

Judicial Transparency: Lessons Learned and Ways Forward

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Excellencies, Dear Colleagues, Ladies and Gentlemen, allow me first to extend my warmest greetings to all of you on behalf of the International Criminal Tribunal for the former Yugoslavia, the ICTY. I would like to thank the Konrad Adenauer Foundation, OSCE, the Government of Norway and especially the Balkan Investigative Reporting Network (BIRN) for organising this conference on a topic which is of great importance, not only for the future of the rule of law in the region, but also for the advancement of international criminal justice around the world.

The work of media and non-governmental organisations such as BIRN has had a great impact on the visibility and understanding of the proceedings before the ICTY. More importantly, such organisations continue to highlight the commendable progress of our fellow courts in the region – sending a clear message that it is possible to cast an analytical, as well as critical eye on the work of the judiciary, whilst upholding the principles of objectivity and accountability.

We have before us today key actors from the local judiciary, media, governmental and non-governmental organisations. I look forward to

hearing your thoughts on our collective performance in restoring the rule of law in the region. With that in mind, I encourage a lively exchange of ideas over these two days, so that we can identify the mistakes of the past and, crucially, the steps that we now need to take to better our work. For, as much as our roles may be different and should remain separate, we must not forget that with our work comes a responsibility towards generations past and present; generations that are still vulnerable to those that speak the dangerous language of impunity, revisionism and denial. It is our responsibility to join forces in the fight against these evils.

The key part of my address to you today is to examine the Tribunal's approach to transparency and accessibility, and the special measures we are taking to secure our legacy. However, I first want to brief you on the Tribunal's completion strategy as it has an immediate relevance to the topic.

ICTY achievements and completion strategy

The Tribunal was always envisaged as an ad-hoc body and that once it had achieved certain goals it would cease to exist. In its most narrow version, this goal can be identified as bringing to justice those believed to be the most responsible for the atrocities committed during the wars which engulfed the former Yugoslavia in the 1990s. The Tribunal was mandated with this task because at the time it was felt that the domestic judicial systems in the region were not able or willing to do this.

But it is important not to forget what a great visionary step it was to create the Tribunal. Back in 1993, there were no international criminal courts –

they were just the dream of a few idealists. The ICTY was the first and as a direct consequence of its success, we have today courts for Rwanda, Cambodia, Sierra Leone, East Timor, Lebanon, and of course the ICC.

The list of achievements in the 16-year history of the ICTY is a long one: we have ensured that impunity does not reign supreme; we have made sure that accountability is a principle also applicable to leaders and not just to subordinates; and, we have established facts about some of the most horrendous crimes to have scarred the soil of Europe in the late twentieth century. The Tribunal has indicted 161 persons – many more than the number of accused at other international and hybrid courts. Only two remain at large. In the meantime, we have worked with various national judicial systems in the region to tackle war crimes cases domestically.

The Tribunal has laid the foundations for what is now the accepted norm for conflict resolution and post-conflict development across the globe, proving that efficient and transparent international justice is possible.

Because the Tribunal was to have only a finite life, in 2003 the judges took the initiative to devise a plan for finishing their work - the 'completion strategy'. The purpose being to make sure that the Tribunal successfully completed its mission, in a timely way and in coordination with ongoing war crimes prosecutions by domestic courts in the former Yugoslavia.

The ICTY is now close to realising that goal. The trial of our most recent arrival, Radovan Karadzic, is being prepared for its start, and soon the Tribunal's work will concentrate more on appeals as trials wind down. By

2011, all of our trials except one should be completed. Most appellate work will finish in 2012, with a small number of appeals running into 2013.

However, these estimates concern only those accused who are presently in the Tribunal's custody. The time needed to try the remaining fugitives, Ratko Mladic and Goran Hadzic, will have to be added after their arrest. This is why the Tribunal continues to urge the international community, and the states concerned, to fulfil their obligations and arrest these remaining fugitives as soon as possible.

