

**ADDRESS BY JUDGE CARMEL AGIUS, PRESIDENT OF THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA
UNITED NATIONS SECURITY COUNCIL**

6 December 2017

**Thank You Mr President
Excellencies
Distinguished Representatives**

On a Tuesday evening back in May 1993, against a backdrop of ongoing atrocities, mass murder, and war, this august body, acting on behalf of the international community, gathered to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia. Spurred on by the belief that this was possible, and necessary; by a prevailing faith in multilateral solutions; and by a determination and willingness to do something – anything – to try to halt the conflicts in the ex-Yugoslavia, the Security Council adopted Resolution 827.

The challenge: a bold and innovative response to conflict.

The odds: zero to none.

The score: 161 out of 161.

In retrospect, and knowing that evenings like that fateful and memorable Tuesday are much rarer today than in the “golden age” of political optimism of the early 1990s, many would agree with me that the establishment of the ICTY was one of the international community’s proudest moments.

Mr President

In supporting the creation and continued existence of the Tribunal, our predecessors, and those present here today, have put their signature on a very important page in the history of international justice and the fight against impunity. We, together with you, will be remembered for what we have achieved. For having done something good; something meaningful.

But there is another history, the history of those who, almost from the very beginning, were afraid to accept the Tribunal and even denounced it. It is a history that belongs to those who did not choose to fight impunity, but rather, for reasons of political or personal gain, blind nationalism and ethnic hatred, preferred *immunity* and to protect, even glorify, those who had committed atrocities.

Both histories will be remembered. However, in time, the first will be judged favourably, and the second will be condemned.

Despite all the sceptics, the naysayers, the deniers who, from the very beginning, embarked on a campaign against the Tribunal and have been at pains to question our legitimacy and integrity and portray a doomsday scenario, I am proud to appear before this esteemed Council today and say: **mission accomplished.**

The Tribunal has, as of last Wednesday 29 November 2017, finished all judicial work firmly in line with previous forecasts. We are now only three weeks away from the ultimate conclusion of the ICTY's mandate and the fulfilment of its Completion Strategy, having achieved over almost a quarter of a century what no-one back in 1993 would have thought possible.

Mr President

Allow me to recall just a few of the Tribunal's defining moments.

2 October 1995: **'What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife.'** *Prosecutor v. Duško Tadić (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)*

10 December 1998: **'Rape may also amount to a grave breach of the Geneva Conventions, a violation of the laws or customs of war or an act of genocide, if the requisite elements are met, and may be prosecuted accordingly.'** *Prosecutor v. Anto Furundžija (Trial Judgement)*

22 February 2001: **'[T]he presence of a state official or of any other authority-wielding person in the torture process is not necessary for the offence to be regarded as torture under international humanitarian law.'** *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Trial Judgement)*

5 December 2003: **'Acts of violence wilfully directed against the civilian population with the primary purpose of spreading terror constitute a violation of the laws or customs of war.'** *Prosecutor v. Stanislav Galić (Trial Judgement and Opinion)*

The aforementioned statements constitute points of no return, which forever changed the landscape of international justice. They have been embraced by this Council in its decisions, by other international courts and tribunals in their judgements, and by numerous actors in domestic jurisdictions. These are but a handful of examples, and the Tribunal has broken new ground in areas too numerous to mention here, but which are set out in the report before you today.

Mr President

In his initial report to the United Nations, that great man Antonio Cassese, first President of the ICTY, proclaimed that the establishment of the Tribunal could constitute a turning-point for the world community if it proved that it could work in an effective and dispassionate way, and if the necessary cooperation of all States and United Nation bodies was forthcoming. I firmly believe that these two conditions were met in the years since, and that the Tribunal has fulfilled President Cassese's prophecy.

In relation to the first condition, the tasks entrusted to us were indeed daunting. The experiences we have lived through have been sobering. But the ICTY has demonstrated time and time again its resilience and determination to deliver justice. And we have done exactly that: rendered justice, by prosecuting and adjudicating crimes committed by individuals – and I repeat *individuals*, not peoples not countries not governments – in an impartial, independent, effective manner.

