



REPUBLIC OF SERBIA

MEETING OF THE SECURITY COUNCIL

AGENDA ITEM: IRMCT

STATEMENT

by

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Mr. President,
Distinguished Members of the Security Council,

Thank you for the opportunity to address you on behalf of Serbia and participate in the video meeting of the Council convened to consider the regular six-month Report on the work of the International Residual Mechanism for Criminal Tribunals (IRMCT).

Mr. President,

Let me point out at the beginning of my Statement that, despite the state of emergency declared to counter the spread of COVID-19, Serbia informed the International Residual Mechanism for Criminal Tribunals, within the shortest time possible, that it will cooperate and continue to supervise persons on temporary release under the conditions specified in the decisions of the Trial Chambers of the Mechanism.

For a quarter of a century, efforts have been made to sanction the consequences of the bloody destruction of Yugoslavia through the mechanism of international justice. Serbia has made a great contribution in this regard. It extradited to international justice the highest officials and military officers of its former State. No other State has done that. The conclusion which the history revisionists are trying to impose on the greatest responsibility of Serbia and the Serbian people, cannot be drawn from that.

Simply put, other States did not do it voluntarily and the international community did not find a mechanism to force them to do so.

Therefore, many open issues and unpunished crimes remain. This fact casts a shadow on the effect of this body in its overall existence.

Mr. President,

Once again, we analyze the results of the Mechanism's work. It is due to fold in the foreseeable future. Not so long ago, in December 2017, the International Criminal Tribunal for the crimes committed in the former Yugoslavia ceased to exist, too.

The Mechanism which should end not only the remaining proceedings, but also resolve all disputed issues related to the serving of sentences, possible revisions of proceedings or issues of archives, has not fully achieved any of its goals yet.

I will mention only the key issues that remained unanswered in my country's cooperation with the Mechanism.

It can be seen from the Third Review Report on the work of the IRMCT and the Regular Six-Month Report that the completion of the proceedings is postponed to April 2021. I see this prolongation as an opportunity to resolve the remaining issues, for which there has been no answer so far.

I would like to reiterate that, in cooperation with the ICTY and the IRMCT, Serbia provided the Prosecution with free access to all evidence, documents, archives and witnesses. Cooperation with IRMCT is going smoothly. Almost all received requests have

been resolved and requests of a more recent date are also being resolved. Answers and documentation from the archives of Serbia's State authorities are submitted to the Prosecutor's Office of the IRMCT, court chambers and the Registry of the IRMCT in a timely manner. Witnesses are released from the duty to keep State, official and military secrets.

Of the remaining proceedings related to the cooperation of Serbia with the Mechanism, the first-instance proceedings in the repeated case of Jovica Stanišić and Franko Simatović are in progress, as well as the appeal procedure in the case of Ratko Mladić.

Mr. President,

First of all, I want to talk about problems related to the imposition of prison sentences and the initiative to serve sentences in Serbia, the early release of persons who have served two thirds of their prison sentence and a, kind of illegal, monitoring and control of persons after release.

The expiration of the deadline for resolving the issues that Serbia's Minister of Justice raised before is evident. I do not hope that much will change in that sense, but I also feel a responsibility to present it to this Council until they are resolved.

The first problem concerns non-compliance with the provisions of the updated ICTY Statute of September 2009. In its Article 24, which refers to Criminal Sanctions, paragraph 1 states, I quote: "The penalty imposed by the Trial Chamber shall be limited to imprisonment. **In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia**". This updated ICTY Statute is available to all on the Tribunal's website. Nevertheless, the Tribunal and the Mechanism have sentenced to life imprisonment the following Serbian citizens: Stanislav Galić, Ljubiša Beara, Vujadin Popović, Zdravko Tolimir and passed a first-instance sentence to Ratko Mladić, while Milan Lukić and Radovan Karadžić were sentenced to life imprisonment as persons of Serbian nationality, who are not citizens of Serbia. In that period, Serbia provided for a sentence of up to 40 years in prison for the most serious crimes. The only conclusion that can be deduced from this is that the Tribunal made these decisions contrary to its Statute. No grievance mechanism is provided for such treatment. Decisions made by the Tribunal outside the rules of its founding act have resulted in far-reaching consequences, i.e. imposition of long-term penalties in cases where there is no possibility of a remedy or any instruction in this regard. Among the persons who were sentenced to life imprisonment, there are also those who died while serving their sentences (Beara and Tolimir), so the need to resolve this legal nonsense is even more pronounced.

