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REPUBLIC OF SERBIA

SECURITY COUNCIL MEETING

AGENDA ITEM: IRMCT

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STATEMENT

by

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New York, 11 December 2019

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

Thank you for the opportunity presented to me to speak to you on behalf of the Republic of Serbia.

Mr. President,

The International Residual Mechanism for Criminal Tribunals (IRMCT) will complete its work soon. The key moments in Serbia's cooperation with this institution have been highlighted in the last several Statements of my country in this Council. So have certain tendencies that foreshadow future developments in the IRMCT work. Yet, the questions posed and the suggestions made in the Statements remain unaddressed.

Serbia's position on the lifespan of the Mechanism is rooted in the fact that the mandates of the holders of the three offices crucial for its functioning, that of President, Prosecutor and of Registrar, expire on 30 June 2020. It is therefore hard to understand why the efforts of my country to solve certain questions raised before the esteemed Council continue to be ignored by those who will have to address the question of the further work of the Mechanism in the near future.

Despite exemplary cooperation with the Mechanism and the fulfilment of the obligations it has assumed, Serbia continues to be looked at as a *bête noire*, bereft of influence even if it proposes improvements in the IRMCT's proceedings that concern, most often, the fate of its nationals. Let me recall once again that, in its cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the IRMCT, my country made sure that their Prosecutors had free access to all evidence, documents, archives and witnesses; that the cooperation was productive; and that all the requests it received got attended to. Feedback and documents from the archives of Serbia's government agencies have been forwarded to the Office of the Prosecutor, Chambers and the Registry of the Mechanism in time and the witnesses have been granted the right to waive the obligation to keep State, official and/or military secrets confidential.

Mr. President,

In its Statements to the Council, my country argued that the decades-long practice regarding the conditions of serving the sentences pronounced by the ICTY and the IRMCT should be changed.

In the Mechanism's Reports, though, including in the last one for the period from 16 May to 15 November 2019, requests are bandied about to amend Rule 151 of the Rules of Procedure and Evidence relative to pardon, commutation of sentences and early release. And, UNSCR 2422 (2018) "encourages the Mechanism to consider an appropriate solution,

including by considering putting in place conditions on early release in appropriate cases". IRMCT President Carmel Agius, it is reported, has already taken the encouragement 'into consideration', while IRMCT Prosecutor Serge Brammertz is 'seriously concerned' over the fact that the vast majority of the sentenced persons have been unconditionally released after serving only two thirds of their sentences. The consideration and the concern indicate that, in all likelihood, unjustifiable changes will be made in the work of the IRMCT.

This worries me, Mr. President, for it is hard to believe that the consideration of this question at the time the conditions have concurred this year for several Serbian nationals to be released early after they have served 2 thirds of their sentences is accidental. Most of them have filed early release applications to the IRMCT President; none of them received a reply yet and no explanation has been provided. The sentenced persons, let me point out, are of advanced age and in poor health, so that, for reasons of humanity, a fair solution of these cases should be proceeded upon.

Serbia has had the 'silence of the administration' laid bare for it already on a number of occasions. Including after two letters that its Minister of Justice sent to the Mechanism in the case of General Pavković. No reply to either of them has been received. The Minister had written with regard to the event of 2 July 2019 when War Crimes Prosecutor of so-called Kosovo Drita Hajdari made an attempt to interrogate the General in the Kylväkoski Prison in Finland under cover of 'international' legal assistance following a letter rogatory in connection with an order to conduct an investigation.

Only the Mechanism, Mr. President, has jurisdiction over this case. Under Article 25, item 2, of its Statute, it has "the power to supervise the enforcement of sentences [...], including the implementation of sentence enforcement agreements entered into by the United Nations with Member States, and other agreements with international and regional organizations and other appropriate organisations and bodies." It is not clear who allowed the attempt, just as a clarification is due as to whether the Mechanism gave a nod of approval to the representative of a territory, a United Nations protectorate under UNSCR 1244 (1999), neither a State nor a member of the United Nations, to conduct the interrogation.

Mr. President,

The indications that the early release provisions will be amended touch on Serbia's initiative launched ten years ago calling for serving, in Serbia, the sentences pronounced to its nationals by the ICTY. The initiative is motivated by the resolve of my country to take up the responsibility for the enforcement of the sentences. The purpose of punishment includes, among others, the re-socialization of the punished persons. It is hard to expect that this purpose will ever be achieved if these persons serve their sentences in faraway countries, the language of which they do not understand and in which the visits by friends and relatives are all but precluded.

I take this opportunity to draw your attention to the difficult situation of Milan Martić and Dragomir Milošević, two Serbian nationals sentenced by the ICTY and serving their sentences in Estonia. Former and current ICTY Presidents Meron and Agius have been advised of their situation by the Ministry of Justice and the Ministry of Foreign Affairs of the Republic of Serbia, International Committee of the Red Cross and by the sentencees themselves on a number of occasions.

