

ADDRESS TO THE UNITED NATIONS GENERAL ASSEMBLY
JUDGE GRACIELA GATTI SANTANA, PRESIDENT,
INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS
18 October 2023

Mr. President, Excellencies, Ladies and Gentlemen,

Allow me to start by congratulating His Excellency, Ambassador Dennis Francis of Trinidad and Tobago, for assuming the weighty responsibilities of guiding the seventy-eighth session of this Assembly. I had the pleasure of meeting with His Excellency earlier in the week and I found his vision for this session to be most inspiring, particularly his efforts to reinvigorate the Sustainable Development Goals.

As I will explain, the Residual Mechanism I am so proud to head is currently defining its own vision for the future and refocusing its attention with regard to its mandated functions.

Mr. President,

Today, when international law as we know it is under threat around the world, and when it is ever-more important to demonstrate that justice institutions can succeed, I am pleased to report that the Mechanism has reached a critical juncture in its lifespan. For the first time since becoming operational – and, moreover, for the first time since the very earliest trial proceedings began at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) – we have no more active trials or appeals in relation to the core crimes set out in their Statutes and incorporated in the Statute of the Mechanism.

Hard work and determination over the last twelve months have led to this significant breakthrough.

With the delivery on 31 May of the Appeal Judgement in the case against *Jovica Stanišić & Franko Simatović*, the Mechanism concluded its final core crimes case inherited from the ICTY. It achieved this milestone almost exactly 30 years after the Security Council created the ICTY; a decision that would permanently alter the landscape of international law and breathe life into the concept of accountability. Soon afterwards, on 1 July, the Mechanism marked a decade of operations at its branch in The Hague.

Decisive events have also taken place in the ICTR-derived case against *Félicien Kabuga*. On 7 August, the Appeals Chamber affirmed that Mr. Kabuga is not fit to stand trial and is very unlikely to regain fitness. In addition, it rejected as an error of law the decision of the Trial Chamber to adopt an alternative finding procedure. The Appeals Chamber remanded the matter to the Trial Chamber, which, on 8 September, stayed the trial proceedings indefinitely and remained seised of the issue of Mr. Kabuga's provisional release. In a separate development, it has been determined that Mr. Kabuga is non-indigent and capable of funding his entire defence.

Mr. President,

The Appeals Chamber's decision of 7 August triggered the Mechanism's truly residual mode, and I can assure you that the impact of this is not lost on any of us. We have long aspired to become the institution that the Security Council originally designed and, through their dedication, our Judges and staff have enabled us to finally reach this point. With no more active core crimes trials or appeals, the time has come to think and do things differently. As a result, our attention has

shifted from in-court proceedings to the longer-term residual functions that were entrusted to us by the Council in 2010 – when, it is worth remembering, we were also tasked with assuming the remaining caseloads of two active tribunals.

We also recognise, and underscore, that the conclusion of in-court activity does not mean we are closing down. Indeed, we still have much work to do and the Mechanism will keep fulfilling its mandated functions until the Security Council decides otherwise. These include supervising the enforcement of sentences, tracking the remaining fugitives of the ICTR, and responding to national requests for assistance, to name just a few. Nevertheless, we know that, as circumstances change, we must change with them. In this respect, downsizing alone will not be sufficient. We must go further, and start to redefine the way we work.

Mr. President,

In order to better reflect our current reality, I considered it imperative to recalibrate the key objectives of my own Presidency. I am pleased to announce today the following new priorities:

First, to present the Security Council with a framework of operations to complete functions during the Mechanism’s new residual phase.

This evinces my commitment to comprehensively respond to resolution 2637 (2022), wherein the Security Council requested the Mechanism to provide clear and focused projections of completion timelines for all activities and, for the first time, options for the transfer of its remaining activities in due course. The mentioned framework of operations will encompass our development of a Scenario-based Workforce Plan, arising from a previous recommendation by the Office of Internal Oversight Services (OIOS).

My first priority is therefore intrinsically connected with the Mechanism’s future-planning activities, which have continued apace since our annual report was submitted to you. In July, the Panel on Judicial Functions, comprising nine Mechanism Judges, concluded its report on the nature, duration, and potential transferability of our remaining judicial functions, as well as the future of the judicial roster. This document has been useful in informing the scenario-based planning that is being coordinated internally within the Mechanism.

As part of this priority, I am also turning my attention to areas where portfolios could potentially be restructured and certain functions absorbed by other sections of the Mechanism, to avoid duplication of efforts and deliver greater efficiencies. One example is the enforcement of sentences. Any such restructuring will of course be carefully examined in light of our legal framework.

My second priority is to promote effective leadership and good governance in the performance of mandated functions and residual activities.

