

**UNITED  
NATIONS**

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International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
former Yugoslavia since 1991

Date: 27 April 2010

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**Report of the President on the Conference  
Assessing the Legacy of the ICTY**

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## **I. SUMMARY OF KEY FINDINGS FROM THE LEGACY CONFERENCE**

1. On 23-24 February 2010, the International Criminal Tribunal for the Former Yugoslavia (“ICTY”, “Tribunal”) staged an international conference, titled “Assessing the Legacy of the ICTY”, in The Hague, Netherlands, gathering more than 350 participants from the international community as well as the countries of the former Yugoslavia, to discuss aspects of the Tribunal’s legacy, particularly in the region of former Yugoslavia. The event was highly successful in bringing together high-level representatives of States, UN agencies, international organisations, think tanks, and members of the academic community, as well as eminent individuals from governments, the judiciary, and civil society from the region of the former Yugoslavia. The Tribunal is grateful to the co-organisers and sponsors of the Conference – the Sanela Diana Jenkins Human Rights Project at UCLA School of Law and the Dutch, Swiss and Finnish governments – for making the event possible.

2. The Conference provided a unique opportunity for panel experts and audience participants to exchange views on the Tribunal’s legacy and to identify ways of securing a long-lasting and positive impact of the Tribunal’s work. Members of the international community had an opportunity to hear the opinions of key officials as well as victim representatives from the region on the significance of the Tribunal’s legacy. The Conference provided further guidance for the development of the Tribunal’s legacy strategy and the opportunity for the Tribunal to build new connections with several potential partner organisations and donors.

3. The Conference discussions stressed that the international community’s support for the national justice systems’ capacity to prosecute war crimes must meet the needs of domestic actors and be designed in ways that are acceptable to them. Insufficient coordination among international agencies was highlighted as a recurring problem of capacity building and related activities. While the national justice systems in the region have made huge progress in the prosecution of war crimes cases, the confidence of victim groups in the national judiciaries remains low and the presence of international judges in the Court of Bosnia and Herzegovina in Sarajevo is still considered necessary. However, victims from Republika Srpska are not confident that the State Court is bringing proper consideration to crimes committed against them and are still waiting for indictments to be issued. The lack of compensation for suffered wrongs is a general cause of frustration amongst the victims.

4. The Conference discussions clearly indicated that solutions imposed from the outside could not secure sustainable results in the region. It was widely agreed upon that the ICTY had made a

tremendous contribution to bringing justice to the affected populations in the former Yugoslavia, but the communities have not yet reconciled and this is something that could not be achieved by the Tribunal alone. The key players in bringing about the process of reconciliation were identified as political leaders, civil society, and the media. However, the outlook on the willingness of political leaders in the region to pursue national reconciliation were very pessimistic.

5. Civil society groups called on the ICTY to forge closer links with them and to coordinate with non-governmental organisations with respect to projects that may overlap with their activities. The Tribunal was advised to focus its Outreach efforts on the youth of the communities. The Tribunal was also urged to intensify its communication with the media as they play a key role in informing the public and influencing popular opinion.

6. Victim groups expressed concern in regards to the impact of the Tribunal's closure in the region and considered that closure, without the arrest of the remaining fugitives, should be resisted. During the conference, the Tribunal's Residual Mechanism was explained including its capacity to deal with outstanding issues, including the trials of remaining fugitives, and how co-location with the archives would facilitate the tasks of the Residual Mechanism.

7. Bosniak victim groups and some officials from Bosnia and Herzegovina, including the Mayor of Sarajevo, strongly expressed their desire to have the Tribunal's archives located in Sarajevo or Srebrenica, arguing a moral claim to the archives on the grounds that their country was the site of most of the crimes that occurred during the conflicts. Representatives from Serbia and Croatia strongly opposed having the archives placed anywhere in the region, fearing for their security, accessibility to the archive, and misuse of the materials for political purposes. While there is interest on the part of all of the States of the former Yugoslavia in receiving copies of the Tribunal's records, there were various opinions as to whether the United Nations should be the custodian of such copies and in what kind of institutions they should be housed. Clear opposition was expressed to any solution that would be perceived as being imposed by the international community.

