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for the former
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Tribunal Pénal
International pour
l'ex-Yougoslavie

STATEMENT

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PRESIDENT

The Hague, 5 December 2013

Address to the U.N. Security Council

Judge Theodor Meron

President, International Criminal Tribunal for the former Yugoslavia

President, Mechanism for International Criminal Tribunals

5 December 2013

Mr. President, Your Excellencies, Ladies and Gentlemen:

It is an honour for me to appear before you again as President of the International Criminal Tribunal for the former Yugoslavia and as President of the Mechanism for International Criminal Tribunals. I congratulate His Excellency Ambassador Gérard Araud of France for his country's assumption of the Presidency of the Security Council. France has a distinguished record of supporting international justice and I wish it every success in its Presidency.

I appear before you today in two capacities: as President of the ICTY and of the Mechanism. Written reports concerning both institutions were submitted to the Council last month. In my remarks today, I wish to focus on the most noteworthy issues detailed in those written reports.

Before doing so, however, I would like to take this opportunity to express my gratitude once again to the Security Council's informal working group on the ad hoc Tribunals. In particular, I would like to recognize the exceptional leadership of Guatemala over these last two years. Guatemala's support for the Tribunals and for the Mechanism during this critical period of transition has been sustained, constructive, and truly appreciated. I would also like to recognize the continuing support and assistance provided to the ICTY and the Mechanism by the Office of the Legal Counsel.

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Mr. President, Excellencies, please allow me to first update you on the progress being made by the ICTY towards the completion of its mandate and its closure.

The Tribunal has continued to make progress in completing the last cases before it. Since my last completion strategy report, the Tribunal has rendered five judgements. In the Trial Chambers, judgements were rendered in the cases of Prlić et al. and Stanišić and Simatović. In addition, the Appeals Chamber rendered a judgement in the Rule 98 bis appeal in the Karadžić case. Finally, one contempt trial judgement and one contempt appeal judgement were also rendered.

Forecast judgement delivery dates remain unchanged in seven of the Tribunal's eleven remaining cases. In particular, forecasts for the delivery of appeal judgements in the cases of Popović et al., Stanišić and Simatović, Tolimir, Stanišić and Župljanin, and Prlić et al. have not changed. The Hadžić trial also remains on track and is expected to be completed by the end of 2015. The Mladić trial is likewise proceeding apace and is expected to conclude by mid-2016, as previously forecast.

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The delays in three of the remaining four cases are of a very limited nature. The delivery of two appeal judgements—in the multi-accused case of Šainović et al. and in the case of Đorđević—has been delayed by one month. The appeal judgements in these cases, originally forecast for December 2013, are now scheduled to be delivered on 23 and 27 January 2014, respectively. These short delays have been the result of various factors, including the complexity of the cases and the heavy workload of the Judges involved.

The Karadžić trial judgement, originally planned for July 2015, is now forecast to be rendered in October 2015. The delay in this case is attributable to the Appeals Chamber's Rule 98 bis judgement rendered in July of this year. In this judgement, the Appeals Chamber reversed the Trial Chamber's decision to acquit Mr. Karadžić on Count 1 of the Indictment against him, and directed the Trial Chamber to determine Mr. Karadžić's relevant culpability after hearing defence evidence. Following the Appeals Chamber's ruling, the Trial Chamber determined that an additional three months were necessary for further preparation and presentation by the defence.

Finally, the conclusion of the trial in the Šešelj case has also been delayed. The Trial Chamber in that case had previously issued an order scheduling judgement delivery on 30 October 2013. However, in July 2013 the accused filed an application for disqualification of one of the Judges in his trial. A panel of Judges appointed to consider the application upheld the application by majority, and another Judge was subsequently appointed to the trial bench. This newly appointed Judge is currently familiarizing himself with the trial record and reviewing related documents. Once he completes this process, the trial bench will be in a position to decide on next steps in the case. I will, of course, provide more information about this case in my next completion strategy report.

As set out in my report, almost all ICTY cases will have been completed by 31 December 2014. Of the six cases that will not be concluded by then, half involve the trials of late-arrested accused—Messrs. Hadžić, Karadžić, and Mladić. In addition, judgements in two appeal cases, Tolimir and Stanišić and Župljanin, are forecast to be delivered in the first few months of 2015. Finally, the multi-accused case of Prlić et al. is expected to be completed in mid-2017. I note that in this latter case, the trial judgement was only rendered in late May 2013 and is very voluminous, numbering approximately 2,500 pages. The case also involves a large number of appellants and expected appellants. These factors contribute to the comparatively late forecast delivery date for the appeal judgement.

