of the Tribunal since 2001 and have previously served as Vice-President for four years, before being elected as President. The Tribunal’s new leadership also includes a new Vice-President, my esteemed Colleague from China, Judge Liu Daqun. Today I also wish to thank my predecessor, Judge Theodor Meron, with whom I continue to work very closely in his capacity not only as Appeals Chamber Judge, but also as President of the International Residual Mechanism for Criminal Tribunals (“Mechanism”). This is particularly relevant because the report before you not only details the progress made in the last year towards the completion of the Tribunal’s mandate, but also the transition to the Mechanism.

Excellencies,

I am truly fortunate to have taken office at a time when the Tribunal is fully operational, strong and well-prepared for its final chapter. We have reached this state thanks to the leadership of my predecessors, the relentless efforts of my fellow Judges, and the superb staff that this institution has been blessed with. The Tribunal has now concluded proceedings against 154 accused of the 161 persons indicted for serious violations of international humanitarian law, and there are no remaining fugitives charged with such violations. In a pending contempt case, however, there are three accused persons whose arrest warrants are yet to be executed.

As we prepare to close in 2017, the Tribunal has continued its diligent efforts to complete the remaining judicial work expeditiously, while respecting due process and the fair trial rights of the accused, which must remain paramount. The work undertaken throughout

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the reporting period ending 1 August 2016 saw more cases disposed of than in the last reporting period, with judgements issued in two cases at the trial level, and two cases on appeal. In addition, the Judges of the Appeals Chamber delivered their judgment in the final and biggest ever appeal case from the International Criminal Tribunal for Rwanda. A further trial case was terminated in July of this year following the death of the accused.

Excellencies,

Today I wish to outline for you the five main challenges that the ICTY will face in the next twelve months:

The first challenge is ensuring that the remaining cases stay on track for a timely and responsible closure, as well as a smooth transition to the Mechanism.

Under my leadership, the Tribunal is committed to completing its remaining judicial work as quickly and efficiently as possible. The Judges and legal staff are now focused on one remaining trial, namely that against Ratko Mladić, one remaining appeal, the Prlić et al. case, and one contempt case, the Jojić et al. proceedings. While in number of cases alone, this might not seem like much work, I can assure you that the ongoing Mladić case is one of the Tribunal's most complex trials, and that the Prlić et al. case is the largest appeal in the history of international criminal justice. At the same time, as the Tribunal concludes its judicial work, certain essential functions continue to be transferred to the Mechanism.

In light of the projected completion dates of the Mladić and Prlić et al. cases, being the end of November 2017, a request for a final extension of the terms of office of the Judges was recently made before the Security Council. I am hopeful that Member States will support this request, as the extension of Judges' mandates is indeed crucial if the Tribunal is to complete its remaining work on time and ensure an orderly closure.

The second challenge is taking all necessary measures to encourage the retention of all staff at the Tribunal and prevent accelerated staff attrition.

As we near the end of the Tribunal's mandate and continue to work very hard to complete the final cases without delay, all Organs of the Tribunal have cooperated closely to address the escalating challenges of staff attrition and staff morale. In this regard, the Tribunal is coordinating with the Department of Management to explore possible further measures to address this critical situation. It is incumbent upon me to take this opportunity to underscore that the staff of the Tribunal are highly dedicated, talented and professional individuals, and it is thanks to their enormous efforts and contribution that we continue to make good progress in the remaining cases. However, the fact remains that as the Tribunal nears its ultimate closure, staff members at all levels will continue to depart from the Tribunal for more secure employment elsewhere. While this is disappointing, it is understandable, and indeed they are free to do so.

The Tribunal urgently needs the assistance of Member States in addressing these acute staffing challenges and urges them to give serious and favourable consideration to measures which would prevent accelerated staff attrition. Exceptional circumstances require exceptional remedies. Further, the Tribunal hopes that Member States will continue to offer other forms of staffing assistance to reinforce our work, as the Peoples' Republic of China has generously done in 2016. I recently had the opportunity to host Chinese diplomats, fellows and staff in my Chambers in appreciation of this support and today I take the opportunity to publicly acknowledge the efforts of the Chinese Government in this respect. Still, a more comprehensive solution is needed, which will involve finding a way of keeping until the end experienced staff who know the cases and the Tribunal's working methods.

The third challenge is that of defending the integrity of the Tribunal, which includes enforcing a zero-tolerance policy in respect of witness interference.