Since the cessation of conflicts in the former Yugoslavia, the circumstances in Serbia have changed dramatically. This fact has been highlighted in my country's Statements to the Council and during the visits of the IRMCT's officials to Serbia.

In June and December 2018 and in July 2019, my country requested the Secretary-General to ask the Mechanism to prepare a comprehensive assessment of the problem in order to make it possible for the Security Council, the founder of the Tribunal and the Mechanism, to consider the ongoing practice relative to the serving of sentences and introduce necessary changes.

Let me reiterate: Serbia is ready to accept an international supervision of the enforcement of the sentences of these persons that would be precisely defined and provide positive guarantees that these persons will not be released early short of appropriate decisions by the Mechanism or any other United Nations agency to be charged with dealing with these issues in the future. Once again, we call on the IRMCT's representatives and the representatives of the relevant institutions to be mandated by the Secretary-General to visit Serbia, tour its prison facilities and see for themselves the situation in the prisons that would be used for this purpose.

This question should be accorded special attention since my country has called for its solution for a decade now and no progress has been made in that regard yet. The position of the Secretary-General expressed in his Report to the Security Council on 3 May 1993 (paragraph 121) to the effect "that, given the nature of the crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia" is hardly relevant now considering that the Report was submitted at the time when war raged in its territory and the situation has changed altogether in the meantime.

Mr. President,

Another question is of paramount importance for Serbia: the fate of the ICTY archives. My country forwarded a large number of documents to the ICTY Prosecutor, its Chambers, as well as to defence counsels. It is our view that the documents forwarded to the ICTY/IRMCT Prosecutors and not presented as evidence in the proceedings should be returned to the authorities who forwarded them in the first place. The precondition for the return of the documents should be predicated on the fact that the criminal proceedings before the ICTY and the IRMCT have been legally completed and on the undertaking by

Serbia not to destroy the documents, but to keep them properly and respect the relevant standards instead.

So far, we have received no concrete response to this question. Our proposals to address this important issue have been met with inattention by the officials of the Mechanism. The return of the documents is of exceptional importance not only because of the responsibility we all have to document the events that took place in the former Yugoslavia in the 1990s, but also because of the abundance of the material and the enormous efforts invested by Serbia's competent institutions in that regard. It is not a simple job and the can should not be kicked down the road all the way to the completion of the work of the Mechanism. The establishment of an Information Centre in Serbia and the relevant question of the ICTY legacy should not be linked to the return of the documents.

Mr. President,

Having discussed the three topics of great importance for my country, I would like to point out that I expect that the proceedings in the Jojić-Radeta case will remain within the legal confines and that politics will not be allowed to interfere in the case of contempt of court. This case must not, as happened in the past, become an instrument of putting political pressure on Serbia.

Last but not least, let me point out that regional cooperation is the result of joint work on mutual understanding, cooperation and reconciliation. A number of facts are given to illustrate it.

From 16 May to 15 November 2019, the War Crimes Prosecutor's Office of the Republic of Serbia issued 2 indictments and received 8 first-instance and 3 second-instance judgments. My country's cooperation with Bosnia and Herzegovina in legal assistance is at a very high level and a number of legal assistance requests was exchanged in the said period. The Prosecutor's Office of Bosnia and Herzegovina submitted 22 requests to the Prosecutor's Office of Serbia, 12 of which were complied with, 7 requests are under consideration, while 10 were rejected under the relevant Protocol due to insufficient grounds. For its part, the Prosecutor's Office of Serbia submitted 20 requests, 5 of which were complied with, while replies to 15 of them remain pending.

From 16 May to 15 November 2019, the State's Attorney Office of the Republic of Croatia submitted 21 requests to the Prosecutor's Office of Serbia, 7 of which were complied with, 12 requests are under consideration, while 2 were rejected under the Memorandum and the Agreement due to insufficient grounds. For its part, the Prosecutor's Office of Serbia submitted 9 requests, 2 of which were complied with, while replies to 7 of them remain pending.

From 16 May to 15 November 2019, the EULEX Specialist Chambers in Priština submitted 4 requests to the Prosecutor's Office of Serbia, 2 of which were complied with, 2

requests are under consideration, while no reply is pending. For its part, the Prosecutor's Office of Serbia submitted 8 requests, 1 of which was complied with, while replies to 7 of them remain pending.

Mr. President,
Distinguished Members of the Security Council,

At the time when the completion of the work of the Mechanism is in sight, it is of paramount importance for the Security Council to remain actively seized of all outstanding issues. And they are many. Its decision-making should be transparent and my country expects answers, and soon. This all the more so, Mr. President, as its cooperation with the IRMCT has been second to none and widely commended.