Mr. President, Excellencies, of course I am sorry that certain cases have been delayed and that we will not be able to complete all ICTY judicial work by 31 December 2014. I note, however, that several of the delays that I have reported and our inability to complete all ICTY judicial work by the end of 2014 are directly attributable to factors outside the case management process, and reflect the inherent uncertainty in predicting the time needed to complete judgements in highly complex cases as well as previous uncertainties as to which cases would transition to the Mechanism on appeal.

Looking forward, the Tribunal is making every effort to ensure that forecast completion dates for cases remain on schedule. In particular, the Tribunal's Chambers are coordinating closely with the Registry to ensure that the significant reductions in personnel and a variety of ancillary services planned for the next biennium do not adversely impact our ability to complete trials and appeals in an efficient and fair fashion. I remain, as ever, tremendously appreciative of all the hard work and dedication shown on a daily basis by the many talented staff members employed by the Tribunal.

I note, however, that staff morale continues to be affected by the knowledge that many staff members' contracts will not be renewed. I have been working with the Tribunal's

Registrar and others to take a variety of measures to bolster morale. Staff members nonetheless continue to seek more secure employment elsewhere, and staff departures pose additional challenges as we strive to maintain previously forecast judgement delivery dates.

As I have previously informed this Council, other potential risks to the timely completion of trials and appeals stem from the unique circumstances of the Tribunal, which is located thousands of kilometres from the scene of alleged crimes, required to translate a myriad of documents into multiple languages, and called to handle volumes of evidence that are almost unheard of in domestic criminal prosecutions. The Tribunal has developed robust systems and processes to address these challenges. However, especially in a downsizing environment and even as we take the practical steps necessary to ensure the Tribunal's orderly closure, I remain particularly vigilant to ensure that services necessary to the Tribunal's functioning are retained long enough that they can help to ensure that trials and appeals are completed in accordance with the schedule previously forecast.

In this connection, I would like to note that the terms of office of all of the ICTY Judges expire at the end of this month, and Security Council action is needed. My requests of 30 October and 19 November asked that the Judges' terms of office be extended through the period in which their last trial or appeal is expected. In making such requests, I was guided by consideration of efficiency and maximum transparency. And indeed extensions that correspond to the lengths of the judicial proceedings on which the Judges are engaged will bolster the Tribunal and also reduce demands on the Security Council's valuable time. I am grateful for your consideration of my requests.

Before concluding my report on the ICTY, I would like to share with you certain reflections based on my visit to Bosnia and Herzegovina last week. I held meetings with victims from various communities, and participated in a conference marking the twentieth anniversary of the Tribunal. Discussions at this conference confirmed the importance of the Tribunal's work in the former Yugoslavia. However, conversations during my visit also underscored for me that the Tribunal's work, important though it is, cannot address all the needs of the region. Instead, the international community needs to support additional, complementary initiatives which provide for reconciliation through dialogue and restitution.

In particular, I would like to urge member states to support efforts to provide reparations and support for victims of the wars in the former Yugoslavia. Many of these victims continue to face serious challenges related to injuries they suffered during war. More broadly, I was particularly encouraged by the conversations I took part in during a meeting held at the Prijedor area. Local representatives of victims' associations from different communities undertook a dialogue that was both constructive and forward looking. In the coming months, I hope to explore the possibility of encouraging similar local-level initiatives. In my view, this kind of dialogue is a necessary complement to the Tribunal's work and essential to peace and reconciliation in the former Yugoslavia.

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Mr. President, Excellencies, I would now like to turn to the work of the Mechanism for International Criminal Tribunals.

Following the opening of the Mechanism's Hague branch on 1 July 2013, the institution is now fully formed. I am tremendously grateful to the Mechanism's Prosecutor, Mr. Hassan Bubacar Jallow, the Registrar, Mr. John Hocking, the Mechanism staff, and the principals and staff of both the ICTY and the ICTR for all that they did to ensure a smooth launch of the Hague branch, as they previously did for the launch of the Arusha branch, and I am

equally grateful for all that they continue to do to ensure the Mechanism's efficient and effective functioning.

As the Mechanism moves forward in its second year, it is now operating on two continents and inheriting work from two related but distinct tribunals: the ICTY and the ICTR. There are many challenges that come in the early years of any new institution, and that makes the work both exciting and rewarding. The Mechanism is fortunate that in its formative stages it can learn from and build upon the best practices of our predecessors, as well as draw upon the talents and expertise of colleagues at the ICTY and the ICTR. Our progress thus far is the result of a truly collaborative undertaking.