Another problem that Serbia raised back in 2009 refers to the initiative **for Serbian citizens to serve the sentences imposed before this Tribunal in Serbia**. We have not yet received a response from the Security Council related to it. The largest number of convicted persons serving their sentences are persons of Serbian nationality and Serbian citizens. Is it not therefore logical that Serbia should be interested in resolving this issue? I believe that we must not allow this issue to remain unresolved before the end of the Mechanism's mandate.

The third problem has arisen because **the treatment regime for ICTY detainees unfortunately differs from country to country**. The treatment of convicts is much better in the most developed countries, which attach great importance to re-socialization and where the level of standards is reflected in all other aspects of life, including the conditions under which prisoners serve their sentences. Neither the Tribunal nor the Mechanism have succeeded in imposing general standards that will have to be respected, but conversely, each of the countries where prison sentences are served, has imposed its own principles.

Serbia is ready to take on the obligation and responsibility for the execution of prison sentences imposed on its citizens convicted before the Hague Tribunal and to accept international supervision in this regard. The competent institutions of Serbia are ready to provide clear guarantees that convicted persons will not be released early without appropriate decisions by the Mechanism. Once again, we invite the representatives of the IRMCT and the representatives of the relevant institutions designated by the UN Secretary-General to visit Serbia, tour its prison facilities and see for themselves if the prison conditions correspond to the purpose.

The fourth major problem is the issue of **changing the conditions for early release after serving two-thirds of the prison sentence**. Serbia insists that the same conditions continue to apply to the citizens of Serbia convicted before the Tribunal.

Most of the requests that the citizens of Serbia submitted to the President of the IRMCT for early release after serving two-thirds of their sentence were not resolved for the first time last year. In 2019, two-thirds of the prison sentences expired for the following citizens of Serbia: Radivoje Miletić, Sreten Lukić, Radoslav Brdjanin, Vlastimir Djordjević and Nebojša Pavković. All of them submitted requests for early release. These are people of advanced age and sensitive health conditions and the legal resolution of their cases, for reasons of humanity, should not be left out.

At the beginning of 2020, the request of Radoslav Brdjanin for early release was denied. Serbia received a "call for a statement" for Radivoje Miletić in March 2020 and for Sreten Lukić in May 2020. A new practice has been introduced for the President of the Mechanism for International Criminal Tribunals to address the country to which the convict is to return, seeking guarantees that the State of which they are nationals will accept and monitor compliance with the conditions set by the Mechanism in the event of a positive decision on the early release to freedom. Serbia submitted positive answers to these calls for a statement within the set deadline.

The conditional release is a legal achievement of a civilized society. The previous presidents of the Tribunal and the Mechanism have decided on this issue without anyone's influence. Certainly, the President of the IRMCT has the right to consult when he deems it relevant in making a decision on early release. The influence of the Prosecution, as well as third parties, in terms of amendments to the Rules of Procedure and Evidence of the Mechanism, is inadmissible. Unfortunately, that change did take place. Persons who have acquired this condition are in this way "additionally punished" by procedural obstacles and long waits for a response.

The answers to the requests are late, without a reason and justification. Any reason for terminating the work of the Mechanism and the budget at its disposal are technical problems and this cannot be an excuse for the non-expediency of the Mechanism. The "administrative silence" in the administrative systems of the whole world is envisaged as a procedural legal institute of untimely enactment, i.e. non-enactment of acts, which has various legal consequences.

