



REPUBLIC OF SERBIA

MEETING OF THE SECURITY COUNCIL

AGENDA ITEM:

STATEMENT

by

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Mr. President,
Distinguished Members of the Security Council,
Ladies and Gentlemen,

Thank you for the opportunity to speak to you on Serbia's behalf.

Mr. President,

The second time this year we are considering the regular six-monthly Reports of the President and the Prosecutor of the International Residual Mechanism for Criminal Tribunals in an open videoconference. This fact bears strong evidence of the great risk of the spread of COVID-19 and I thank the President and the Prosecutor for their efforts to acquaint us with the work of the Mechanism in these extraordinary circumstances.

We in Serbia adjusted to these circumstances, too, and advised the Mechanism immediately after the outbreak of the pandemic that we were going to cooperate and continue supervision of persons on parole under the conditions specified in the decisions of its Trial Chambers. To that end, the question of communication limitations has been resolved and Serbia considers its cooperation with the Mechanism one of its key obligations, the fulfilment of which belongs among its priorities.

Serbia's results in this field stand out when compared to those of the other countries of the region, both in respect of cooperation with the Mechanism and the domestic judiciary. Serbia has enabled, let me point out, unrestricted access to the Office of the Prosecutor of the Mechanism to all evidence, documents, archives and witnesses and the cooperation with these organs runs smoothly. All the requests have been attended to and only those of more recent dates are under consideration. Replies are forwarded to the Office of the Prosecutor, Trial Chambers and the Secretariat of the Mechanism, while witnesses are exempted from the obligation to keep State, official and/or military secrets on a regular basis. With regard to the remaining cases, the first-instance proceedings are currently underway in the re-trials of Franko Simatovic and Jovica Stanisic and in the appeal case of Ratko Mladic.

Serbia has aligned its laws with relevant standards, making cooperation possible, exception-free, also in the matter recognized by the Security Council as serious international crime from the Statute of the Mechanism. My country's commitment to combating impunity is reflected also in the number and rank of the accused persons it surrendered to the Tribunal. It has been our duty to prosecute those responsible regardless of the national, ethnic or religious belonging of the perpetrator or the victim. The persons surrendered included a President of the Federal Republic of Yugoslavia, President of Serbia, Federal Deputy Prime Minister, Deputy Prime Minister of Serbia, 3 former Chiefs of the General Staff of the Army of Yugoslavia, a former Head of the State Security Agency and many army and police generals. This was not requested from any other State that emerged from the former Yugoslavia even though the reasons were

many. What there was not many, much to be exact, was political will, Mr. President. Now, is the non-selective cooperation of my country appreciated enough? It is a call for each one of you to make.

With respect to the request to Serbia to surrender Vjerica Radeta and Petar Jojic for obstruction of justice, let me bring to your attention once again that an independent court of Serbia rejected the request by a legally valid (final) decision.

The independence of the judiciary is one of the basic principles of democratic society. Serbia is such society and there is no way in which the subject decision could be influenced. It is instructive, though, that the decision was brought in accordance with Article 1 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (Competence of the International Tribunal) which reads: 'The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.' Accordingly, it is evident that 'obstruction of justice' does not belong in 'serious violations of international humanitarian law.'

The extension of the operating period of the Mechanism until June 2022 brings into focus the consideration of the cases that remain unresolved. After all, the Mechanism's mission is not only to end the remaining cases, but also to address all questions still in dispute. My country will continue to insist that all key issues unaddressed in its cooperation with the Mechanism be resolved.

Mr. President,

In UNSCR 2242 (2018), the Mechanism is encouraged to consider a conditional regime of early release. The latest Report informs us that the Office of the Prosecutor is seriously concerned over the fact that the vast majority of the convicted persons has been unconditionally released after serving only 2 thirds of the sentence. Let me reiterate the position of my country in this regard: the 'concern' is in fact a call for introducing unjustified changes in the work of the Mechanism.

The institute of conditional release is a legal achievement of civilized society. The previous Presidents of the Tribunal and the Mechanism decided this matter without interference by the Office of the Prosecutor. Of course, the President has the right to consult whomever he may deem relevant. Yet, the interference by the Office in the sense of requesting changes in the Mechanism's Rules of Procedure and Evidence is unacceptable.