A key pillar of the Completion Strategy is the Tribunal's partnership with judicial institutions in the region – an important element of our legacy - and a recognition of the impact the Tribunal has beyond its strictly judicial function. It is for exactly this reason that the Tribunal has, since its inception gone to great efforts to safeguard and promote judicial accountability. We strive to achieve transparency and accessibility. The Tribunal's staff, its decisions and its vaults are a rich archive of knowledge, wisdom, experience and facts which must not only be safeguarded but also embedded into the conscience of both current and future generations so that mistakes of the past are not repeated.

ICTY – the history of transparency

However very early on, we realised at the Tribunal that it wasn't good enough to just pride ourselves on our courtroom proceedings and judgements. The big threat to the Tribunal was that our work was not being understood by those that matter the most – the people of the former

Yugoslavia. As the Nineties drew to a close, it had become obvious that our work was poorly publicised in the region and that some governments were not doing much to help their citizens gain accurate information about the trials going on in The Hague. Different parties, including some politicians and some regional media, would deliberately advance hostile misinformation about the Tribunal.

This misinformation coupled with the physical remoteness of the Tribunal and the fact that it operates in languages and procedural rules foreign to the countries of the former Yugoslavia, forced us to take stock of the Tribunal's mandate – and to recognise the fact that, whilst its primary goal is to determine the guilt or innocence of individuals charged with war crimes, it also had other roles to play in contributing to post conflict resolution and the advancement of peace. The Tribunal took a decision to take a step outside of the usual confines of a judicial institution and it started to actively explain its own work to the communities it serves in the region.

This culminated in the launch of the first ever outreach programme. This programme, is now replicated in international and local judiciaries around the world, and this year marks a decade of its existence.

But judicial accessibility and transparency is not just public information and outreach activities - it must be embedded in the daily work and psyche of the institution.

Let me present a few examples of how the Tribunal tackled this challenge.

First, our Statute provides that all hearings shall be in public unless a chamber decides otherwise, usually for witness protection issues. However, the Tribunal went a step further than many domestic jurisdictions in 1994 and initiated audio-visual recoding of its proceedings. This was for two main reasons: to make sure that the geographic gap between the Tribunal and the region was bridged; and to create a historical record of the extraordinary proceedings taking place in its courtrooms. Each courtroom is equipped with six remote-controlled cameras that record the proceedings and professional film directors provide a balanced and accurate account of the public hearings. This footage is broadcast to the world with a 30 minute delay via internet streaming. Recordings of public sessions are made available free-of-charge. This innovation is now a model for all international tribunals and is regarded as a landmark development in the field of communications and justice.

I understand that the judiciaries in this region have different approaches and this level of transparency is not a worldwide norm. However, I can only share the Tribunal's very positive experiences from having this kind of public access to its trials.

The way forward

It is critically important to take full advantage of modern technology. Over the years the Tribunal's website has grown into a fundamental communications tool. At the end of last year, I was here in Sarajevo to introduce the Tribunal's newly developed website. This contains a range of multimedia and interactive products, such as maps of crime-sites addressed

in ICTY's judgements, and audio-visual recordings of guilty pleas and witness testimonies.

On the website you'll find another key resource, the Tribunal's Court Records Database. This houses every public document filed in the Tribunal's court proceedings, from the very first in 1994, through to today. That is, around two million pages.

These are not only critical information tools but they will also form an important part of the Tribunal's legacy: both for those who continue our work prosecuting war crimes cases in the former Yugoslavia; as well as an investigative tool, for journalists, scholars and activists alike. The site will be continually improved and will provide an authoritative history of the Tribunal's work, development and achievements.

One exciting project currently underway is to place on the website a complete audio-visual archive of every public court session that has taken place at the Tribunal. When completed, this ambitious project will provide a remarkable facility for future audiences to study the Tribunal's work. We are looking into embracing other new technology tools to further promote the rule of law and justice – but first and foremost, in order to set out the facts established here at the Tribunal. For this is the most powerful weapon we have against those who are still bold enough to oppose justice and truth - two key ingredients necessary for a long-lasting peace.

