



UNITED NATIONS

International Residual Mechanism for Criminal Tribunals

The International Residual Mechanism for Criminal Tribunals ("Mechanism") was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY") which closed in 2015 and 2017, respectively

STATEMENT

PRESIDENT

(Exclusively for the use of the media. Not an official document)

Arusha, The Hague, 17 July 2019

Address to the UN Security Council Judge Carmel Agius President, International Residual Mechanism for Criminal Tribunals 17 July 2019

Mr President, Excellencies, Ladies and Gentlemen,

I feel deeply honoured to have once again the privilege of addressing the Security Council; this time as the new President of the International Residual Mechanism for Criminal Tribunals (Mechanism). I am fortunate to have assumed the leadership of the Mechanism when the institution is strong and well-established, thanks to the unstinting and outstanding work of my predecessor, Judge Theodor Meron, together with that of my esteemed Colleagues, the Mechanism's remarkable Judges, and of course its wonderful staff.

This is not to say that my first months have been easy. The role of Mechanism President is a demanding one: running an institution spread across two continents, with Judges and staff coming from numerous legal systems and diverse backgrounds, working in different time zones; with our focus split between the residual judicial matters arising out of two very distinct conflicts and resulting from the closure of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). I already knew of these unique circumstances before assuming the Presidency, of course, because I have been a Judge of the Mechanism since it came into operation in 2012, and was a Judge of the ICTY for many years before that. Nevertheless, I have been surprised and enthralled by the extent to which the Mechanism differs from its predecessor institutions.

Despite our unique mandate and the many challenges that no doubt lie ahead, I remain fully committed: first and foremost, to the efficient and timely conclusion of the judicial proceedings at both the Arusha and The Hague branches of the Mechanism, bearing in mind due process and fundamental fair trial rights; second, to enhancing inter-branch coordination and harmonisation of practices and procedures; and third, to doing my utmost to foster a working environment that encourages high staff morale and performance. This is in line with the priorities I announced at the start of my Presidency, which are elaborated in document S/2019/417, being the Mechanism's progress report for the period 16 November 2018 to 15 May 2019. I must add that this report partly reflects the work of the Mechanism under President Meron's guidance until 19 January of this year, when I took over the leadership of this fine institution from him.

International Residual Mechanism for Criminal Tribunals

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Mr President,

As set out in the report before you, the Mechanism continues to work vigorously towards concluding its residual judicial workload. Notably, most of this work has been performed by Judges working remotely with the assistance of Chambers staff at both branches, in accordance with the imperative to operate in a cost-efficient manner. In the Mechanism's seven years of existence, its Judges have had only two opportunities to come together for the purpose of in-person Plenary sessions. The second in-person Plenary of Judges, and the first to be held at the Mechanism's Arusha branch, took place earlier this year in March, offering my Colleagues and me a tremendous opportunity to discuss practical and substantial matters, familiarise ourselves with the new courtroom, and get to know our dedicated staff in Tanzania. This was a most valuable meeting, which I hope will be repeated periodically.

Turning to our workload, I am pleased to note that the Appeal Judgement in the Karadžić case was delivered on 20 March 2019, representing a milestone for the Mechanism in the conclusion of one of its most significant cases. Remarkably, the timely adjudication of the case was achieved despite changes in the Bench at a very late stage. I wish to particularly commend Judge Vagn Joensen, who took over as the Presiding Judge, and Judge Ivo Nelson de Caires Batista Rosa, who upon being newly assigned to the case was able to quickly take up the complex and large responsibilities entrusted to him.

In relation to the other ongoing cases in The Hague, I am likewise pleased to report that changes in late 2018 to the Bench assigned to the Mladić case have also not resulted in any delays to the appeal proceedings, which are progressing smoothly. I am grateful to the Presiding Judge, Judge Prisca Matimba Nyambe and the other Judges on the Bench, whose diligence together with that of the Chambers team has allowed the case to remain on track for conclusion by the end of 2020. Solid progress is also being made in the Stanišić & Simatović re-trial, with the Defence case underway as of 18 June 2019. Thanks to the dedication of the Presiding Judge, Judge Burton Hall and the rest of the Bench and assigned staff, the Trial Judgement in this case also remains on schedule for delivery by the end of 2020.