This is all happening at the time when several Serbian citizens have made requests for early release after they have served 2 thirds of their sentences. So far, a reply to only one of these requests has been received, and it has been rejected. Others are still waiting for a reply. Such important decisions related to human rights and the destiny of the

convicted persons and, by extension, of their families must not be played the game of Three-card Monte with. The completion of the work of the Mechanism and its budget are technical problems, not an excuse for its sluggishness. In legal systems all over the world, the 'silence of the administration' is perceived as a procedural-legal institute of untimely decision-making, i.e. a failure to institute an act, bound to produce multiple legal consequences.

The personal position of President Agius of non-belief in the rehabilitation of persons convicted by the Tribunal is not rested on the teachings of penology, yet it does end up producing consequences. In my opinion, no judge, even the President of the International Residual Mechanism, should have such liberty in decision-making. His only control mechanism is the founder of the Mechanism, the United Nations Security Council. And it must act.

Serbia has done its best to reply quickly and effectively to the 'request for expression of interest' in connection with the early release. Under the newly introduced practice, the President of the Mechanism contacts the country to which a convicted person is to return and in March, May and November 2020 Serbia received 3 requests for Radivoje Miletic, Sreten Lukic and Vlastimir Djordjevic. It replied instantly.

In view of the failure of the competent organs of the Mechanism to provide answers regarding the conditional regime of early release, let me point out once again the importance of Serbia's initiative launched in 2009 related to serving sentences imposed on its citizens by the Tribunal in Serbia. Notwithstanding the convincing arguments that we have continually made to highlight the importance of the initiative, we have received no reply from the Security Council yet. Here are some of the arguments:

- Armed conflicts in the territory of the former Socialist Federal Republic of Yugoslavia ended more than 2 decades ago;
- The opinion of the United Nations Secretary-General contained in paragraph 121 of the Report adopted along with the ICTY Statute on 3 May 1993 to the effect that convicted persons should serve sentences outside of the territory of the former Yugoslavia was a reasonable position at the time when the territory was engulfed in armed conflicts; today, though, this position is anachronistic and, in light of the manner in which sentences are enforced, it generates harmful consequences both for the convicted persons and their families;
- Serbia is a democratically developed country today and a candidate for EU membership;
- Its system of sentence enforcement is aligned with international standards in the area and is sometimes more progressive than those in some EU member States;
- Many of Serbia's penitentiaries have been built recently and are suitable for the enforcement of the sentences imposed for war crime offences, while the country has the legal basis for the enforcement of the sentences imposed for the criminal offences laid down in the Statute of the Mechanism; and

- Serbia's Government has agreed to have the organs designated by the Tribunal/Mechanism carry out supervision of the enforcement of sentences.

The importance of the initiative is very relevant now in the light of recent developments. Under Polish laws, for instance, Sreten Lukic, sentenced by the Tribunal, will have completed 2 thirds of his sentence come January and the Polish authorities intend to transfer him immediately upon the completion to some other country to continue to serve the rest of the sentence or to return him to the UNDU in Scheveningen temporarily. Is it not only too obvious that it would be in everybody's best interest to transfer him to serve the rest of his sentence in Serbia?

A person who has fulfilled the conditions for an early release, Sreten Lukic is being 'additionally punished' by the afore-mentioned procedural obstacles and a long wait for a reply to his request. In view of the ongoing COVID-19 pandemic, his transfer to another prison or the Scheveningen UNDU without the possibility to establish contact with the family would be tantamount to additional, inappropriate punishment.

Once again: Serbia is ready to take up the obligation, as well as the responsibility, in this and in all other cases, for the enforcement of sentences and is agreed to have relevant supervision. The competent Serbian institutions are ready to provide clear guarantees that convicted persons will not be released early short of a decision by the Mechanism.

Another point is worth mentioning. Unfortunately, the treatment of persons serving sentences imposed by the Tribunal varies from country to country. Neither the Tribunal nor the Mechanism has managed to set general standards that would be respected by all; instead, each country in which the convicted persons serve their sentences upholds its own principles. Consequently, the treatment is significantly better in developed countries as they attach greater importance to re-socialization and their higher standard levels are reflected on all aspects of life, including the conditions under which the sentences are served.

