



THE REPUBLIC OF SERBIA

General Assembly

Agenda item 130 – International Residual Mechanism for Criminal Tribunals

STATEMENT

by

Ms. Sandra Pejic-Glymph

Counsellor

Permanent Mission of the Republic of Serbia

to the United Nations

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Mr. President,

Thank you for the opportunity to address this Assembly today on behalf of the Republic of Serbia with regards to the ninth Report of the President of the International Residual Mechanism for International Criminal Tribunals of the United Nations.

At the outset, allow me to reiterate that Serbia's results in its cooperation with the Residual Mechanism have been positive, as well as indicative of the highest level of my country's commitment to comply with its international obligations. Our cooperation with the Mechanism has been successful and widely recognized.

The remaining functions of the International Criminal Tribunal for former Yugoslavia, established in 1993, were taken over by the Mechanism for International Criminal Tribunal. Nowadays, The Hague branch of the Mechanism is dealing with considerably different issues from the ones we were facing three decades ago. Some of the issues related to the Mechanism's operations unfortunately do not occupy an adequate space in the Report issued by the President of the Mechanism.

Let me remind you that the Security Council, in accordance with chapter VII of the Charter of the United Nations, Resolution 1966 (2010),

“requests the ICTY and the ICTR to take all possible measures to expeditiously complete all their remaining work as provided by this resolution no later than 31 December 2014, to prepare their closure and to ensure a smooth transition to the Mechanism, including through advance teams in each of the Tribunals”.

The primary objective of the Mechanism is to complete its operations as soon as possible.

Mr. President,

The first issue I would like to bring to your attention was not included in the Report of the President of the Mechanism. Taking into consideration its gravity, we believe that it should have been mentioned in the Report at least as a potential issue which the Mechanism is dealing with or might deal with. I am referring to requests to extradite or to conduct some new investigations against the individuals who were convicted either by the International Criminal Tribunal for former Yugoslavia or by the Mechanism. Possible decisions of the Mechanism regarding these issues might have far-reaching consequences.

The issue of extradition of convicted individuals to third countries has not been regulated either by the Statute of the ICTY or by the Mechanism's Statute. It is based on established rules regarding international assistance in cases of criminal matters, such as the application of the principle of *ne bis in idem*, as well as the respect for laws and interests of a country of origin of the individuals requested to be extradited.

The individuals who fall within the jurisdiction of the Mechanism, regardless of in which country they serve a prison sentence, cannot be extradited to any country or jurisdiction based on the decision of the Mechanism. They can be extradited only to the country of their citizenship.

None of the international statutes gives the authority to the Mechanism to make decisions about the extradition of convicted persons to third countries or jurisdictions to have them prosecuted for criminal acts which are under the jurisdiction of the Mechanism. We emphasize that the countries where the convicted individuals are serving a prison sentence have neither legal basis nor it is acceptable for them to make decisions related to extradition of those individuals to any national judiciary, bearing in mind that those convicted individuals are under the jurisdiction of the Mechanism and countries of their citizenship.

We urge on the Mechanism to prevent attempts of violation of the principle *ne bis in idem*, which is confirmed in Article 7 of its Statute, and not to allow retrials for persons already convicted by the ICTY, particularly to make sure that it is not done in the territory of Autonomous Province of Kosovo and Metohija, which is under interim UN administration.

Mr. President

The second issue that my delegation wishes to address is related to the conditions of the early release of convicts, which have been significantly changed over the last few years.

Para 29 of the Report of the President of the Mechanism stipulates:

“Supervising the enforcement of sentences remained a central area of responsibility for the President in accordance with article 15 (2) of the statute. In consultation with other judges, as required by rule 150 of the Rules of Procedure and Evidence, President Agius issued numerous orders and decisions relating to applications for pardons, commutations of sentence or early release of persons convicted by the ad hoc Tribunals or the Mechanism. In doing so, he further developed the jurisprudence on general standards to be considered in determining whether such applications should be granted”.

In the period which should be the final stage of the Mechanism’s operations and which should lead to its closure, we encounter, as stated in the Report, “development of jurisprudence on general standards” of early release of convicts. Unfortunately, the Report does not state that such a practice is contrary to practices of previous presidents of the Mechanism and that it is contrary to the legal framework, which was in effect for two decades, with regards to early release of convicts. Thus, it violates the principle that all convicts who find themselves in the same or similar situations should be treated equally. All previous presidents of either the International Criminal Tribunal for former Yugoslavia or the Mechanism drew on this principle in their decisions. Therefore, we do not find any justification that now, when the Mechanism should terminate its operations, these conditions have changed.

Mr. President,

with regards to the contempt case (*Jojic-Radeta* case) allow me to remind that, in line with the SCR 1966 (2010), Mechanism’s primary objective is to expeditiously complete its operations. Resolution also stipulates the intention to refer the cases to the national jurisdictions. When national courts stand ready to conduct criminal proceedings, under the Mechanism’s monitoring, respecting the principles of just trials, there is no need that the proceedings should be conducted before the Mechanism.

The Resolution of the Security Council 1966 (2010):

“urges the Tribunals and the Mechanism to actively undertake every effort to refer those cases which do not involve the most senior leaders suspected of being most responsible for crimes to competent national jurisdictions in accordance with their respective Statutes and Rules of Procedure and Evidence (para 11).

It is in the interest of peace and stability not to disturb the legal order and trust in the national judicial system to conduct appropriate legal proceedings. The objective of the SCR 1966 (2010) is to limit the jurisdiction of the Mechanism to its necessary function, so that other cases can be referred to the jurisdiction of national judiciary institutions.

The claim of the President of the Mechanism that in the present circumstances only a trial before the Mechanism can “improve justice in the region of former Yugoslavia” is groundless. Republic of Serbia takes seriously its obligations regarding cooperation with the Mechanism. It expressed its readiness to take over the court proceedings of *Jojić-Radeta* case and provided appropriate guarantees. Additionally, the Republic of Serbia fully recognizes and accepts the obligation of the Mechanism to monitor trials that were transferred to national courts with the help of international and regional organizations, as well as to take measures envisaged by the Article 6 of the Statute of the Mechanism. Let me reiterate once again - Serbia’s national judicial system is equipped, willing and able to prosecute the contempt case.

In closing, I would like to underline that, as it did in the past, Serbia will continue to fully comply with its international obligations in its cooperation with the Residual Mechanism.