In Arusha, the Ngirabware review proceedings are currently expected to be heard in September of this year. As you may be aware, the replacement of Mr. Ngirabware's counsel and the disclosure of voluminous material from a related contempt case resulted in the postponement of the review hearing, which had previously been scheduled for September 2018.

In addition to these proceedings, which relate to core crimes within the jurisdiction of the Mechanism, the Mechanism is seised of a number of cases pertaining to allegations of contempt of court. I refer in particular to the multi-accused Turinabo et al. case, in which a Single Judge continues to conduct pre-trial proceedings and to deal with numerous motions filed by the five accused. It is anticipated that the trial will start in October 2019 and conclude in the first semester of 2020. Here I would like to add that the Appeals Chamber, myself presiding, is also seised of several appeals of pre-trial decisions of the Single Judge, and is exerting its best efforts to ensure that these are adjudicated as expeditiously as possible, in order to allow the trial to start on time.

Another contempt case, the case of Petar Jojić & Vjerica Radeta, is presently back before the Mechanism. This case was in 2018 referred to the authorities of Serbia for trial but was subsequently remanded back to a Single Judge following an appeal by the amicus curiae prosecutor. In May of this year, the Single Judge revoked the previous referral order and requested Serbia to transfer the accused to the Mechanism without delay. While the two accused have not filed an appeal against this decision, Serbia has, and the matter is currently pending before the Appeals Chamber.



Mr President,

What you have just heard relates to the most visible aspect of the Mechanism's mandate, namely its residual judicial workload. It is clear that our trials and appeals, and especially our decisions, orders and judgements, are followed closely not only by the countries most affected by our work, namely Rwanda and those in the region of the former Yugoslavia, but other United Nations Member States and numerous stakeholders around the world. Less attention, however, is paid to the Mechanism's additional statutory functions, which include protecting victims and witnesses, monitoring cases referred to national jurisdictions, preserving the archives of the ICTR, the ICTY and the Mechanism itself, addressing requests for assistance from national jurisdictions, and supervising the enforcement of sentences.

I would therefore like to share some of my reflections since assuming the Presidency on what it means to manage some of these residual matters, and will focus my remarks here on enforcement issues.

My first observation may be an obvious one, namely that justice does not end with the delivery of a judgement. I am referring here to post-conviction matters, which are a little-understood but crucial part of the Mechanism's work. The legal framework of the Mechanism grants me as President broad powers to supervise the enforcement of sentences, and I do not take these responsibilities lightly. Determinations as to where a convicted person will serve his or her sentence, whether he or she should be transferred to continue a sentence elsewhere, or whether a person may be eligible to be considered for early release, pardon or commutation of sentence, are extremely important. They are also very sensitive, relating inter alia to the rights of detainees and concerning sentences imposed as a result of painstaking, often lengthy trial and appeal proceedings concerning the gravest violations of international criminal law. My duty is and remains to apply the law, and I will continue to do so responsibly, thoroughly, and with as much transparency as possible. I would recall that, pursuant to the Mechanism's legal framework, such decisions involve the exercise of discretionary functions by the President, and require a careful case-by-case assessment and balancing of factors.

Second, as a judicial institution the Mechanism is bound to strictly observe its duty to safeguard the rights of all its detainees, whether subject to pending or ongoing proceedings or awaiting transfer to an Enforcement State. As of 5 December 2018, the Mechanism is now implementing a new regulatory framework on detention matters that I believe can serve as a model to other institutions. In this regard, the Mechanism has been guided by the need to harmonise practices between the Arusha and The Hague detention facilities, and by standards enunciated by the General Assembly through its adoption of the Nelson Mandela Rules (A/RES/70/175). Moreover, it has sought to build upon those standards through detailed procedures governing visits, communications, complaints, and disciplinary matters in a detention setting. The Mechanism will continue to focus on ensuring that its implementation of this framework is also reflective of best practices in detention management.

Third, in undertaking its enforcement functions, the Mechanism will continue to rely on the support of Member States and other key stakeholders. It is evident that in order to have an enduring impact on international peace and justice, we must all remain committed not only to having trials and appeals and active judicial processes, but also to what comes afterwards. In my six months as President, I have come to appreciate even more how complex the enforcement of sentences can be, and how precious such commitment is. In this regard, I would like to praise the critical role performed by Enforcement States that voluntarily assume additional responsibilities to further the cause of international justice. In particular, I wish to thank Austria, Benin, Denmark, Estonia, Finland, France, Germany, Italy, Mali, Norway, Poland, Senegal, Sweden and the United Kingdom for their generosity and ongoing support with regard to the Mechanism's enforcement functions.

