

THE TRIBUNAL'S ACCOMPLISHMENTS IN JUSTICE AND LAW

When he visited the Tribunal in 1997, the United Nations Secretary General Kofi Annan, said that "*impunity cannot be tolerated, and will not be. In an interdependent world, the Rule of the Law must prevail.*"¹

LEADING THE SHIFT FROM IMPUNITY TO ACCOUNTABILITY

The International Criminal Tribunal for the former Yugoslavia (ICTY) is leading this effort. So far, 132 individuals have appeared in proceedings before the Tribunal. Forty have been found guilty, another 43 are currently awaiting trial, nine are at trial, while cases against 14 individuals are currently before the Appeals Chamber of the ICTY. Most importantly, by holding individuals accountable regardless of their position, the ICTY's work has dismantled the tradition of impunity for war crimes and other serious violations of international law. The ICTY is the first international tribunal after World War II to hold high-level leaders accountable for their crimes. The ICTY has indicted a head of state (while still in office), prime ministers, army chiefs-of-staff, interior ministers and many other high and mid-level political, military and police leaders from all sides of the conflict. Some, such as former Herzeg Bosna Vice-President have been convicted and are serving their sentences. Thanks to the ICTY, the question is no longer *whether* leaders should be held accountable, but rather *how* can they be called to account.

INDIVIDUALISING GUILT

By trying individuals on the basis of their *personal* responsibility, the ICTY *individualises* guilt. Leaders and other individuals can no longer hide behind the 'nation' or any other group. They have to take responsibility and answer for their own actions. Accordingly, communities are shielded from being labelled as collectively responsible for others' suffering. This can greatly contribute to preventing mutual hatred and promoting the reconciliation process within the war-torn societies of the former Yugoslavia. One of the accused before the ICTY, who admitted his guilt and participation in the genocide in Srebrenica conveyed precisely this sentiment at his sentencing hearing:

*"My testimony and admission of guilt will also remove blame from my nation because it is individual guilt, the guilt of a man named Dragan Obrenović. I stand by this. I am responsible for this. The guilt for this I feel remorse and for which I apologise to the victims and to their shadows, I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance. I will be happy if my testimony helps the families of victims, if I can spare them having to testify again and thus relive the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world."*²

ESTABLISHING THE FACTS

As the work of the ICTY progresses, important elements of a historical record of the conflicts in the former Yugoslavia in the 1990s have emerged. The ICTY has established many facts about crimes, which were once subject to dispute, beyond a reasonable doubt.

¹ Speech to staff of the ICTY, 24 February 1997

² *Prosecutor v. Dragan Obrenović* (IT-02-60/2-S), Sentencing Proceedings, 30 October 2003

An example can be found in one of the Tribunal's judgements related to the crimes that occurred in the Prijedor municipality in Bosnia and Herzegovina:

"On the 30th of April 1992, Serb forces took control of Prijedor. The takeover of Prijedor was followed shortly afterwards by the removal of the non-Serbs, Muslims, and Bosnian Croats from positions of responsibility. Many lost their employment, their children were prevented from going to school, and the radio broadcast anti-Muslim and anti-Croat propaganda... To avert any desire for resistance by the Croats, and especially the Muslims, the Serbs decided to interrogate any non-Serbs who might present a threat and arrested, in particular, any persons exercising an authority, moral or otherwise, or representing some kind of power, in particular, economic. At the same time, the men were separated from the women, children, and elderly. Men in particular were interrogated. The Serbs thus found reason to assemble in centres the non-Serbs who had not left the region. That is how the camps of Omarska, Keraterm, and Trnopolje were established... The evidence presented to the Chamber makes it necessary to speak not of investigation centres or assembly points but of camps...Planned initially to function for a fortnight, [Omarska camp] in fact remained in operation until about the 20th of August, 1992. During this period of almost three months, more than 3.334 detainees at least passed through the camp. Thirty or so women must be added to this list, several of whom occupied high positions locally. All those detained were interrogated. Almost all were beaten. Many would not leave the camp alive."³