The fifth question arises at the end, when the convicts are released. The IRMCT Prosecutor's Office continues to "observe and monitor them". The regular part of the six-month reports, including this one, refers to the "**denial and glorification of war crimes.**" Each Report, sometimes by name, mentions the appearance in public of persons who have served a sentence imposed before the ICTY. It is not clear why. The work of the Prosecutor's Office has been completed by the passing of a verdict. After serving the sentence, these persons cannot be further sanctioned, on any grounds, nor can anyone deprive them of any personal and civil rights.

Mr. President,

Regrettably, I have to pay special attention to the problem that regularly occurs in the Detention Unit of the Mechanism in Scheveningen and concerns **the health condition of General Ratko Mladić.**

On 30 March 2020, Serbia's Minister of Justice addressed the President of the MICT, Mr. Carmel Agius, conveying to him her concerns about the operation to which General Mladić was subjected, in the context of the pandemic and even the recommendation of the Dutch authorities not to perform non-emergency medical procedures of which his family was only subsequently informed. Due to similar actions by employees of the Detention Unit, as well as the members of the medical service in charge of detainees, the family of Ratko Mladić had to intervene even on previous occasions. An international medical expert team has been formed to protect the life and health of General Mladić. The unanimous assessment of this team was that the operation would carry an unnecessary risk to his life. Fortunately, General Ratko Mladić survived.

A special problem is the non-enforcement of court decisions. According to the decision of the Appeals Chamber, the medical service of the mechanism was ordered to provide information on health condition of Ratko Mladić to his medical team **once a week.** Contrary to that decision, official reports on his health are hidden from the family of Ratko Mladić and his medical team, i.e. the Secretariat does not respect the decision of the Appeals Chamber. The behaviour of the administration of the Detention Unit remained unsanctioned.

In such a situation, the Minister of Justice of Serbia requested President Agius to take measures to save one human life and to maintain the authority of the court decision endangered by the administration of that same court. The answer of President Agius was that, in respect of the health of Mr. Mladić, his ability to react is limited and that this authority has been entrusted to the Appeals Chamber, which decides in proceedings related to Mr. Mladić. In addition, he stated that the management of the United Nations Detention Unit, including the provision of medical services to detainees, is the general responsibility of

the Registrar. The question is how to solve problems of this kind, when the decisions of the court are ignored by the Registry of that same court, while the President of the court leaves them to his administration without any reaction and even calls that the decisions of the court be respected.

The sixth issue is the fate of the ICTY archives. Serbia has submitted a large number of documents to the ICTY Prosecutor's Office, the Defence of the Defendants and the ICTY Trial Chambers. The general position of Serbia is that the documentation submitted to the ICTY Prosecutor's Office (later to the Mechanism as well), which was not presented as evidence in the proceedings before the ICTY and the IRMCT, should be returned to the authorities that submitted it. The precondition for the **return of documentation** is the fact that the criminal proceedings before the ICTY and the IRMCT have been finalized.

So far, no concrete answer to this question has been provided. Our proposals to launch this great undertaking have not been met with a response from the Mechanism officials. The return of documentation is extremely important, not only because of the responsibility for documenting events in the former Yugoslavia in the 1990s, but also because of the volume of material and additional engagement of the relevant institutions of Serbia. In any case, this is not an easy job and it has been postponed until the last moment, when the end of the Mechanism's work is already in sight.

Last, but not least, let me point out the **cooperation at the regional level**, which is the result of joint work on mutual understanding, cooperation and reconciliation.

In the period from 16 November 2019 to 16 May 2020, the War Crimes Prosecutor's Office of the Republic of Serbia filed two **indictments**, according to which the procedure is currently in progress before the first instance court. In the same period, according to the indictments of the War Crimes Prosecutor's Office of the Republic of Serbia from the previous period, 4 first-instance convictions were passed. In the second-instance procedure, 1 person was acquitted and 2 persons were convicted.

