

**MICT**

UNITED NATIONS

Mechanism for International Criminal Tribunals

The Mechanism for International Criminal Tribunals ("MICT" or "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") after the completion of their respective mandates. The MICT has two branches, one in Arusha, Tanzania, and one in The Hague, Netherlands.

STATEMENT

PRESIDENT

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

Arusha, The Hague, 9 November 2016

Address to the UN General Assembly

Judge Theodor Meron

President, Mechanism for International Criminal Tribunals

9 November 2016

Mr. President, Excellencies, Ladies and Gentlemen:

It is my privilege to appear before the General Assembly once again in my capacity as President of the Mechanism for International Criminal Tribunals.

Before I turn to the substance of my remarks, I wish to take this opportunity to congratulate you, Mr. President, on Fiji's assumption of the General Assembly Presidency and to wish you every success during your term. I also wish to acknowledge the steadfast support and assistance provided by the Office of Legal Affairs and, in particular, by Mr. Miguel de Serpa Soares, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, as well as by Mr. Stephen Mathias, the Assistant Secretary-General for Legal Affairs.

Last, but certainly not least, I would like to acknowledge with pleasure my fellow Judge at both the Mechanism and the ICTY, President Agius.

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Mr. President, Excellencies, as many of you know, this year, 2016, marks the 400th anniversary of William Shakespeare's death.

His fellow poet and playwright, Ben Jonson, wisely and correctly anticipated in 1623 that Shakespeare was "not of an age, but for all time". Yet, it is to my deep dismay that Shakespeare's depictions of the ravages of war remain equally relevant today, some four hundred years after he wrote them. War, in Shakespeare's words, is the "son of hell" (*2 Henry the Sixth*); it is "fierce and bloody" (*King John*) and "cruel" (*Timon of Athens*). *Troilus and Cressida* gives us a gruelling account of the senseless slaughter of war, while *Hamlet* offers the most powerful statement of the futility of war in a speech against sacrificing thousands of lives for trivial causes, for "a fantasy and trick of fame".

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While much has not changed when it comes to conflict and bloodshed in the course of four hundred years, at least one important thing has. During the past quarter century, the international community has come together as never before in an effort to end impunity for grave violations of international law and to promote respect for the rule of law—or what Shakespeare refers to as "the majesty and power of law and justice", which the Chief Justice of England invokes in explaining to the new King Henry V that even he had to submit to justice for infractions he had committed as Prince Hal (*2 Henry IV*).

By establishing the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in the early 1990s, and the other international and hybrid criminal courts that would follow thereafter, the international community has made manifest its commitment to justice and to the principle of individual criminal responsibility. In doing so, the international community has helped to bring about the dawn of what Secretary-General Ban Ki-moon has described as a new age of accountability.

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The Mechanism is very much a part of this global effort to ensure accountability, for by establishing the Mechanism, the UN Security Council was making certain that the closure of the ICTR and the ICTY would not open the way for impunity to re-emerge and recognizing that justice and the rule of law require a sustained commitment and support even after trials and appeals have concluded.

As detailed in the written report submitted on behalf of the Mechanism in August, much has transpired in the year since I last appeared before this Assembly. On the judicial front, following the issuance of ICTY judgements in December 2015 and March 2016, the Mechanism is seized of a retrial in the case of *Stanišić & Simatović* and appeals in the cases of *Radovan Karadžić* and *Vojislav Šešelj*. A wide variety of other requests and applications are regularly filed before the Mechanism and addressed by the Mechanism's Judges, the majority of whom are—consistent with the Security Council's vision of the Mechanism as a small and efficient institution—working remotely and part-time from their homes and offices around the world, carrying out their functions for the Mechanism on top of their other professional commitments. Since its establishment, the Mechanism has issued in excess of 800 judicial orders and decisions.

With the closure of the ICTR in December 2015, the Mechanism has assumed responsibility for all remaining functions of that Tribunal and preparations for the transfer of relevant remaining ICTY functions continue, in anticipation of that Tribunal's expected closure at the end of 2017.

Throughout the reporting period, essential ongoing functions—such as the protection of vulnerable victims and witnesses, the provision of assistance to national jurisdictions seeking to ensure accountability in local proceedings, and the supervision of the enforcement of sentences—have also continued to be carried out with care and professionalism. Important steps have likewise been taken with regard to the management and preservation of the vital archives of the ICTR and the ICTY entrusted to the Mechanism.

It is thanks in great part to the sustained cooperation and generosity of the Government of the United Republic of Tanzania that we will, in under three weeks from today, mark the opening of the Mechanism's new premises in Arusha. This construction project, which reflects a lean and minimalist

approach and incorporates best practices from other UN capital projects, has taken place under the stewardship of this Assembly and remains—importantly—on budget. In the meantime, both Tanzania and the Netherlands, as the Host States of our respective branches, continue to support the Mechanism’s work on a near daily basis in countless but meaningful ways.

It is thanks to the support and assistance of Member States in Africa and Europe that we are able to enforce sentences pronounced by the ICTR, the ICTY, and the Mechanism. The support and cooperation of individual Member States is likewise essential in resolving the situation faced by the Mechanism with regard to individuals indicted by the ICTR who were subsequently acquitted or released in Tanzania. The appropriate relocation of these individuals, as I have stated before, is a crucial challenge for international justice, and a humanitarian imperative.

And of course, the Mechanism will not have fulfilled its mandate unless and until all remaining fugitives indicted by the ICTR have been called to account. Success on this front will depend in great part upon the timely cooperation of individual Member States. I wish the greatest success to Prosecutor Brammertz in his continuing efforts in this regard.

