



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") after the completion of their respective mandates.

## STATEMENT

PRESIDENT

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

Arusha, The Hague, 11 December 2018

### Address to the UN Security Council Judge Theodor Meron President, International Residual Mechanism for Criminal Tribunals 11 December 2018

Mr. President, Excellencies, Ladies and Gentlemen:

Today marks my final appearance before this Council as President of the International Residual Mechanism for Criminal Tribunals. It has been a profound privilege to serve in this role since the founding of the institution, and it is an honour for me to provide this, my last briefing to the Council on the progress of the work of the Mechanism.

*Avant de le faire, je tiens à féliciter Son Excellence Monsieur Adom, ambassadeur de la Côte d'Ivoire, pour l'accession de son pays à la présidence du Conseil de sécurité et à lui adresser tous mes vœux de réussite à la présidence du Conseil.*

I would also like to take this opportunity to convey my deep appreciation for the considerable attention and commitment shown by the Members of the Council's Informal Working Group on International Tribunals both now, under Peru's expert leadership, and during the many years that I have been appearing before this Council. The support and engagement of this Working Group has been invaluable to the success of the Mechanism and, before that, of the International Criminal Tribunals for Rwanda and for the former Yugoslavia.

Finally, and as always, I must underscore my tremendous gratitude for all of the assistance provided to the Mechanism by the Office of Legal Affairs and to Under Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Miguel de Serpa Soares, and Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias, and their dedicated team.

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Mr. President, Excellencies:

Over the last six months, and notwithstanding a challenging budgetary situation and the myriad operational consequences engendered thereby, the Mechanism has continued to make significant strides in the conduct and completion of the mandate entrusted to it by this Council. From the provision of vital assistance to national jurisdictions to the methodical preservation of materials in the archives, and from the sustained protection of



vulnerable victims and witnesses to the enforcement of sentences across two continents, the Mechanism and its staff have continued to carry out key residual functions inherited from the predecessor Tribunals with steadfast professionalism. In this context, I wish to pay special tribute to the Mechanism's Registrar, Mr. Olufemi Elias, for his leadership, his abiding integrity, and his excellent stewardship of our institution during this challenging period.

The Mechanism reached several important milestones during the reporting period. After in-depth internal and external consultations, the Mechanism adopted Rules of Detention to govern detention matters in both Arusha and The Hague. These Rules, together with related regulations, went into effect last week. Alongside recent amendments to the Rules of Procedure and Evidence and the continual review and revision of other policies pertaining to a wide range of judicial and non judicial activities, the adoption of the Rules of Detention reflects the Mechanism's unceasing attention to finding ways to improve its methods and work and serve as a model for courts in other jurisdictions. The Mechanism's activities in this respect have benefited greatly from the engagement and recommendations of the Office of Internal Oversight Services during the course of the evaluation of the Mechanism completed last spring as well as in the context of regular audits.

In another significant milestone, the Mechanism held its first judicial hearing at the new, custom-built courtroom in Arusha in September. This hearing—an initial appearance by the five individual accused in the new contempt case of *Turinabo et al.*—went very smoothly, a testament both to the exceptional efforts of Mr. Elias and his team and to the invaluable cooperation of the Government of Rwanda in carrying out the arrest and transfer of these accused. This development is also an important demonstration of the Mechanism's readiness for when the remaining fugitives indicted by the ICTR are apprehended.

Mr. President, Excellencies:

I had hoped to stand before you here today and announce another significant milestone, this time in the case of *Radovan Karadžić*, as the projection had been to deliver the judgement in that case this very month, significantly earlier than previously forecast. As you may be aware, however, changes were made to the composition of the Appeals Chamber benches in both the *Karadžić* case and the case of *Ratko Mladić* following motions for the disqualification of certain Judges, including myself.

I regret that I am no longer in a position to see the *Karadžić* case to its conclusion, as had been my aim. Nonetheless, as set forth in my decision withdrawing from the bench in that case, while I would have continued to adjudicate with an impartial mind had I remained on the case, I considered it to be in the interests of justice that I withdraw in order not to allow the then pending disqualification proceedings to impede the progress of the appeals in the case. I am pleased to inform this Council that, notwithstanding the changes in the bench composition, it is expected that the appeal judgement in the *Karadžić* case will be delivered in the first quarter of 2019, just a short time later than previously projected.

In the *Mladić* case, meanwhile, briefing has recently concluded. The changes in the bench composition in that case are not expected to delay the rendering of the judgement in that case, which—prior to the briefing process—had been projected for completion by the end of 2020.