In addition to evidence presented at trials, admissions of guilt from a number of accused have also greatly contributed to the establishment of the facts. The statements that usually accompany such admissions of guilt corroborate the evidence collected by the Tribunal's investigators to contribute to an irrefutable account of some of the events that occurred in the wars of the 1990's. In another judgement related to the crimes committed in Prijedor, in addition to the physical evidence and the victim testimonies, the judges also relied on the admission of guilt of an accused - Duško Sikirica - to complete the picture of conditions in the Keraterm camp near Prijedor:

"Sikirica has admitted to killing one of the detainees in the [Keraterm] camp by shooting him in the head. Moreover, he admits that there is considerable evidence concerning the murder of other individuals at Keraterm during the period of his duties... In addition to the killings, Sikirica has admitted that there is evidence that beatings, rape, and sexual assault were perpetrated in the camp, as well as harassment, humiliation, and psychological abuse of the detainees. He further admits that there is ample evidence that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp."⁴

Many of their important statements have offered information or leads unavailable to the investigators, such as important details about military operations or the planning and execution of some of the most horrendous crimes. In a revealing account, Momir Nikolić, who was the Assistant Commander for Security and Intelligence of the First Light Infantry Brigade in Bratunac, and who admitted to his participation in the Srebrenica massacres described the general attitude of the Bosnian Serb forces to the laws of war:

"Do you really think that in an operation where 7.000 people were set aside, captured, and killed, that somebody was adhering to the Geneva Conventions? Do you really believe that somebody adhered to the law, rules and regulations in an operation where so many were killed? First of all, they were captured, killed, and then buried, exhumed once again, buried again. Can you conceive of that, that somebody in an

³ *Prosecutor v. Kvočka et al.* (IT-98-30/1), Judgement, 2 November 2001

⁴ *Prosecutor v. Sikirica et al.* (IT-95-8), Judgement, 13 November 2001

*operation of that kind adhered to the Geneva Conventions? Nobody ... adhered to the Geneva Conventions or the rules and regulations. Because had they, then the consequences of that particular operation would not have been a total of 7.000 people dead."*⁵

In some instances, the perpetrators of crimes are the only ones who could disclose the location of mass graves so that the victims' families can finally locate and properly bury their dead. At the sentencing hearing of Dragan Nikolić, commander of the Sušica detention camp in Vlasenica, the following exchange took place between a victim and the accused:

Habiba Hadžić: "... My children were innocent and they lost their lives. They were killed... I would just like to ask Dragan to tell me where they are, in which mass grave, so that their mother could give them a dignified funeral. I want to give them a proper burial, and then I can go away myself..."

*Dragan Nikolić: "As far as her sons are concerned, as far as I heard - because I wasn't there when it happened - on the 30th of September, I believe, together with a group of about 40 people, they were taken to Debelo Brdo and liquidated. From that group, I remember - and I can say this because I know this lady and her sons and I remember that group of people - I remember that this group included mainly people who had previously said that they wanted to stay in Vlasenica. Most of them were locals from Vlasenica, people whom I knew and some of them were my friends. That's why I remember them. And it was in this group of people that Enis and Bernis, this lady's sons, were. I knew them well. And from what I heard, there were liquidated - they were liquidated on that site... And if I remember her sons well, one of her sons was wearing a denim jacket and trousers. And should there be an exhumation, perhaps he could be recognised by his clothes. And if an exhumation takes place, I believe that's where her sons would be found. I wanted to tell this lady even before, but the circumstances were not favourable. I wanted to speak to her even before this, because I knew that she was anxious to know the fate of her sons, as some other people were to find out about their relatives. It is absolutely certain that this happened on that day, in fact, that night, and that they were taken away in that group of about 40 people to Debelo Brdo... And I can say with a great degree of certainty that their bodies should be there together with the bodies of those other people."*⁶

Admissions of guilt can also be very significant in providing additional evidence which is otherwise unavailable. One of the accused who pleaded guilty to crimes committed in Srebrenica, Dražen Erdemović, later testified in the trial of general Radislav Krstić, also on trial for crimes committed in Srebrenica in 1995. Erdemović testified about his role in the mass execution of Bosnian Muslim men that occurred on 16 July 1995 at Branjevo military farm. Even though the Prosecution submitted evidence from two of the four known survivors of that massacre, it was Erdemović who provided the detailed evidence that identified the people who were responsible. Dražen Erdemović said the following:

"... when they had all left, the Lieutenant Colonel was talking to Brano and I heard him say that buses would be coming. As soon as he said that, it wasn't long after that, he left with these two policemen in a car. Then Brano came back to us and told us that buses would come with civilians from Srebrenica on them. And I and some others started objecting, saying, "What are we going to do there?" And he said that we would have to execute those people.