Mr. President,

I would like to bring to your attention once again the failure to heed the provisions of the Updated Statute of the International Criminal Tribunal for the Former Yugoslavia of September 2009. In paragraph 1 of its Article 24 related to Penalties, it is said: "The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chamber shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia." The Updated Statute is widely available on the Tribunal's website. Nevertheless, the Tribunal and the Mechanism imposed life sentences on the following Serbian citizens: Stanislav Galic, Ljubisa Beara, Vujadin Popovic, Zdravko Tolimir and a first-instance life sentence on Ratko Mladic. Life sentences have been imposed also on Milan Lukic and Radovan Karadzic, persons of Serbian nationality, but not Serbian citizens. At that time the penalty of up to 40 years in prison was provided for the most serious crimes in Serbia. The only conclusion to be made

from this punishment policy is that the Tribunal imposed the said sentences contrary to its own Statute. No mechanism is provided for the appeals procedure. The decisions brought by the Tribunal contrary to its founding act resulted in far-reaching consequences, i.e. years-long sentences imposed without resource to legal remedy and absent any instruction in that regard. Some of the persons who had had life-sentences imposed upon (Tolimir and Beara) died while serving the sentences, which makes the need for the resolution of this legal *nonsense* ever more apparent. This all the more so now as the imposition of the first-instance sentences on Franko Simatovic and Jovica Stanisic and the second-instance sentence on Ratko Mladic is expected to take place in May 2021.

Another question is of exceptional importance for my country: the fate of the Tribunal's archives. We have forwarded to the Office of the ICTY Prosecutor, Defence Teams and the Trial Chambers a large number of documents. We believe that the documents forwarded to the Tribunal's and later the Mechanism's Prosecutor and not used as evidence in the proceedings should be returned to the forwarding agencies. Our belief is predicated on the fact that the proceedings have been completed, that Serbia will not destroy the documents, that it will keep them in a proper way and that it will fully respect the standards of document safekeeping and use.

No concrete reply has been received to this request yet. The officials of the Mechanism continue to turn a deaf ear to our proposals. The return of the documents is of paramount importance not only because of the responsibility that we all have for documenting the events that took place in the former Yugoslavia in the 1990s, but also because of the enormous amount of the material and the need to enlist the help and assistance of many Serbian institutions. It is not a simple task and it has been postponed on and on pending the completion of the work of the Mechanism. The question of the Information Centre in Serbia and the legacy of the Tribunal should not be confused with the return of the documents at all.

Mr. President,

A part of the six-monthly Reports, including of this one, deals with the 'denial and glorification of war crimes' on a regular basis. In each Report mention is made of public appearances by persons, sometimes expressly named, who have served sentences imposed by the Tribunal. It is not clear why. The job of the Office of the ICTY Prosecutor is completed once a judgment is passed. And after they serve their sentences, these persons cannot be sanctioned any more on whatever basis or denied a personal or a civil right. The position of the Office on the 'denial and glorification of war crimes' is therefore irrelevant and selective, just as it is replete with political messages, which is well beyond the bounds of its competence.

The importance of regional cooperation in the field of war crimes is essential for prosecuting all suspects effectively irrespective of the country they reside in. The international legal framework, i.e. the International Agreement on cooperation in criminal

matters has long been amended by memoranda, bilateral agreements and protocols among the Ministries of Justice and the Prosecutor's Offices of the countries of the region.

From May to November 2020, the Prosecutor's Office of Bosnia and Herzegovina submitted to the Office of the War Crimes Prosecutor of the Republic of Serbia 27 requests for assistance, 11 of which have been responded to, while 16 are still considered. In the same period, the Office of the War Crimes Prosecutor of the Republic of Serbia submitted 67 requests to the Prosecutor's Office of Bosnia and Herzegovina, 21 of which have been responded to, while responses to 46 are still awaited.

From May to November 2020, the Office of the War Crimes Prosecutor of the Republic of Serbia submitted to the State Attorney's Office of the Republic of Croatia 55 requests for assistance, 9 of which have been responded to, while no response has been received for any of 46 others. The State Attorney's Office of the Republic of Croatia submitted to the Office of the War Crimes Prosecutor of the Republic of Serbia 12 requests for assistance, 7 of which have been responded to, while 5 are still considered.

