



ICTY Legacy Dialogues

Symposium Concept Paper

Looking Back to Move Forward:
Final Reflections on the ICTY

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The Hague, The Netherlands



UNITED NATIONS
International Criminal Tribunal for the former Yugoslavia

Looking Back to Move Forward: Final Reflections on the ICTY

I. Introduction

At the present time, it appears more relevant than ever for the international community to reflect on why international criminal courts and tribunals are needed, what they can contribute and whether they make a difference. The efforts, achievements and challenges of the International Criminal Tribunal for the former Yugoslavia (ICTY or Tribunal) provide rich material with which to answer these questions.

As one of the key events in the *ICTY Legacy Dialogues* series, and on the eve of its closure, the Tribunal will hold a final symposium on Monday, 18 December 2017. This occasion will provide participants and attendees with an invaluable opportunity to discuss and address the contributions that the ICTY has made during its 24 years of existence in three key areas:

- Contribution to international criminal courts and tribunals;
- Contribution to the region of the former Yugoslavia; and
- Contribution to international criminal law.

In reflecting on these contributions, it is envisaged that two aims will be achieved. First, a picture will emerge of why international criminal courts and tribunals are needed and what they can contribute both to the international community and to the communities around the world affected by genocide, crimes against humanity and war crimes. Second, the symposium will provide an opportunity for rigorous and analytical discussion about what will constitute the core of the Tribunal's legacy. By facilitating dialogue between a variety of stakeholders, it is hoped that dynamic and lively debate will emerge, and a range of views will be both voiced and challenged.

Overall, the goal is to go beyond "taking stock" of what the ICTY has achieved, and examine what its continued, broader significance will be in the future and how its legacy can be carried forward.

II. Symposium Structure

The *ICTY Legacy Dialogues* symposium will take place in The Hague, The Netherlands.

The one-day symposium is envisaged as a dynamic and thought-provoking event, attended by approximately 200 people including academics, international experts, judges and legal practitioners (from the ICTY and other judicial institutions), members of the diplomatic community, and stakeholders from the region of the former Yugoslavia. The event will also be streamed live via the Tribunal's website to ensure a wider audience and dissemination of information.

The day's proceedings will commence with a Welcome Address and Remarks, focusing on the value of creating international criminal courts and tribunals and setting the tone for the Symposium. These addresses will be followed by four panels: three moderated panels, each with a different format to ensure maximum engagement and interest, plus a final panel delivering a message on the future of international criminal justice. This final panel will provide a strong and resounding conclusion to the day's discussion and will reflect on some of the universal lessons that are part of the Tribunal's legacy.

While focused primarily on expertise and experience in the relevant areas of discussion, the composition of panels will also reflect a diversity of views, as well as voices from other international criminal courts and tribunals.

III. The Panels

1. The ICTY's Contribution to International Criminal Courts and Tribunals

A defining feature of the ICTY's work over its 24-year history has been its role in constructing "from the ground up" a set of working practices for the developing field of international criminal law. This role arose out of necessity as, at the time of the Tribunal's establishment, very few – if any – such working practices were yet in existence. The Tribunal was required, for instance, to develop an entire set of Rules of Procedure and Evidence after it had commenced operations. In addition, it developed an innovative witness protection and support programme and Outreach Programme, and, in the absence of any statutory provision, was also required to deal with contempt of court matters in order to ensure its proper functioning.

In breaking new ground as the first tribunal of its kind since the Nuremberg and Tokyo tribunals after World War II, the ICTY has accumulated a wealth of practical knowledge and experience which is of significant value to other international criminal courts and tribunals. This panel will provide an opportunity to discuss the Tribunal's pioneering efforts and practical impact, and to debate the most important lessons that can be learnt by other international criminal courts and tribunals.

The panel discussion will begin with brief remarks from the moderator, introducing the topic and providing some reflections on the ICTY's role as a pioneer of working practices in its field. Following this, the discussion will be structured and guided by the moderator so as to address various substantive areas in turn, allowing time for all panellists to delve into subtopics according to their expertise. Each panellist will discuss how various aspects of the ICTY's legacy have been carried forward to other institutions, drawing from, *inter alia*, their own substantive experiences. The aim of this panel is to provide an overall picture of the nature of the ICTY's contribution to international criminal courts and tribunals, while also allowing for more in-depth and interactive discussion. At the end of the session there will be time for questions from the audience.

The panel will cover key aspects of the ICTY's experience and groundbreaking work, such as:

- Contempt of court proceedings: what key lessons can other international criminal courts and tribunals learn from the ICTY's experience, and what impact has this already had?
- Should the Defence have been an organ of the ICTY, as is the Prosecution? Why have subsequent international criminal courts and tribunals done things differently from the ICTY in this respect?
- What can other courts and tribunals learn from the ICTY's experience in providing language services, in particular in-court interpretation and the use of methods of interpretation and translation?
- Should sentencing and the early release of convicts be a more regulated practice?
- How can the experience of the Office of the Prosecutor in building investigative capacity and prosecutorial strategies from the ground up assist other courts and tribunals?
- How important is having an awareness of legacy from the outset of a tribunal's creation? Is there ever a tension between the consideration of a tribunal's legacy and other priorities?
- Similarly, should a court's completion strategy be established at the outset or is this unrealistic or impractical?

2. The ICTY's Contribution to the Region

The fundamental – and frank – questions underpinning this panel discussion are: “What is the significance of the Tribunal’s work in the region of the former Yugoslavia?” and “How can other international courts and tribunals best make use of the Tribunal’s experience in dealing with their own affected regions?” It is with these questions in mind that the panel will discuss three distinct elements of the ICTY’s work pertaining to the region.