This priority recognises that, as the Mechanism further downsizes, those in senior and leadership positions must be vigilant in our responsibilities to manage with transparency, efficiency, and accountability. Simply put, we must lead fairly and in good faith, and our dwindling resources must be put to the best and most productive use. It is certainly not easy to steer a downsizing organisation, to keep productivity high when morale is low, and to reconcile tensions between budgetary constraints and our desire to keep achieving results. Alongside my own efforts, I will therefore be relying on management to help ensure the Mechanism remains a functional and thriving organisation.

We owe this to the international community that established us; to our staff members, who work so hard and are directly impacted by downsizing and attrition; and to the affected communities and other stakeholders that are counting on the Mechanism to keep delivering on its mandated activities.

In this context, the periodic review, evaluation, and audit processes that the Mechanism undergoes will play a crucial role in ensuring our continued accountability, as well as our responsiveness to change. At present, we are actively engaging with OIOS, which is evaluating the methods and work of the Mechanism. This evaluation will contribute to our fifth biennial review by the Security Council, to be conducted in the first half of 2024. Such processes, however, should not be taken as the sole markers of our performance. A plan for the future, coupled with strong leadership, is needed to effectuate operational change.

And the third new priority is to continue consolidating the legacy of the *ad hoc* tribunals and the Mechanism and working closely with all main stakeholders.

Now that we are focused primarily on longer-term residual functions, rather than in-court proceedings, consolidating the legacy of the ICTY, the ICTR, and the Mechanism becomes even more important. After all, it is the legacy alone – the landmark judgements, the testimonies of thousands of brave witnesses, and all of the other records documenting this incredible journey of justice – that will exist far into the future, long after we are gone.

The Mechanism will in this respect continue to support national jurisdictions in the former Yugoslavia and Rwanda by responding to requests for assistance, among other activities. In doing so, the Mechanism is essentially passing the baton on to domestic prosecutors and judiciaries. From now on, only they will be responsible for trying alleged perpetrators of crimes that took place during the Balkan conflicts of the 1990s and the 1994 Genocide against the Tutsi in Rwanda.

The other key component is making sure that our public judicial records are as accessible as possible; not only through the Mechanism's website and public databases, but also through the establishment of Information Centres in accordance with Security Council resolution 1966 (2010). One such Centre was opened in Sarajevo in 2018 and we hope that a second can be established in Zagreb in the near future. Disseminating information in this way allows others to understand the judgements and our ongoing work, and plays a vital role in combating genocide denial and related divisive phenomena.

Mr. President,

The Mechanism remains committed to cooperating with its key stakeholders towards achieving these and other aims. In addition to Member States and the United Nations bodies to whom we are answerable, we will continue to work closely with our staunch supporters, who strengthen our resolve on a daily basis. I am referring to our enforcement and Host States, our affected communities and national authorities, the Office of Legal Affairs, the European Union, and independent monitoring bodies such as the International Committee of the Red Cross, among others.

Of course, cooperation does not flow in only one direction. As I have said on previous occasions, the Mechanism relies heavily on the support provided by Member States and others with respect to various functions, and we are deeply grateful for the assistance that we receive. However, there is a pressing need for further cooperation in a number of areas.

As you are aware, one of these is the situation of the acquitted or released individuals who were relocated to the Republic of Niger more than 22 months ago, and who remain under *de facto* house arrest following Niger's breach of its agreement with the United Nations. This predicament, which is not of the Mechanism's making, has been exacerbated by the country's recent political crisis and continues to detrimentally impact the rights of the relocated persons. At the same time, it burdens not only the Mechanism but the United Nations more broadly.

The other area – which has been mentioned on numerous occasions in this hall – concerns the arrest and transfer of the accused persons in the contempt matter of *Petar Jojić & Vjerica Radeta*. Despite the Republic of Serbia having been referred three times to the Security Council for its failure to cooperate with the Mechanism or the ICTY in this case, the arrest warrants remain outstanding.

We also urgently need further assistance with the enforcement of sentences. In recent years, we have seen an increased number of convicted persons being returned to the United Nations Detention Unit in The Hague, by States that are no longer able to continue enforcing sentences due to legal or other impediments within their domestic jurisdictions. As a result, our enforcement responsibilities are in some instances becoming long-term detention problems. I once more strongly encourage other States to come forward and volunteer to support the Mechanism with this crucial function.

These examples reveal the considerable challenges that can arise once the main in-court proceedings are completed. They relate to the Mechanism's longer-term and continuous activities, which, despite being less visible, are no less important and in fact consolidate the full cycle of justice. Let us unite our efforts to see this cycle through in a fair and efficient manner.

As the last three decades have demonstrated, when we work together, we can deliver on the promise of justice far beyond any expectations of what the ICTY, the ICTR, and the Mechanism itself, would be able to achieve. It now falls upon all of us to ensure that the Mechanism can carry on towards the final chapter of this historic mission and secure the precious legacies of all three institutions, for the benefit of generations to come.

I thank you sincerely for your attention.