

Initiative for RECOM
International Forum on Transitional Justice in post-Yugoslav Societies
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ICTY and alternative truth-finding mechanisms

Ladies and gentlemen, Excellencies, colleagues,

It is my pleasure to appear and speak at this distinguished forum in Sarajevo – a city like many others, whose suffering moved the international community back in 1993 to take a visionary step and create the International Criminal Tribunal for the former Yugoslavia.

Last month, a day after the Tribunal's 18th birthday, Ratko Mladic, its longest running fugitive, was finally arrested and then transferred to stand trial in The Hague. His capture means that of the 161 accused indicted by the ICTY, now only one – Goran Hadzic remains at large. Proceedings have been completed against 126 accused. We currently have 34 accused either in trial or awaiting judgement, millions of pages from political and military archives have been made public by the Tribunal, over 6,000 witnesses have walked through our doors and told their stories in our courtrooms. From this testimony, numerous facts have been established about crimes committed in the former Yugoslavia during the 1990s. Those found responsible have been punished.

The Tribunal's track record has surpassed the wildest expectations of its founders. The ICTY has turned accountability from a pipedream into a reality. The highest echelons of power are no longer untouchable. This accountability is spreading throughout the world.

The criminal trial process, however, is not the only way to confront human rights violations. A wide variety of transitional justice mechanisms provide tools for social transformation. Criminal justice is a critical element, but it is not the sole element. Nor should it be. Today's Forum demonstrates this.

The United Nations recognises the importance of taking a broad perspective when dealing with post conflict societies and it often takes a leadership role in this process. The former United Nations Secretary General stated that "justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective."¹ This means that we have to approach these issues comprehensively and pay attention to all of the inter-dependent institutions, be sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms.

The Tribunal is an international court located far from the locations of the crimes. But its impact must not be limited to its courtrooms in the Hague. The Outreach Programme is a key instrument of the ICTY's transitional justice work - Outreach has helped the Tribunal realise this broader vision expressed by the Secretary General. Seeing justice being done is a necessary precondition for peace.

As its mandate draws to a close, the mission of the ICTY and Outreach is more important than ever. The remaining few years present our last opportunity to ensure that the evidence gathered, the testimony of those 6,000 witnesses, the judgements we have rendered - that this vast wealth of objectively tested facts are made publicly available both to national courts and to the citizens of the region, without ethnic or political slant. It is for this very reason that as Registrar I have made

¹ UN Secretary General Report "The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies", August 2004.

Outreach a key strategic priority during the ICTY's last years. It is the work that we do now that will cement the legacy of the Tribunal. What we do today will define our place in history.

But the work of the Tribunal has ultimately always been about local ownership – it has been a guiding principle of the Tribunal's outreach efforts. We have this in common with the REKOM initiative. REKOM opens a new chapter in the post-conflict transformation of the former Yugoslavia. It represents an alternative voice of those who want to tell their stories without constraints, and generate debate about past atrocities and how to come to terms with them. It is an enterprise by the community for the community.

Over the past quarter century, many countries have grappled with how to deal with the tragic legacies of conflict. A number have created truth telling bodies which have been tailored to suit the needs of their particular society. REKOM steps on this path. Experience shows that such mechanisms have the potential to transform a society - look at South Africa, Argentina and Rwanda.

But confronting the past is not a simple process. In my view it requires at least two elements: one is the ability to understand and accept the past; the other is accountability for the past. Truth telling mechanisms and criminal prosecutions can contribute to both. Truth telling initiatives such as REKOM are more aimed towards to the process of understanding the past. Criminal prosecutions: the Tribunal and local courts; they play a dominant role in accounting for the past. Although their methods differ, ultimately they share the same fundamental goal, and both can compliment each other and contribute to post-conflict recovery.

But they play a different role, they have different aims, and they have different procedures. I will just touch on a few of those differences.

The Tribunal's cases focus on selected incidents where evidence is presented based on what is most suitable to support the stringent demands of the legal process. During the course of the Tribunal's trials, vast amounts of evidence has been presented and tested through a rigorous legal procedure – all aimed at establishing individual responsibility beyond reasonable doubt. The evidence before the ICTY is not primarily intended to produce a comprehensive record of history. It can't do this.

Truth commissions, such as REKOM on the other hand have a different intent - to assemble a much more expansive record including an analysis of the role of national institutions. This is something that can't be done by the criminal justice system. Truth telling processes are not subject to the rigorous rules of admissibility of evidence or cross examination which are indispensable to criminal trials. This may bring benefits – but it will also bring limitations and it is important to recognise and fully acknowledge this.

Both processes create a record that is victim-centered. The role of the victim in criminal trials at the ICTY is crucial. Without the witnesses and their testimonies there would be no trials. Those thousands of brave witnesses at the Tribunal have enabled the voice of many of the victims to be heard and remembered. In this context, the criminal trial serves both the public and the victim's interest to be heard, and ultimately, punishing those responsible. Truth commissions place the victims even further at the heart of the process. They aim for a full record of their sufferings. Truth telling is an essential component of individual and public healing. It happens in both contexts but under different conditions and with different aims.

Education also plays a critical role in preventing future oppressive behavior and is critical in reinforcing respect for the rule of law. Both criminal courts (whether international or national) and truth finding mechanisms, function as vehicles for educating communities of past wrongdoings. The

Tribunal does this through its court proceedings, its judgements and its Outreach Programme. Similarly, REKOM has as one of its goals, the prevention of the spreading of lies in public.

It is critical for these differences to be spelled out and expectations managed. The needs of victims can differ dramatically from individual to individual. Not all victims will be content with criminal punishment expressed by a term of imprisonment. Many may feel that their suffering and loss cannot be compensated by such means. These victims may find solace in the non-retributive mechanisms offered by truth telling bodies.

The region of the former Yugoslavia demands justice and reconciliation. No one institution or mechanism alone can satisfy this need. Criminal prosecutions, be it by the ICTY or domestic courts, and alternative truth-telling mechanisms - both can have a role to play. A sharp juxtaposition between the two mechanisms must be shunned. We must take a wholistic approach to justice and look for synergies if we are to build a lasting peace.