Indeed, as we move forward, seeking to fulfil all other aspects of our mandate in the best way possible, the cooperation and support of the United Nations and its Members form the essential and invaluable basis for all our efforts.

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Mr. President, Excellencies, it is in this context that I find that I must advise the Assembly of a serious matter impacting upon the effective discharge of the Mechanism’s mandate.

On 20 December 2011, following nomination by the Government of Turkey, this Assembly elected Judge Aydin Sefa Akay, of Turkey, as a Judge of the Mechanism. This election followed Judge Akay’s distinguished prior service as a Judge of the ICTR and, earlier, as an Ambassador of Turkey. After consultation by the Secretary-General with the Presidents of this Assembly and of the Security

Council, Judge Akay was recently appointed for a new term as Judge of the Mechanism, commencing 1 July 2016.

On 25 July 2016, as President of the Mechanism, I appointed Judge Akay to a Bench of the Appeals Chamber to address a motion for review of judgement and associated applications advanced by Mr. Augustin Ngirabatware, who is currently detained following his conviction.

Without notification to the United Nations or the Mechanism, on or around 21 September 2016, Judge Akay was detained in Turkey in relation to allegations connected to the events of July 2016 directed against the constitutional order of Turkey, and has remained in detention since that time. As a result of Judge Akay's detention, the proceedings to which he has been assigned have necessarily come to a standstill, with corresponding implications for the fundamental rights of the applicant to the determination of his claims within a reasonable time.

Mr. President, Excellencies, judicial independence is a cornerstone of the rule of law, and it is a longstanding and consistent practice to accord international Judges privileges and immunities in order to protect the independent discharge of their judicial functions. The Security Council accorded the Judges of both the ICTR and the ICTY diplomatic immunity to that end. The Statute of the Mechanism, adopted by the Council acting under Chapter VII of the UN Charter, likewise accords the Judges of the Mechanism diplomatic immunity for those periods of time in which they are engaged on the business of the Mechanism. In according the Judges of the Mechanism such immunity, the Council necessarily understood that, thanks to the Mechanism's lean and efficient design and the statutory expectation that Judges will work remotely as much as possible and away from the seats of the Mechanism, the Judges would typically be carrying out their judicial work for the Mechanism in their State of nationality.

As a result of this legal framework, Judge Akay enjoyed diplomatic immunity from the time of his assignment to the *Ngirabatware* proceedings on 25 July, and continues to enjoy such immunity through to the conclusion of those proceedings.

The UN Office of Legal Affairs, on behalf of the Secretary-General, has formally asserted this protection to the Government of Turkey, and, as a consequence, requested Judge Akay's immediate release from detention and the cessation of all legal proceedings against him. In the meantime, on 17 October 2016, as President of the Mechanism, I formally requested permission of the Government to visit Judge Akay to consult him confidentially and ascertain his conditions of detention.

Mr. President, Excellencies, I deeply regret that the Government of Turkey has thus far provided no formal communication whatsoever on these matters to either the United Nations or the Mechanism, and that the Government continues to maintain Judge Akay's detention, in breach of the Statute of the Mechanism and of Turkey's obligation to cooperate with the Mechanism in accordance with operative paragraph 9 of Security Council resolution 1966 (2010). I likewise regret that, as a result of Judge Akay's detention, the will of this Assembly that he discharge judicial functions for the Mechanism, consistent with the provisions of the Statute pursuant to which he was elected and then appointed to a new term, is concurrently being frustrated.

As Judge Akay's detention becomes increasingly prolonged, its effects on the Mechanism's ability to perform its core mandate become ever more pronounced, as this detention has materially impeded the Mechanism's ability to perform one of its most fundamental functions: to judicially determine, in accordance with the law, matters going to an individual's responsibility for the most serious international crimes. Absent clear understanding of his conditions of detention, and a response to my request for authorization to visit Judge Akay, my concern for my judicial colleague's welfare from a humanitarian standpoint likewise becomes all the stronger.

I therefore call upon the Government of Turkey, consistent with its binding international obligations under Chapter VII of the UN Charter, to immediately release Judge Akay from detention and enable him to resume his lawfully-assigned judicial functions.

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Mr. President, Excellencies, in discharging our mandates to pursue justice and accountability for the most serious crimes known to humanity, international criminal tribunals such as the Mechanism serve the interests of all States and their peoples. At the same time, however—and as the past twenty-five years have demonstrated—international criminal tribunals are fully dependent both on the cooperation of States and on States' respect for the international legal framework applicable to each institution. Without such cooperation and respect, international courts cannot ensure their independent operation, wherever around the world court functions may be exercised, and they therefore cannot carry out the vital mandates entrusted to them.

I have every confidence that the Government of Turkey shares this common interest in enabling the Mechanism to function efficiently and effectively, in accordance with its mandate and with applicable law, and that the Government will, without further delay, take the necessary steps with respect to the situation I have described towards that end.

The resolution of this matter is critically important not simply for the Mechanism. It is essential for all of us if we are to ensure that UN institutions are able to carry out their mandates in accordance with the law and in the absence of interference. It is essential for all of us if we are, working together, to bring about an era of accountability based upon and enshrining respect for the rule of law, for which judicial independence is fundamental. It is essential for all of us who wish to be able to say that we have done all that we can to end impunity for horrific crimes in violation of international law and to seek to bring about a world in which the highest humanitarian principles are upheld. But to accomplish all of this, it is essential that all Members of the United Nations, in addressing vital requests from Chapter VII tribunals, act in accordance with good faith, the duty to cooperate, and unimpeachable due process.

Thank you.

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