We have a number of other transparency enhancing projects underway.

Transcripts:

The Tribunal's transcripts are currently only available in its working languages - English and French. We are now looking at producing ICTY trial transcripts in the languages of the region. This would clearly be of great benefit to our colleagues who often have to rely on witness testimony given before the Tribunal for use in local cases here in Bosnia.

Electronic Tools and Related Training:

Another priority area is the provision of various electronic tools: for example online databases, and training on their use. As I mentioned earlier, the ICTY has recently made its public case records available on the website, and this is a monumental step in furthering transparency and accessibility. We will continue to build-on and strengthen these tools.

Archives:

In addition to its website and online database, the Tribunal has also started looking into the future placement and preservation of its physical archive. The Security Council's Working Group on Ad-hoc Tribunals has been considering amongst other things, these important questions.

Information Centres:

Recently, the President of the Tribunal initiated another important project which will see the setting up of information centres aimed at people who are unfamiliar with or unable to access digital databases. These centres will be set-up in a number of public institutions throughout the former Yugoslavia, and will promote knowledge about the work of the ICTY and facilitate access to the Tribunal's records. The ICTY is conducting a feasibility study

for this project in cooperation with United Nations Criminal Research Institute in Turin, UNICRI, and would welcome feedback from interested parties on this initiative.

Ladies and Gentlemen,

Of course, the principal function of the Tribunal is judicial, as indeed it is of the special courts in the region. But we must not fall into the dangerous trap of ignoring the wider political and social context in which we function. This is why we must take unprecedented but well measured steps to reach out to our constituent communities, be it at the grass-roots level or peer-to-peer meetings with our colleagues from local judiciaries.

Indeed, as many of you may have heard when the Tribunal's President Patrick Robinson spoke here a few months ago: The Tribunal views the continuation of its work by national jurisdictions as a central element of its legacy and it remains committed to transferring its experiences and knowledge to the domestic justice systems in the former Yugoslavia.

But we must work together to achieve this goal. This should include joint efforts to ensure full accessibility to and transparency of the judiciary. However this demands responsible and accountable reporting.

It is very positive to see media reports about the developments and challenges faced by the local judiciary – not least those provided on a daily basis by BIRN's Justice Report. However, I am troubled by the continued presence of some malicious and irresponsible reporting, and comments attributed to some officials – these have a chilling echo of the ethnic

divisions and mistrust present in the Nineties. These poisoned chalices do not attack the Tribunal alone, but all efforts towards post-war justice, including the hard work being done by my colleagues here in the region.

The Tribunal will continue to support and work with its colleagues here who are prosecuting and providing fair war crimes trials. Their work will continue long after the Tribunal has closed its doors.

Ladies and gentlemen,

I have now spoken at length about the subject of transparency and accessibility, and the Tribunal's experiences and plans in this regard. This topic is critically important to all of us and I have pledged to pay particular attention to it during my mandate as Registrar of the Tribunal. I am keen to hear the views of my colleagues from the courts in the region as well as from the representatives of the media and civil society. For we must join forces if justice is to prevail. What are the challenges you face and your ideas to address them?

This conference is a good start. There are a number of respected professions represented here today. Each plays a separate but important role on the world stage and each of our professions is guided by its own rules and values. Many times we will not see eye to eye. Inevitably, though, at certain times our values and goals will, or at least should, meet – for example, when impunity is tolerated or even encouraged. At times of chaos and war, a fair and impartial media and judiciary are among the first casualties. We have an obligation to prevent future desecration of these professions by those who have little regard for the values they stand for.

In parting, allow me to leave you with the words of Alexander Solzhenitsyn:
Justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognise the voice of their own conscience usually recognise also the voice of justice.

Thank you.