8. A strong need for effective access to key materials such as transcripts of the Tribunal's proceedings in local languages was expressed. In that regard, the Tribunal's Bosnian/Croatian/Serbian (BCS) transcription project was welcomed. Access to the Tribunal's records in the languages of the region was repeatedly stressed during the conference as an essential requirement for different interest groups such as victim organisations, judiciary officials, historians, and other academic scholars.

9. The Tribunal's records would play an important role in a regional truth commission, the creation of which is being lobbied by a large civil society coalition. Such a commission would assist the countries in arriving at a shared historical record of the conflict, which is considered to be a precondition for moving forward towards reconciliation.

10. The significance of the Tribunal's legal legacy and its contribution to the global development of international criminal justice, while not a central topic of the Conference, was recognised by the participants. Several concrete proposals concerning the Tribunal's global legacy have come to fruition as a result of the Conference.

## II. STRATEGIC CONSIDERATIONS

11. The following strategic considerations can be formulated in respect of the Tribunal's legacy:
- (i) The fundamental basis of the Tribunal's legacy is its core work, i.e. the investigations, trials and the judgements. The proper completion of the Tribunal's mandate, maintaining the high quality of its judicial work until the end of the last proceedings, and the creation of a credible residual mechanism are a *sine qua non* for a positive long-term legacy of the ICTY.
  - (ii) Effective long-term access to the Tribunal's records is a cornerstone of the legacy. One focal area of the legacy activities is to ensure the availability of the essential records in the languages of the affected communities and in a form that is understandable to the general public. Securing methods of access in the region such as information centres is a closely connected goal. Accessibility of the records will allow a wide variety of interests to make use of the Tribunal's legacy on their own terms.
  - (iii) The states of the former Yugoslavia must be encouraged to assume responsibility for the process of national reconciliation and for suppressing impunity for war crimes, crimes against humanity and genocide. The Tribunal should consult local authorities and civil society with respect to outreach and capacity building activities in order to support national ownership and the empowerment of local structures. The Tribunal should only engage in activities that are expected to provide sustainable benefits. Box ticking exercises must be avoided at all cost.
  - (iv) As the Tribunal downsizes and heads towards closure, it must intensify its cooperation with United Nations agencies and other organisations that are willing and capable of assisting the preservation of the Tribunal's legacy. While goals such as reconciliation and capacity building are connected to the ICTY's mandate, the Tribunal is and remains a criminal court. It should focus on its key expertise and make use of the possibility of cooperating with other actors who are best positioned to assist it.
  - (v) The concept of the legacy must remain flexible; it is not property within the exclusive control of the Tribunal. A range of other actors will play a critical role in preserving and promoting the legacy and the Tribunal welcomes proposals and initiatives for cooperation in that respect. While the legacy efforts have so far centred mainly on the Tribunal's impact in the region of the former Yugoslavia, the Tribunal is increasing its focus on its global legacy as well as the inclusion of the Tribunal's staff in its legacy activities.

### **III. STEPS TAKEN AFTER THE LEGACY CONFERENCE**

#### **A. Planning for the Tribunal's 2011 Global Legacy**

12. Encouraged by the fruitful outcome of the Conference “Assessing the Legacy of the ICTY”, the Tribunal has started exploring the possibilities of convening a second conference next year on its global legacy, focusing on legal topics and the impact of the Tribunal’s jurisprudence on the development of international criminal law and justice.

#### **B. Kosovo related initiatives**

13. Following the recommendation of several participants at the Conference to increase focus on Kosovo, the President’s office has approached potential donors with two proposals. The first one essentially mirrors the Tribunal’s BCS transcription project which is starting on 1 May 2010<sup>1</sup>; just over a million Euros is being sought for the production of Albanian-language transcripts from the relevant ICTY cases, which would provide the communities in Kosovo with a permanent, accessible record of the landmark international trials concerning the gravest crimes committed in the 1999 conflict.