Cooperation with the competent prosecutor's offices from the region continued with the exchange of requests for assistance. The Prosecutor's Office of **Bosnia and Herzegovina** submitted 16 requests for assistance to the War Crimes Prosecutor's Office of the Republic of Serbia, of which 6 requests were granted, 8 requests were processed, and 2 requests were not granted due to formal deficiencies. The War Crimes Prosecutor's Office of the Republic of Serbia submitted 18 requests for assistance to the Bosnia and Herzegovina Prosecutor's Office, of which 4 requests were granted, while 14 requests have not yet been answered.

The State Attorney's Office of the **Republic of Croatia** submitted 10 requests for assistance to the War Crimes Prosecutor's Office of the Republic of Serbia, of which 4 requests were granted, while 6 requests are still being processed. The War Crimes Prosecutor's Office of the Republic of Serbia submitted 7 requests for assistance to the State Attorney's Office of the Republic of Croatia, of which 3 requests were granted, while 4 requests have not yet been answered.

Six requests were submitted to the **EULEX** Special Prosecutor's Office in Priština, but so far no requests have been answered.

The War Crimes Prosecutor's Office was committed to **strengthening regional co-operation** in war crimes prosecutions. Its representatives participated in the regional meeting at the technical level, which was held on 26 and 27 November 2019 in Sarajevo, in which, in addition to the representatives of Serbia's War Crimes Prosecutor's Office, the representatives of the Prosecutor's Offices of Bosnia and Herzegovina, the International Residual Mechanism for Criminal Tribunals, the Supreme State Prosecutor's Office of Montenegro and the State Attorney's Office of the Republic of Croatia also participated. In the period from 17 to 19 December 2019, the representatives of Serbia's War Crimes Prosecutor's Office participated in the Regional Conference of Prosecutors in Sarajevo, which was attended by the representatives of prosecutors from the region - Bosnia and Herzegovina, Croatia, Montenegro and the Chief Prosecutor of the International Residual Mechanism for Criminal Tribunals.

On 14 May 2020, the War Crimes Prosecutor of the Republic of Serbia held a telephone **meeting** with the Chief Prosecutor of Bosnia and Herzegovina Gordana Tadić. The topic of discussion was the improvement of regional cooperation in specific cases.

The cooperation with the International Mechanism for Criminal Tribunals remains active and constructive. On 12 May 2020, the War Crimes Prosecutor of the Republic of Serbia and the Chief Prosecutor of the Mechanism held a telephone meeting. The topic of conversation were the results achieved by the Prosecutor's Office in the previous period, regional cooperation and cooperation between the War Crimes Prosecutor's Office and the Mechanism.

In December 2019, the Deputy Prosecutors for War Crimes and Assistant Prosecutors attended the Introductory **Training** in The Hague and, on that occasion, the experts of the Prosecutor's Office of the IRMCT transferred to them the knowledge and experience gained in the work of the Mechanism.

In the past period, the War Crimes Prosecutor's Office of the Republic of Serbia has continued to request the necessary **documentation** from the International Residual Mechanism for Criminal Tribunals for specific cases it conducts at all stages of criminal proceedings.

The **joint project** of the IRMCT and the European Commission "The Visiting National Prosecutors" is still being implemented, which enables the stay and work of the War Crimes Prosecutor's Office representative at the IRMCT Prosecutor's Office ("liaison officer") who continuously searches the ICTY/IRMCT Prosecutor's Office database, separates and submits documentation and evidence relevant to the proceedings within the jurisdiction of the War Crimes Prosecutor's Office. In addition, case handlers regularly search databases by accessing the Electronic Disclosure System (EDS).

Mr. President,
Distinguished Members of the Security Council,

I believe that, at this time when the end of the work of the Mechanism is in sight, the active engagement of the United Nations Security Council in all open issues is extremely important. Serbia expects answers to these questions.

In lieu of a conclusion let me point out that I believe that the highlights that I made in my Statement are elucidative enough to lead you to the conclusion that the cooperation of my country with the Residual Mechanism has been successful indeed.

Thank you Mr. President.