The first of these is the Tribunal’s mandate, namely what it was meant to achieve in the region – and conversely what it was not meant to achieve and never could have achieved, given its nature as a court of law. The Tribunal was never mandated to achieve reconciliation, for example, but rather to contribute to ensuring that violations of international humanitarian law were halted, and to the restoration of peace and security in the region. However, the perceptions of many in the former Yugoslavia were different, leading to frustrations on their part and questions on the Tribunal’s part of how to better manage expectations. In this respect the panellists will discuss what can and should realistically be expected of an international court or tribunal, as well as the necessary limitations, and how best to use outreach to impact affected communities. The challenges of setting up a court or tribunal while a conflict is ongoing could also be discussed.

Second, a crucial element in rebuilding a region affected by serious violations of international humanitarian law is the establishment and acceptance of the truth. In the cases of *Krstić* and *Kvočka et al.*, the Tribunal’s role in the creation of a historical record through establishing facts about crimes was acknowledged. With reference to the experience of the ICTY, the panel will discuss the nature and extent of the contribution that an international court or tribunal is capable of making in creating an historical record and thereby preventing denial of the facts.

Finally, the panel will discuss the ICTY’s experience and contribution to the region through cooperation with national authorities and legal systems, referral of cases, enforcement of arrest warrants and capacity building. The focus of this portion of the debate will thus be the practical impact of the Tribunal on courts in the region and national actors including prosecutors, judges and legal practitioners, and thereby its impact on the rule of law.

The aim of this discussion is to acknowledge the ICTY’s contributions but also to address the issue in an analytical and objective manner, all the while focusing on the significance of the ICTY in the region. This panel event will take the form of an interactive “Question Time” style debate, with a series of questions being put to a panel consisting of five members, as well as a moderator to steer the direction of the discussion.

3. The ICTY's Contribution to International Criminal Law

The Tribunal has made enormous contributions to the development of international criminal law and international humanitarian law, not only through its jurisprudence but also its procedure and practice. In many ways, it was tasked with “filling the gaps” in its own Statute, as well as in the international community’s understanding of certain crimes and modes of criminal liability.

These contributions can be broadly organised into three categories. First, the ICTY has been a pioneer in defining modes of criminal responsibility. In the *Tadić* case, it became the first tribunal to rely on the customary international law doctrine of joint criminal enterprise, whilst in *Čelebići* the Tribunal advanced the law on command responsibility through its application of the modern doctrine of criminal responsibility of superiors. Second, the Tribunal has fleshed out the elements of

several crimes under international law, clarifying various definitions and the factual scenarios in which they apply. Examples include the Tribunal's finding that rape may constitute a form of torture, its elaborations on the definition of genocide, its pronouncements on the systematic destruction of cultural heritage as a crime against humanity and its contributions to the understanding of the crime of persecutions. In addition, the Tribunal has contributed to the definition of international and non-international conflicts and clarified the applicability of the laws and customs of war in non-international armed conflicts. Third, the ICTY's achievements in international criminal procedure are equally noteworthy and include its development of comprehensive Rules of Procedure and Evidence from scratch, its navigation of the differences between civil and common law traditions and development of a *sui generis* procedural framework featuring elements of both systems, as well as its contributions to the areas of protective measures for witnesses and the use of written evidence instead of in-court testimony.

This panel discussion will involve a moderator and six panellists, and will be divided into three sub-topics to reflect the categories identified above, namely:

- The ICTY's contribution to the understanding of modes of liability in international criminal law;
- The ICTY's contribution to the understanding of genocide, crimes against humanity and war crimes; and
- The ICTY's contribution to international criminal procedure and practice.

For each segment, two panel members will have a moderated discussion contrasting different aspects of these contributions to international criminal law. The two panel members will each be given a short time allocation to make presentations introducing their own views on a given theme. After this, the pair will be able to debate more freely between themselves, with a moderator present to oversee the discussion and perhaps take questions from the audience.

4. Final Panel on the Future of International Criminal Justice

Whereas the first three panel discussions of the day will consider the Tribunal's contributions to international criminal courts and tribunals, the former Yugoslavia, and international criminal law, this final part of the symposium programme will focus on the universality of the Tribunal's work. Each speaker will deliver a short but emphatic statement on the importance of international criminal courts and tribunals – particularly in today's political climate – and the significance of the ICTY's work on a global level. This panel event will be an opportunity for speakers to offer ideas and reflections that may serve as inspiration for the future, going beyond the field of law. This will be a truly inspirational and impactful end to the day's events, and a fitting way to conclude the last-ever symposium to be hosted by the Tribunal.

IV. Benefits of the Symposium

As the last substantive event in the *ICTY Legacy Dialogues* series before the formal Closing Ceremony, the *ICTY Legacy Dialogues* symposium will provide a critical final opportunity to engage in a dynamic conversation about the Tribunal's legacy before the Tribunal closes its doors on 31 December 2017.

For this reason, the symposium will be an immensely significant occasion, not only for judges and staff of the Tribunal who will be able to share their perspectives and reflections at the very end of the Tribunal's lifespan, but also for international experts, academics, legal practitioners and other members of the international community, who can learn from the Tribunal's challenges and experience and indeed carry the Tribunal's legacy forward.

The rich programme of discussions will contribute significantly to the ICTY's legacy goals:

- to identify best practices, achievements and challenges resulting from more than 20 years of the Tribunal's operation;
- to explore ways to build on these achievements to bolster transitional justice efforts in the region; and
- to explore ways to build on these achievements to support accountability for international crimes worldwide.

V. Logistical Information

Further details, such as those relating to media are available at the following website: www.icty.org. For more information please contact the Tribunal at ICTYlegacydialogues@un.org.