Proceedings in the review case of *Augustin Ngirabatware* took an unanticipated turn during the reporting period with the postponement of the hearing that had been scheduled for September. The hearing was postponed at Mr. Ngirabatware's request in light of material disclosed following the arrest of the five accused in the *Turinabo et al.* case and has recently been re-scheduled.

A variety of pre-trial matters are also being litigated in the new *Turinabo et al.* case before a single Judge, who just last week issued a decision declining to refer the case for trial in a national jurisdiction. In another contempt



case, the case of *Petar Jojić & Vjerica Radeta*, a single Judge granted such a referral to a national jurisdiction and an appeal from that ruling is currently pending before the Appeals Chamber. In the meantime, the retrial of Jovica Stanišić and Franko Simatović is proceeding apace, as is the work that the Mechanism Judges carry out on a variety of smaller, *ad hoc* requests pertaining to everything from the protection of vulnerable victims and witnesses to access to confidential materials.

In this context, I would like to underscore my deep gratitude to my fellow Judges for their dedication to our work and our institution. I likewise wish to express my thanks to this Council for its efforts to ensure that the current vacancies on the Mechanism's judicial roster will be filled expeditiously.

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Mr. President, Excellencies:

As I have spent the waning weeks of my presidency consulting with my successor and taking all possible steps to ensure a smooth transition to the presidency of my friend and colleague, Judge Carmel Agius, I have also had occasion to pause and reflect on all that has been achieved during the nearly seven years that I have served as this institution's president.

I would not be human if I did not have certain regrets in this regard. I regret, of course, that the *Karadžić* appeal judgement will not be delivered during my tenure as President and that the disqualification decision in the *Mladić* case departed from established jurisprudence.

I also regret that a suitable and sustainable solution for the resettlement of the acquitted and released persons in Arusha has not been found, notwithstanding my and my colleagues' best efforts and the engagement of the Members of this Council on this issue. The Council's continued focus and the cooperation of key Member States are essential if this problem is to be resolved once and for all.

I likewise regret that, notwithstanding the best of intentions and good will, we have yet to fully achieve the harmonization of practices and procedures across the Mechanism's two branches. Our aim, from the beginning, has been to have a single, unified institution on two continents, and while this aim has been achieved in a great many respects, challenges still persist and may continue for some time.

It is, in many ways, inevitable that some judicial rulings may be met with negative reactions, particularly where those rulings pertain to controversial issues. I have always been, and will always be, guided by the law and by the evidence in reaching my judicial rulings—nothing more and nothing less. Nonetheless, I regret that some of my rulings on matters such as early release have caused pain or concern for victims and their communities. In this respect, I have reflected at length on the issues raised in the Security Council plenary last June and I have taken concrete steps to address the concerns reflected in Council resolution 2422 (2018)—such as by inviting certain convicted persons to undertake to abide by certain conditions if granted early release—whilst ensuring fundamental fairness and continued adherence to the Mechanism's governing legal framework.

And it remains for me a profound regret that a different and better resolution for the situation of my former colleague, Judge Aydin Sefa Akay, was not found. At a time when the world is facing deeply troubling trends related to the undermining of independent judiciaries and the weakening of the rule of law, we at the United Nations simply cannot afford to be anything less than exemplary when it comes to our own handling of interference with judicial independence and actions undertaken in contravention of UN immunities. At the very least, it is imperative that, going forward, fair and transparent processes be developed to determine whether any proposed non-reappointment of a Judge accords with the fundamental principles of the rule of law.



But, for all these regrets, I am also exceptionally proud of what has been achieved at and by the Mechanism over the last nearly seven years. It was during my tenure as President that the Mechanism came into being, that the Rules of Procedure and Evidence were first adopted, the Judges sworn in, and the branches in Arusha and The Hague first opened. Systems and policies to support the Judges as they carried out their judicial work remotely were put in place and repeatedly revised and refined over the years, reflecting our continued focus on improvement, efficiency, and economy. A broader legal and regulatory framework was established for the Mechanism, and it too was, and continues to be, refined and augmented as needed. What is more, my fellow Judges and I adopted a ground-breaking code of professional conduct for Judges—something our predecessors had never done before then—and we proceeded to revise that code to provide a disciplinary process, a reflection of the importance of accountability in all aspects of our work.