This exemplary cooperation is not only vital to the Mechanism's ability to fulfil its broader mandate, it is also a sign of the trust and credibility that our institution enjoys in the eyes of the international community. For that



reason, I am compelled to raise a challenging and most unfortunate situation under the Mechanism's purview. I am referring to the fate of the nine acquitted and released persons that remain in Arusha, one since 2004, in an unacceptable legal limbo. These persons should be free to start a new life, having served their sentences or never been convicted in the first place, and yet they cannot. While the Mechanism is doing all it can to find a long-term solution, the fate of these nine individuals is a responsibility it shares with the Member States of the United Nations, as was noted in Resolution 2422 (2018). More can, and must, be done to resolve this situation.

Mr President,

It is of course a double pleasure for me to appear before the Security Council on the Day of International Criminal Justice - a day celebrating the achievements of international criminal courts and tribunals in delivering justice and holding to account those responsible for violations of international law. Today we pay tribute to the vision and commitment of all of the individuals, organisations and stakeholders who have advocated, and continue to advocate, for justice to be more than an abstract ideal. The underlying reason for this important day, namely the adoption of the Rome Statute of the International Criminal Court, would not have been possible without the ICTY and the ICTR having paved the way for such a remarkable endeavour. The establishment of the Mechanism, as the successor institution to the two ad hoc Tribunals, further demonstrates the Council's commitment to principled accountability and your resolve to ensure that the closure of the Tribunals will not open the way for impunity to reign once more.

On this day we are also called upon to remember that international criminal justice is not the responsibility of courts alone. All those who are committed to the rule of law have a vital part to play in the fight against impunity - and particularly now, when there is a resurgence in genocide denial and revisionism in both the former Yugoslavia and Rwanda. This includes by defending judicial processes and pronouncements, and speaking out against those who try to distort the truth as established by international and domestic courts. Consequently, those who deny the legitimacy of the findings of the ICTY, the ICTR and the Mechanism must be reminded that you, the Security Council, mandated these institutions – and no-one else – to investigate, prosecute, adjudicate and punish the crimes committed in the former Yugoslavia and Rwanda. Likewise, they must be reminded that the domestic courts are entrusted with continuing to carry out these functions, and not politicians or individuals. I therefore call upon you all to defend and protect our judicial legacy, which established time and time again, beyond a reasonable doubt, that what the world witnessed both in 1994 and in 1995 was genocide, together with the gravest and most brutal of other international crimes.

International criminal justice concerns us all, because justice is in the service of peace, and peace must be maintained on a daily basis, as this distinguished Council knows all too well. The extent of the world's yearning for justice was made clear to me this April when I attended the Twenty-fifth Commemoration of the Genocide against the Tutsi, in Kigali, and again last week in Potočari where I attended the Twenty-fourth Commemoration of the Srebrenica Genocide. These occasions reinforced in me the firm belief that, while international justice takes time and costs money, for the victims and affected communities it is worth it, offering not only some form of closure but also a powerful way forward. However, we must be mindful that justice has enemies as well, constantly seeking to make sure that countless atrocities throughout the globe remain unanswered.

Mr President,

I am determined to do my utmost to maximise the Mechanism's ability to deliver meaningful justice and to fulfil all aspects of its mandate in an effective and efficient manner. My Colleagues the other Judges and the



Mechanism's Principals, together with our exceptional staff, are equally committed to this task. However, we cannot do it alone. The success of international justice depends on sustained support and cooperation, today and every day. I hope, and trust, that the Mechanism will continue to find such help in the esteemed Member States of this Council. For your support thus far, I am extremely thankful.

Before concluding, please allow me, Mr President, to commend you on your Presidency for the month of July and to thank you in particular for your personal commitment and outstanding leadership as Chair of the Council's Informal Working Group on International Tribunals. My recognition also goes to the Office of Legal Affairs and its dedicated team for their invaluable support.

And last but not least, I wish to express my sincere gratitude for the continuing and excellent support provided by the two Host Countries of the Mechanism, the Kingdom of the Netherlands and the United Republic of Tanzania.

Thank you for your attention.