14. The second proposal seeks 35.000 Euros for the translation and printing of the ICTY Manual on Developed Practices<sup>2</sup> in Albanian. The publication would provide Albanian-speaking audiences with unprecedented insight into the functioning of the ICTY and would serve to demystify the Tribunal and bring it closer to the legal profession, in particular, in Kosovo.

#### **C. Proposal of cooperation with the UNDP**

15. In accordance with the strategic consideration (iv) referenced above, the Tribunal’s President has approached the United Nations Development Programme (UNDP) which has a strong continuing presence in the former Yugoslavia and expertise in facilitating sustainable development. The President has proposed to the UNDP Administrator that the ICTY and UNDP enter into a

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<sup>1</sup> The BCS transcription project, which is part of the Tribunal’s joint capacity building project with the OSCE’s Office for Democratic Institutions and Human Rights (OSCE ODIHR) funded by the European Union, has a budget of ca. 1,15 million Euros. While judgements and decisions of the Tribunal are routinely translated into the languages of the accused and the victims, the trial transcripts have so far been available only in English and French.

<sup>2</sup> The ca. 240-page Manual, which was written by senior Tribunal staff, was published jointly by UNICRI and ICTY in May 2009. It is the first publication to describe the Tribunal’s operating practices in detail from the inside.

partnership with the aim of developing projects and initiatives that would ensure a lasting positive impact of the Tribunal's work in the region.

#### **D. Initiative for a regional consultation group on ICTY information centres**

16. The ICTY President has approached the relevant authorities, as well as the UNDP offices in Bosnia and Herzegovina, Croatia, Serbia, Kosovo<sup>3</sup>, Montenegro and Macedonia, asking them to nominate representatives to an informal consultation group on the creation of ICTY information centres. The United Nations Security Council has mandated the ICTY to explore the possibility of setting up such centres in the region of the former Yugoslavia in order to provide effective access to the Tribunal's records. Discussions at the Legacy Conference, as well as a previously conducted feasibility study, indicate that there is interest in the kind of services that information centres could provide, but there is no consensus or a clear vision as to their format. The purpose of the consultation body would be to develop a sustainable model that has national ownership as well as consistency, to the extent possible, across the region.

#### **E. New types of legacy proposals being developed**

17. The President's office has initiated the drafting of a discussion paper in order to consider various options for including the experiences and memories of ICTY staff in the Tribunal's legacy activities. Such projects may, for instance, involve the recording of interviews with the longest serving staff members in order to preserve their views on the development of the Tribunal based on their unique position inside the institution from its inception until today. The ICTY Staff Union will be included in the planning process.

18. A proposal for a permanent exhibition on the ICTY is also being developed. The Tribunal will actively seek the cooperation of interested museums and other relevant institutions for the development and implementation of such projects as well as for fundraising.

#### **F. National buy-in to guide capacity building activities**

19. The Tribunal will pay close attention to the principle of national ownership in its capacity building efforts, particularly in the implementation of the 18-month capacity building project which will be launched on 1 May 2010 jointly with the Organisation for Security and Co-operation in Europe and its Office for Democratic Institutions and Human Rights (OSCE ODIHR). The Tribunal

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<sup>3</sup> ICTY, being part of the United Nations, is neutral with regard to the status of Kosovo.



will strive to ensure that the project takes into account the actual needs and the legal culture of the domestic justice systems as fully as possible and that the activities gain national buy-in, avoiding solutions imposed from the outside. The Tribunal's judges will continue to engage in peer-to-peer roundtable discussions with their counterparts from the region as much as possible. Such joint working sessions having been identified as one of the most successful forms of interaction between the ICTY and the national jurisdictions.

**G. Chambers to intensify participation in youth outreach activities**

20. The ICTY President's office and Communications Service have jointly developed a proposal which foresees increased involvement of Chambers Senior Legal Officers in outreach activities aimed at the youth in the former Yugoslavia. The purpose is to make more use of the Tribunal's strongest asset, its legal expertise, in a large-scale outreach action targeting high schools and universities in the region.