During my tenure and in full cooperation with colleagues at the ICTR and the ICTY, responsibility for judicial activities as well as non-judicial residual functions was transferred from those Tribunals and carried out smoothly and to the highest standards at the Mechanism. The Mechanism took the steps needed to stand on its own, without the assistance of its predecessors, and to realize its own administrative capacity spanning a wide range of functions and tasks. In the meantime, hundreds upon hundreds of judicial rulings have been issued, addressing a wide range of requests, and every effort has been taken to ensure that judicial work is conducted in a timely and cost effective manner, in keeping with this Council's vision for the institution. Indeed, we have shown that the new model by which Judges work remotely can function efficiently and economically—and in full compliance with due process requirements.

But that is not all. Thanks to the exceptional generosity of the Government of the United Republic of Tanzania and engagement with local companies, the Mechanism was able to construct a new, minimalist facility in Arusha consistent with the institution's mandate to be small and efficient. We have started important traditions in these new premises, hosting a judicial colloquium for national, regional, and international Judges and visits by a wide range of officials seeking to learn from our practices as well as inaugurating an annual event designed to bring together international and regional organizations and the local community in Arusha. And we have maintained and made accessible one of the leading law libraries in the region.

We have given back in important ways at the Hague branch as well, both at our historic premises there and through collaborations with victims associations and the new Information Centre on the ICTY in Sarajevo. During a recent visit to the former Yugoslavia, I met with senior Government officials in Croatia, Bosnia and Herzegovina, and Serbia, and I am pleased by the cooperation received on different fronts, including in particular the positive indications given in both Croatia and Serbia with regard to the establishment of information centres in those countries. And, of course, at both branches we continue to make important strides in making accessible the judicial records and key precedents of our predecessor Tribunals.

All the while, my colleagues and I have made it a priority to build an exemplary UN institution and a model of what an international criminal judicial institution can and should be. Our remarkable body of staff, drawn from some 70 countries around the world, has repeatedly surpassed the Secretary-General's gender parity goals. Through their professionalism and ingenuity, their resourcefulness and resilience, these staff have been invaluable when it comes to making the Mechanism what it is today.

In this context, I wish to salute in particular Ms. Gabrielle McIntyre, *Chef de Cabinet* and Principal Legal Advisor at the Mechanism since its founding and the *Chef de Cabinet* to the Presidents of the ICTY for more than a decade. As a senior official of the ICTY since 2004, she played a pivotal role in the conceptualization and creation of the Mechanism, and she has proven an invaluable colleague and leader at the Mechanism throughout that



institution's existence. I am deeply indebted to her, to her deputy, Ms. Willow Crystal, and to all of the excellent staff of the Mechanism who have made the institution what it is today.

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Mr. President, Excellencies:

As I bring my remarks to a close, I hope you will allow me one final moment of personal reflection.

I may be amongst the last individuals to appear before this Council who survived the Holocaust. I do not speak lightly or often of this time in my life, a period during which many of my loved ones perished. But I wish to remember it today because it was the horrors of the Holocaust and of the Second World War more broadly that led to where we are today. It was the experience of the "scourge of war" and the "untold sorrow" it wrought that led the peoples of the world to unite in a ringing call to reaffirm faith in fundamental human rights, in human dignity, and in the value of justice and the rule of law through the establishment of the United Nations. It was this experience that led to the Universal Declaration of Human Rights, which marked its 70th anniversary only yesterday. And it was, in many ways, the echoes of all of this that led to the establishment of the ICTR and the ICTY, the pioneers of international criminal justice in the modern era.

Today, in speaking of the work of the International Residual Mechanism for Criminal Tribunals, we often make reference to the importance of incorporating lessons learnt. But the Mechanism itself, as it carries forward the invaluable legacies of the *ad hoc* Tribunals, is a symbol of the lessons learnt by past generations. It is a symbol of what we hold dear: respect for the rule of law, fundamental fairness and justice, and adherence to the highest principles and to our obligations arising thereunder. It is a reminder of the thread of human events that connects our work today with those dark days of unimaginable cruelty and chaos from the Second World War. It is a reminder that none of us may stand idly by whilst genocide and other violations of international law are committed—or while their commission is denied. It is a reminder today of the chorus of generations—from the Poland of my childhood to the former Yugoslavia and from Rwanda to so many other places around the world—who, when faced with appalling atrocities, have proclaimed: *never again*.

We must heed these lessons, lest we be doomed to repeat them. The leadership of all of you here today, and of this Council as a whole, is essential in this regard, as my generation passes the torch to you.

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Mr. President, Excellencies:

For the support that the Members of this Council have offered me throughout my presidencies of the Mechanism and, before that, the ICTY, and for the support that this Council has provided and will continue to provide to the Mechanism itself, I am humbly and deeply grateful. I thank you.

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