To this end, we developed and implemented a Completion Strategy, and we constantly searched for ways to improve our operations and increase efficiency. With the delivery of judgements in the final trial case against Ratko Mladić on 22 November, and the final appeal case against Jadranko Prlić *et al.* on 29 November 2017, the Tribunal's core work has now been concluded, in line with its previous commitment to this Council. It is only fitting that the Judges who presided over both final

cases are present here today. In this respect, I am delighted and honoured that Judge Alphons Orie, Presiding Judge in the *Mladić* Trial Chamber, is seated here with me as I present the Tribunal's final-ever Completion Strategy Report to you, and of course I was the Presiding Judge of the *Prlić et al.* case.

Both judgements were significant and followed closely around the globe. In relation to the *Prlić et al.* case, we can all agree that what happened in court last Wednesday was extremely unfortunate. The Tribunal attaches the utmost seriousness to this incident, which is now being thoroughly investigated. However, regrettable as they are, these circumstances must not be allowed to overshadow the ICTY's final weeks or somehow undermine its legacy and judgements. It is extremely disturbing that some even appear to be exploiting this situation. They should not be allowed to get away with it.

In relation to the second of Cassese's conditions – cooperation of all States and United Nation bodies – I shall not recount all the logistical, financial and other problems that bedeviled the initial life of the Tribunal and have plagued its closure, or the myriad circumstances outside the Tribunal's control that led to delays in the arrest of fugitives and the conduct of proceedings. Indeed these and other challenges, and the Tribunal's responses thereto, are set out in the report before you. However, the difficulties faced by the ICTY should in no way lead one to conclude that resort to international criminal tribunals is not worth it.

In all fairness, when it came to it, the Tribunal ultimately received all of the resources and support it needed to complete its work. But let us be honest here. If we are to believe in international criminal justice at all, then we must accept that it will be time-consuming, unwieldy, and expensive, and that it cannot be compared with criminal proceedings at the domestic level. Could we have done things better? Probably. Could we have been more efficient? In hindsight, yes. Let me assure you, though, that this was not for lack of trying. Did we have a choice? No. Because, I can assure you, to live with the alternative of doing nothing and giving in to impunity, is to pay a much, much higher price. Can anyone in this room honestly argue with the family members of victims that justice for their loved ones is not worth fighting or paying for?

Mr President

In these short minutes, it would be impossible to specifically recognise everyone who has played a role in the creation, development and fulfilment of the Tribunal's mandate. From the unfailingly helpful Office of Legal Affairs, to the Tribunal's outstanding Host Country, The Netherlands; from the forthright Chairs of the Informal Working Group on International Tribunals, to the European Union and numerous individual States who have provided generous voluntary contributions; from all the countless Legal Advisers here in New York to the civil society representatives, victims' associations and members of academia both in the former Yugoslavia and around the world. And, significantly, from the Members of the Security Council who in 1993 had the courage to take the initiative – indeed, the risk – in setting the Tribunal up, to those State representatives here today, and all those who have sat on this esteemed Council in between: it is thanks to your guidance and assistance throughout, your extension of Judges' mandates and ensuring the adequate provision of resources, that we have been able to carry out our work and get the job done. To all of these stakeholders and supporters, it is only befitting that I convey our sincerest gratitude on behalf of the Tribunal.

In relation to the Tribunal's final biennium, I wish to personally acknowledge: Ambassador Rosselli of Uruguay for being an eloquent and leading voice in the Security Council in the fight against impunity; Ambassador Cardì, who on behalf of Italy vigorously upheld and advanced the rule of law during his term on the Council; Miguel de Serpa Soares and Stephen Mathias, our formidable

legal support team in the Secretariat; and to Ambassador van Oosterom. The Kingdom of The Netherlands could not be in better hands as you prepare to assume your term in the Security Council. We trust that you will continue to advance the agenda of international peace and justice, which is your country's trademark. Of course, I am personally indebted to many more, including not least the Tribunal's Prosecutor, Mr Serge Brammertz, and the Tribunal's Registrar, Mr John Hocking, who stridently supported the Tribunal and myself throughout my Presidency.