Mention should be made in this connection that, after the Regional Prosecutors' Conference held in Belgrade in 2019, the representative of the State Attorney's Office of the Republic of Croatia presented in her letter of 2 October 2019 the position of her Office that its prosecutors acting in the matters of war crime should be exempted from regional training courses carried out jointly with the Prosecutor's Offices of other countries. She said that she was guided by the fact that Croatia is an EU member State, that it is a party signatory of the Conventions implemented in its criminal legislation and that, in view of the fact that its legislative solutions are different, its prosecutors need a different training. She also invoked a statement made by the Mechanism to the effect that it would help regional Prosecutor's Offices of Bosnia and Herzegovina, Montenegro and Serbia strengthen their capacities. The State Attorney's Office of the Republic of Croatia is left out, which, in her opinion, is a further indication that Croatian prosecutors should be exempted from regional training courses.

The Office of the War Crimes Prosecutor of the Republic of Serbia remains committed to strengthening cooperation with the Mechanism, which is one of the basic activities it engages in under the strategic documents in force in Serbia: the National Strategy for the Prosecution of War Crimes and the Prosecutorial Strategy, as well as the Chapter 23 Action Plan. The cooperation was very extensive in the reporting period and a number of working meetings was held, including conference calls due to the COVID-19 pandemic. The last meeting was held at the level of Chief Prosecutors last October; it was focused on category 2 matters which had been the subject of discussions also at the Regional Conference in Sarajevo in 2019. The Office took over the prosecution of a category 2 case, while receipt of unredacted statements from the Prosecutor's Office of Bosnia and Herzegovina is waited on following the changes in the protection measures.

The cooperation with the Mechanism continues through joint projects. One such project was launched last November with the participation of a number of representatives

from the Office of the War Crimes Prosecutor and the Mechanism and the inclusion of a thorough-going analysis of category 2 cases, assistance requests, regional cooperation, the cases in which evidence is ceded, documents and information and the cases in which witness testimonies are ensured.

The Office, let me point out, was very active in the period from May to November 2020 and issued 3 indictments, taken over from the prosecution agencies of Bosnia and Herzegovina within the framework of regional cooperation. 2 of the indictments refer to the commission of offences that accounted for a large number of casualties, while 1 was issued in a complex case with a large number of offences and casualties in which a high-ranking person was indicted. Furthermore, another indictment was issued last July, but it was dismissed due to insufficient evidence. The prosecution is now expected to come back with stronger evidence. 5 more cases are to be taken over as soon as complete evidence is received from regional prosecution agencies. In 1 case a decision of the Mechanism is waited upon following a request to change protection measures. The main trial is ongoing before first-instance courts in 15 cases against 37 persons and 3 convictions were handed down under the indictments issued by the Office in the same period.

54 persons are currently investigated by the Office of the War Crimes Prosecutor of the Republic of Serbia in 8 cases. 2 investigations were initiated in the period from May to November 2020 and the others date to the previous period. Investigation of unknown perpetrators was initiated in 11 cases. Investigation of 134 persons in 30 cases has been ceased, mainly because the defendants are at large and their whereabouts are unknown.

One of the priorities in the work of the Office is the solution of the problem of a large number of missing persons. In view of its importance, the Office is engaged regularly, alongside the Commission of the Government of the Republic of Serbia on Missing Persons, in the quest for solutions to outstanding issues on bilateral and regional levels and, to that end, a representative of the Office took part in a working meeting held on 23 October 2020 between the Commission and its Croatian counterpart.

Mr. President,
Distinguished Members of the Security Council,

It is hard to understand why the efforts of my country to solve certain questions, presented also in this Council, are met with official indifference. It seems sometimes that we are being convened here only for an informal meeting of interested parties and that the real decision-making takes place elsewhere. This does not benefit the Mechanism, it is demeaning for the United Nations and disruptive of the international legal order. The only way to bridge the differences, overcome the impasse and embark upon the road of addressing the initiative of my country is to get the Security Council actively engaged in this matter and provide answers and solutions that we have been waiting on for a long time now.

Thank you, Mr. President.