As the members of this Council are aware, the Mechanism's mandate encompasses both judicial work and certain other essential functions. The one appeal from judgement filed thus far, in the Ndirakobuca case, is forecast to be completed by the end of 2014. In the meantime, my fellow Judges and I continue to address a variety of other judicial matters, ranging from requests for variation of protective measures to motions concerning contempt allegations. The Mechanism is also expected to hear appeals, if any, in the cases of Šešelj, Karadžić, Mladić, and Hadžić, and must remain ready to address any additional judicial matters that may come before it, such as requests for review of judgements or orders for retrial. Although we do not know when the remaining three fugitives indicted by the ICTR who are expected to be tried by the Mechanism will be arrested or will surrender, it is my profound hope that this will be soon and I call upon the Members of this Council and the Member States of the United Nations to do all in their power to make this hope a reality.

The Mechanism, of course, is responsible for many other functions besides judicial work, including: ensuring the monitoring of cases referred to national jurisdictions; providing protective services to witnesses and victims; enforcing sentences of those convicted by either the ICTY or the ICTR; responding to requests for assistance from national jurisdictions; and managing the archives of both the ICTY and the ICTR. Details concerning the Mechanism's activities in these areas are included in my written report; I wish only to underscore that we are fully engaged with our responsibilities in these areas and making good progress.

I mentioned a moment ago the importance of Member States' assistance in relation to apprehending the remaining fugitives who are expected to be tried before the Mechanism. In truth, the Mechanism depends on the cooperation of the international community in all that it does, and it particularly depends on the cooperation of the affected States, including both Rwanda and the States of the former Yugoslavia. Strong relationships and partnerships with these States, and with other States and organizations, will remain vital to the Mechanism going forward given its unique mandate to be an efficient and temporary institution whose size and functions are to diminish over time.

In this respect, I am pleased to report that several weeks ago, President Joensen of the ICTR, Prosecutor Jallow of the ICTR and the Mechanism, I, and representatives of the Registrars of both the ICTR and the Mechanism visited Kigali and had very productive meetings with Government officials there. I also was in Sarajevo just last week and hope to return to the region again in the new year. Meetings of this sort, whether among high level officials or at the working level, are crucial to helping to ensure that lines of communication are kept open and that, during this time of transition between the original ad hoc criminal tribunals and the Mechanism, the nature and effect of this transition are fully communicated and understood, particularly in the communities most affected by our work in both Rwanda and the States of the former Yugoslavia.

One issue that continues to be raised, and is particularly important for many from these communities, has to do with access to information about the work of the tribunals. In

Resolution 1966, this Council requested that the Mechanism, along with the ICTY and the ICTR, cooperate with Rwanda and the States of the former Yugoslavia and other interested parties to facilitate the establishment of information and documentation centres by providing access to copies of public records of the archives of the tribunals and the Mechanism, including through their websites. For the Mechanism's part, I can assure you that we are taking seriously our responsibilities in this regard. In the months and years we will continue to take steps to ensure that such access is widely available, whether online or otherwise, and we welcome ideas and suggestions from any and all interested parties. I look forward to reporting to this Council on our progress, as well as other developments, in my next written report on behalf of the Mechanism next year.

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Mr. President, Excellencies, as always, I come before you committed to the most complete transparency possible. I hope, however, that my frank discussion of delays, challenges, and potential future risks does not give an unnecessarily negative impression of the Tribunal. The staff and Judges of both the Tribunal and the Mechanism remain fiercely committed to completing trials and appeals efficiently and in accordance with the highest standards of procedural fairness.

Indeed, the twentieth anniversary of the ICTY this year provided an opportune time to reflect on the Tribunal's tremendous accomplishments. What the Tribunal has achieved in the course of two decades has been extraordinary: it has accounted for all 161 individuals indicted; given rise to an authoritative and extensive corpus of procedural and substantive law relating to serious international crimes; assisted national judicial systems in conducting their own trials of such crimes; and helped to end impunity, even for national or military leaders. These accomplishments are a reflection not just of the hard work and dedication of the Tribunal's staff and Judges, but also of the key assistance provided to the Tribunal by the United Nations and its Member States. Without this support, the success of the bold experiment in international justice initiated by this Council in 1993 would never have been possible.

As the Mechanism carries the legacy of the ICTY and the ICTR forward, I know that it will serve as a worthy successor to these two institutions, and will continue to symbolize the international community's determination—and this Council's determination—to bringing an end to impunity.

Thank you very much.

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