Mr President

As to my own, personal reflections, I would like first of all to say that, while serving as the Tribunal's last President has been a tremendous honour, ensuring that the ICTY closes in a timely and dignified manner has been an extremely heavy responsibility to shoulder. It has required extraordinary effort to balance and absorb pressures from both within and outside the Tribunal. There was never any question of failure, because if the Tribunal had failed, through us the whole international community would also have failed. I believe we have been successful, and I want to stress that success cannot only be measured in terms of numbers of judgements delivered or cases concluded, but must also mean acting professionally and honourably, and being proud of what we do every day. I take great pride in closing down an institution of the calibre of the ICTY and in having kept my word to this Council that we would close by the end of this year.

Second, the achievements of the ICTY do not begin and end in The Hague. The completion of our work, and of our restricted mandate as a court of law, does not mean that the job is done. It is with a heavy heart that I leave the Tribunal, deeply troubled by the huge numbers of crimes yet to be prosecuted before domestic courts in the former Yugoslavia, and by the thousands of victims who continue to cry for justice. While it is commendable to see that many cases have been adjudicated through special war crimes courts, and that specialised war crimes prosecutors continue to investigate and bring charges against perpetrators, much more needs to be done. In this respect, I call upon the United Nations to continue to assist and support the relevant institutions and actors on the ground. Further, the rise of revisionism and nationalism throughout the region cannot be ignored. Do not delude yourselves; the absence of war does not mean peace – particularly in Bosnia and Herzegovina, where political conflict and unrest continue to reign. I therefore urge the international community to assure those of all ethnicities throughout the region that they will not be abandoned after the Tribunal's closure, and to keep to that promise.

Third, ending impunity for mass crimes is not the preserve of any one institution – it is a common goal and aspiration that ties us all together in our shared quest for justice, peace and stability. We at the Tribunal have made our contribution, and indeed the Tribunal spurred on the creation of other courts and tribunals. However, the international community must take steps to ensure that the contributions of these institutions are not undermined, or even reversed, by a lack of political support, and that their legacies are preserved. The ICTY is fortunate to end with a strong successor institution in place – namely, the Mechanism – and I know we can count on the Mechanism, under the leadership of my renowned colleague, Theodor Meron, to carry the Tribunal's legacy forward.

Fourth, I want to reflect on the people who have breathed life into the ICTY – the precious staff, Principals, and Judges of the Tribunal, who have been entrusted to carry out its mission. Not only has working with dedicated, talented individuals from around the world been the professional experience of a lifetime, it has been deeply enriching and rewarding on a personal level. I only wish that each of you could work with people as motivated and committed to the cause of justice as I have over my 16 years as an ICTY Judge. At the end of this month, there will not be a single staff member left, yet together with the Judges they have made it possible for the Tribunal to enrich international humanitarian law and to constitute a beacon of hope in the fight against impunity. I have faith that, wherever their journeys will take them, they will continue to contribute to what is

right and just. On behalf of the entire ICTY, I express my heartfelt gratitude to all staff, Judges, and Principals for their outstanding service to the Tribunal and to international criminal justice. It would be remiss of me not to also mention and thank all of the Defence Counsel and members of Defence teams who throughout the years have always been considered a crucial part of the Tribunal.

I take this opportunity to congratulate and convey my best wishes to Japan on the remainder of their term as President of the Security Council, to thank all outgoing members, and to welcome the incoming members.

Mr President

A great statesman and diplomat once said that *‘Justice will not be served until those who are unaffected are as outraged as those who are’*. The setting up of our Tribunal was a powerful signal that the international community would not stand idly by and watch while barbaric acts were perpetrated far away in the former Yugoslavia. You, the Members of this Organisation, decided that heinous crimes such as rape, torture, “ethnic cleansing”, and the wanton killing of civilians, affect *each and every one of us*, simply because they imperil the great principles of civilization, as protected by the rule of law and enshrined in internationally recognised standards of human rights and humanitarian law.

In closing, I cannot help but wonder what Nino Cassese or the ever-so-brilliant Cherif Bassiouni would say on this occasion. I can only hope that we at the Tribunal have made them proud and contributed to alleviating the anguish and sorrow of those who suffered during the conflicts of the 1990s. As the international community now looks on while mass crimes continue to take place, even as I speak, and geopolitical roadblocks impede any kind of comprehensive justice solutions, we must not forget the political courage that sparked the ICTY’s existence, the Tribunal’s long trajectory, and the need to stay the course.

I thank you for your attention.