The role of witnesses is central to any international criminal justice system. Over the course of the past 23 years, the ICTY has heard 4,670 witnesses; far more than any other war crimes tribunal in modern history. At the Tribunal we have a specially established unit aimed at supporting and protecting witnesses. So far the ICTY has managed to prosecute and convict several persons responsible for witness interference, including intimidation and tampering. I cannot emphasise enough that any interference with the administration of justice not only undermines the integrity of proceedings, but also has a chilling effect on actual and potential witnesses. International courts and tribunals must therefore continue to take a decisive stand against witness interference and enforce a zero-tolerance policy. Contempt trials have a crucial role to play in this respect and total support by this institution is imperative.

As Member States will be aware, in the *Jojić et al.* contempt case, the accused Petar Jojić, Jovo Ostojić and Vjerica Radeta are charged with four counts of contempt of court in relation to alleged witness intimidation in the *Šešelj* case. The Republic of Serbia has yet to execute their arrest warrants, which were issued over 21 months ago. The Tribunal appreciates that political sensitivities may arise in certain circumstances as a result of cooperating with the ICTY. However, these can never constitute an excuse for failing to cooperate with the Tribunal, when such cooperation is a responsibility flowing from the Statute of the Tribunal itself and reflects the desire of the Security Council that the fight against impunity remains meaningful. The Tribunal's next steps regarding Serbia's non-cooperation will be communicated to the United Nations Security Council in December.

The fourth challenge involves promoting the ICTY's image and engaging in discussion to consolidate the shared legacy of both the Tribunal and the United Nations.

As the Tribunal prepares to close in December 2017, ensuring that its work and achievements are accessible and impactful for stakeholders in the region of the former Yugoslavia - and abroad - is more important than ever before. In order to best utilise this crucial remaining time, the ICTY has developed an initiative entitled "ICTY Legacy Dialogues", which will consist of a series of events both this year and next, designed to enable others to build on the achievements of the Tribunal. Each event will aim to engage with actors in the former Yugoslavia and elsewhere who can utilise the ICTY's experience to continue to develop accountability for international crimes.

These encounters are planned to take place in Sarajevo, The Hague and New York, and will be designed as dynamic, interactive dialogues. We are counting on your full participation, as what the Tribunal will leave behind after December 2017 is not merely its own legacy, but primarily is the legacy of the United Nations in its fight against impunity. The Tribunal's experience has been a ground-breaking, challenging and rewarding journey in international humanitarian law and I barely need to remind you that what amounts to a success for the Tribunal is even more so a success for this Organization as a whole, and for international justice.

The fifth and final challenge is supporting and enabling national jurisdictions to adjudicate international crimes, including through enhancing regional cooperation.

In accordance with the Completion Strategy endorsed by the Security Council, the ICTY has focused its work on the prosecution of the most senior leaders while referring a number of cases involving intermediate and lower-rank accused to national courts in the countries of the former Yugoslavia. These referrals have helped to strengthen the

capacity of national courts to handle core international crime cases, ensure fair trials in accordance with international standards, and consolidate the rule of law.

With the completion of the Tribunal's mandate approaching, accountability for these crimes now depends on national prosecution offices and judiciaries. Within existing capacities, the Tribunal is committed to assisting national authorities in the former Yugoslavia to expeditiously and effectively handle the large number of remaining war crimes cases. The Tribunal has also strongly supported efforts to enhance cooperation between the states of the former Yugoslavia, as regional cooperation is an essential step in combating impunity, securing justice for all victims and rebuilding trust in the region.

Excellencies,

In closing, on behalf of the entire Tribunal, I wish to express our deep gratitude to your governments for continuing to support our work. I would also like to acknowledge the tremendous support of the Office of Legal Affairs, which reflects the Legal Counsel's unwavering commitment to international criminal justice, as well as the Permanent Representative of Uruguay, together with his team, for so ably chairing the Security Council's Informal Working Group on International Tribunals.

In addition, I take the opportunity to pay tribute to outgoing Secretary-General H.E. Mr Ban Ki-moon for his dedicated efforts in fostering the age of accountability, and to congratulate H.E. Mr António Guterres on his appointment as the next Secretary-General.

With only one trial, one appeal and one contempt case remaining, the Tribunal's mandate is nearly complete - though it is not over and we face some formidable challenges in the coming year. I have faith that, through the continued efforts and support of the international community, this bold experiment in international justice will successfully conclude on time and, in the years to come, will continue to serve as a reminder of what is possible in the fight against impunity.

Thank you very much.