Then I saw two policemen taking men out, men who were in the bus, and these two men were probably the security for the transport of these men, and they reached

⁵ *Prosecutor v. Blagojević and Jokić* (IT-02-60), 25 September 2003, witness Momir Nikolić

⁶ *Prosecutor v. Dragan Nikolić* (IT-94-2), 3 November 2003, Sentencing Hearing, witness Habiba Hadžić

Brano and Vlastimir Golijan. And the first group of people were brought behind this garage down there, maybe 100 metres away, maybe more, but roughly to such a position. Then Brano told us to form a line. The men in front of us were ordered to turn their backs. When those men turned their backs to us, we shot at them. We were given orders to shoot.”⁷

Determining the facts of the crimes committed in the former Yugoslavia is crucial in order to combat denial and prevent attempts at revisionism. The detail in which the ICTY’s judgements describe the crimes and the involvement of those convicted make it impossible for anyone to dispute the reality of the horrors that took place in and around Bratunac, Brčko, Čelebići, Dubrovnik, Foča, Prijedor, Sarajevo, Srebrenica, and Zvornik to name but a few. As other trials are completed, further facts will be established regarding crimes committed in these and other areas in the former Yugoslavia.

BRINGING JUSTICE TO THOUSANDS OF VICTIMS AND GIVING THEM A VOICE

One of the witnesses who testified at the Tribunal, a healthcare professional who had been involved in treating victims of war crimes said that *“The Hague Tribunal, all the victims, all the women with whom I have had a chance to work, has a very great significance for them... They do trust that the real causes of what happened will be identified and that the people will muster enough courage, including victims, to tell the story of what happened... People expect that justice will be done and that the right decisions will be reached.”⁸*

By holding senior individuals responsible for the crimes committed in the former Yugoslavia, the Tribunal is bringing a sense of justice to the many thousands of victims across the region. The victims can see the individuals who are responsible for their suffering convicted by an international criminal court and sent to prison.

At the same time, many victims play a crucial role in the proceedings at the Tribunal as witnesses. By displaying exceptional courage in testifying at the Tribunal, they contribute to the process of establishing the truth. In turn, the Tribunal’s proceedings provide these victims and witnesses the opportunity to be heard and to speak about their suffering. To date, over 3,500 witnesses have told their stories in court. Through this, they have contributed to creating elements of a historical record. In addition to those who have testified, the Tribunal’s Prosecution has also interviewed many other potential witnesses. This has given victims and witnesses a real sense that they and their communities are involved in the Tribunal’s work. Thus, the ICTY guarantees that the suffering of victims across the former Yugoslavia is acknowledged and not ignored.

In addition to that, the admissions of guilt can at times provide some satisfaction and a sense of justice to the victims. One Srebrenica survivor said the following:

“... the confessions have brought me a sense of relief I have not known since the fall of Srebrenica in 1995. They have given me the acknowledgment I have been looking for these past eight years. While far from an apology, these admissions are a start. We Bosnian Muslims no longer have to prove we were victims. Our friends and cousins, fathers and brothers were killed - and we no longer have to prove they were innocent.”⁹

⁷ *Prosecutor v. Radislav Krstić* (IT-98-33), 22 May 2002, witness Dražen Erdemović

⁸ *Ibid.*, 7 July 2000, witness Teufika Ibrahimović

⁹ *New York Times*, 1 June 2003 OP-ED, Emir Suljagić

DEVELOPING INTERNATIONAL LAW

The Tribunal is a unique institution and a pioneer in international legal proceedings. The first truly international war crimes tribunal, and the first tribunal established under Chapter VII of the UN Charter as a measure to maintain international peace and security, the ICTY has made a number of lasting contributions to international justice:

- The Tribunal has created an innovative system of procedural law, combining elements of adversarial and inquisitorial legal traditions;
- The Tribunal has established the most modern court facilities in the world, the layout and technical equipment of which are being taken as a model in other modern courtrooms such as the International Criminal Court and the Special Court for Sierra Leone;
- The Tribunal has established, developed and maintained an effective victims and witnesses programme;
- The Tribunal has established a unique legal aid system, and contributed to the creation of a group of defence attorneys highly qualified to represent accused in war crimes proceedings before international judicial bodies;
- The Tribunal has created a Judicial Database of all its jurisprudence, soon to be available on the internet, providing access to a vast amount of decisions and orders in and international procedural and criminal law.

Since its establishment 12 years ago, the Tribunal has consistently and systematically developed international humanitarian and international criminal law, both in terms of substance and the procedure. To name but a few examples:

- The Tribunal has identified a *general prohibition of torture* in international law which cannot be derogated from by a treaty, internal law or otherwise;
- The Tribunal has made significant advances in international humanitarian law pertaining to the legal treatment and *punishment of sexual violence* in wartime;
- The Tribunal has specified crucial elements of the crime of *genocide*, in particular the definition of the *target* of this crime;
- The Tribunal has determined that *enslavement* and *persecution* constitute crimes against humanity;
- The Tribunal has applied the modern doctrine of criminal responsibility of superiors, so-called *command responsibility*. It has clarified that a formal superior-subordinate relationship is *not* necessarily required for criminal responsibility. In the same vein, the Tribunal has removed uncertainty about the *level of knowledge* to be expected from a superior whose subordinates were about to commit crimes or actually committed them;
- The Tribunal has made numerous contributions to issues of procedural law, some of which are in the areas of protective measures for witnesses, the confidentiality and disclosure of information relevant for the national security of States, guilty pleas of accused, duress as a defence, among others.

The Tribunal has proved that efficient and transparent international justice is viable. Through the legal and institutional precedents that the Tribunal has established, it has contributed to the establishment and work of the International Criminal Tribunal for Rwanda, the International Criminal Court, the Special Court for Sierra Leone and other international efforts to see justice done.

STRENGTHENING THE RULE OF LAW

In November 1995, on the conclusion of the Dayton peace agreement, the Tribunal's then President, Antonio Cassese, commented as follows:

"Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have had to live under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus Peace and Justice go hand-in-hand."¹⁰

In addition to its primary function of trying individuals for war crimes, the Tribunal has also served as an incentive to authorities in the former Yugoslavia to reform their judiciaries, and has been a catalyst for the creation of specialized war crimes courts. These and other courts across the former Yugoslavia have and will continue to benefit from the Tribunal's invaluable experience in dealing with war crimes and the volume of evidence that the ICTY has made, and continues to make, available to the local prosecutors.

Through its central role in the so-called *Rules of the Road* system, the ICTY Prosecution has reviewed over 900 investigations files from prosecution offices in Bosnia and Herzegovina to verify that the inquiries were justified and whether any were related to ICTY cases. This was done in order to ensure freedom of movement across Bosnia and Herzegovina by preventing arbitrary arrests of individuals on war crimes charges.

To further support the process of strengthening the rule of law, the Tribunal is actively involved in transferring its expertise to legal professionals from the former Yugoslavia so as to assist them in dealing with war crimes cases and enforcing international legal standards in their local systems. In implementing its completion strategy, the Tribunal has already begun transferring some ICTY cases to national courts in the former Yugoslavia, thus giving a new dimension to the principle that its jurisdiction runs concurrent to national courts. The Tribunal is especially committed to assisting the War Crimes Chamber of the State Court of Bosnia and Herzegovina. The ICTY has also provided substantial assistance to the War Crimes Chamber of the Belgrade District Court as well as the Croatian judiciary dealing with war crimes cases, and will continue to do so.

All of these efforts have contributed to the promotion of the respect for the rule of law across the former Yugoslavia which is vital for long-term stability in the region.

The ICTY has made a vital contribution to international justice, well beyond the region of the former Yugoslavia. The Tribunal's Judges and staff have extensively shared their expertise with those involved in the development of other international courts, such as the International Criminal Court, the Special Court for Sierra Leone and others. With its experience to date, the ICTY has played a crucial role in bringing justice not just to people in the former Yugoslavia but across the globe.

¹⁰ Antonio Cassese, ICTY Press Release Number 27, 24 November 1995