

Keynote Remarks of Judge Theodor Meron
President, International Criminal Tribunal for the former Yugoslavia
and President, Mechanism for International Criminal Tribunals
“Marking the Twentieth Anniversary of the Tribunal”
Sarajevo
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Just a few months ago, on 25 May 2013, we marked an important milestone: the passage of 20 years since the establishment of the International Criminal Tribunal for the former Yugoslavia by the United Nations Security Council in Security Council resolution 827.

The decision taken back in 1993 by the Security Council was historic. After a half century of inaction following the trials of Nazis leaders for war crimes and other violations at Nuremberg, the international community joined together and issued a strong response to atrocities being committed during a period of fierce armed conflict—a response grounded not in recriminations or vengefulness, but in the rule of law and the idea of principled accountability.

When the ICTY was created, many had their doubts as to whether it would accomplish all that was hoped, and whether the broader ideals embodied in resolution 827 would ever become a reality. They had doubts that there would be arrests, doubts that there would be trials, and doubts that the court that they were creating on paper would become a viable and venerable institution.

In the early years, the Tribunal certainly faced its share of challenges, and some of those challenges persist even to this day. Some of our rulings—both then and now—have been controversial. Some claim that the Tribunal’s decisions have failed to give victims justice,

while others question the ICTY's impact on regional or national reconciliation or its contribution to the historical record.

It must be remembered, however, that the mandate of our Tribunal is quite limited; the Tribunal is tasked with determining the individual criminal responsibility of those who stand accused of serious violations of international law, and it may only find an accused guilty where that guilt has been proven beyond reasonable doubt in accordance with the law and on the evidence presented.

And it is by paying strict and sober adherence to this mandate that, in the twenty years that have passed since the Tribunal was founded as the first international criminal court in the modern era, the ICTY has put to rest the early doubts and arguably surpassed expectations in important ways. Indeed, many of the advancements made since 1993 in the world of international criminal justice more generally were made possible thanks to the groundbreaking example set by the Tribunal.

Through its decisions and judgements, the ICTY has established key precedents in the areas of international criminal and humanitarian law, precedents that have not only been applied in the Tribunal but have guided the work of other international courts and judicial authorities in domestic jurisdictions. The Tribunal has also developed an important body of procedural jurisprudence addressing international fair trial rights and international standards of due process.

But this is not all of our Tribunal's legacy. Although the ICTY is a court mandated to try individuals for serious violations of international humanitarian law, in trying these cases our court has also prided itself in having at its core a deep commitment to respect for human

rights – and for due process of law in particular. Fair trial rights, such as the right to be presumed innocent until proven guilty and the right to a fair and public hearing, are not simply at the core of our Statute – they are a fundamental concern, the import of which inform how our trials and appeals are conducted are conducted day in and day out and the structure and myriad of services provided by the Tribunal’s Registry.

Fair trial rights are the focus of a great many of our decisions and judgements, and our rulings in this regard embrace a range of topics: from the sufficiency of an accused’s notice of the nature and cause of the charge against him, to the adequacy of the time and facilities granted for the preparation of his defence, to the availability of translations of certain documents and judgements in a language that the accused can understand.

Outside the courtroom, the Tribunal has crafted practical processes and procedures dealing with everything from the enforcement of sentences to the protection of victims and witnesses, processes and procedures that serve as valuable models for other international courts.

And through its trials and the dedicated efforts of both the Prosecution and the defence, the Tribunal has become the guardian of an extraordinary quantum of evidence and information concerning events during the conflicts in the former Yugoslavia, creating an archive of material that will serve students and researchers for generations to come.

Perhaps most fundamentally, the ICTY has demonstrated that it is possible: to try even the most complex of cases, involving allegations of some of the worst crimes imaginable and brought against senior military and political leaders; to do so fairly; and to do so not once or twice but time and again. And importantly, ever since 2011 when the last fugitive was

transferred to its custody, the Tribunal has been able to claim an unrivalled, 100% enforcement rate, with all 161 of those indicted by the Tribunal accounted for.

In many ways, the ICTY has helped to usher in a new era of accountability: an era where the clear expectation is that the international community can and will react to heinous crimes committed in times of armed conflict and in times of peace; an era where the human dignity of all persons is valued and where there is an obligation on the part of the international community to act to stop the commission of atrocities and to bring those responsible to account. The work of the ICTY has demonstrated that such action can be taken, that principles can win out over impunity, and that heinous crimes can be punished, whoever their architects may be.

I would be remiss if I did not, in this context, express my deepest gratitude to our host government, the government of the Netherlands, for its day in, day out support for the Tribunal, on both the logistical and political level. Indeed, let me be quite clear: without the support of the Netherlands, Mr Mladic would not be at The Hague now.

We see evidence of the rise of this new era of accountability when we look at the international and hybrid criminal courts and tribunals now present on three continents, including the world's first permanent International Criminal Court. And we see signs of this new era truly taking hold when we look to the growing number of cases being brought in national jurisdictions, from here in the former Yugoslavia to Latin America, involving allegations of crimes committed in times of armed conflict.

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In reflecting on the work of the ICTY over the past twenty years and its achievements, it is easy to attribute much of what has been accomplished to the Judges, the Registrars, the Prosecutors, the defence counsel, and the exceptional staff who have worked tirelessly to turn what was only a dream at the time the ICTY was created into a functioning and fair actuality.

But there are others who have made the ICTY's achievements and milestones over the past twenty years possible—others to whom I wish to pay tribute today. All that we have accomplished in The Hague would not have been possible without the sustained support of the international community over the years. But it also would not have been possible without the tireless efforts, dedication, and courage of people here in Sarajevo and elsewhere in the countries of the former Yugoslavia. These are the people whom I wish to honour today for their contributions to the work of the ICTY over the past twenty years.

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First and foremost, we must recognize the important role played by individuals who have summoned the courage to come forward and give evidence about what they have seen and heard, and in many cases about the tragic and horrifying events that they have survived. Hundreds and hundreds of individuals have travelled far from their homes to testify before our court, often being asked to speak about some of the most difficult events imaginable. Countless other individuals have likewise given evidence or statements, facilitating the Prosecution and Defence investigations that are so essential to the preparation and trial of a case.

Without the bravery of those who have stepped forward, it would have been far more difficult for the Tribunal to carry out the mandate with which it was entrusted: to try the cases of

those accused of being most responsible for serious violations of international law here and elsewhere in the region. Without those men and women who have been willing to speak for all to hear and to tell personal stories of strength and horror, heartbreak and resilience, it is difficult to imagine that the Tribunal would have been able to achieve all that it has.

In other words, in a very real way, the Tribunal's accomplishments are thanks not just to the diligent efforts of my many colleagues in The Hague but to the courage and commitment of individuals here in Sarajevo, elsewhere in Bosnia and Herzegovina, in Croatia, in Serbia, and throughout this region—individuals who have stepped forward to give their evidence when it mattered, individuals who have made our work possible and have helped to bring about the new era of accountability in which we are entering now.

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If the ICTY's accomplishments over the past 20 years would not have been possible without the dedication and bravery of scores upon scores of individual witnesses, they also would not have been possible without the cooperation that we have received from States—States around the world, but especially here, in this region.

Without a police force of its own to conduct investigations and obtain evidence, the Tribunal has been, and continues to be, reliant on the cooperation of States for assistance. The Tribunal has likewise been dependent on States to ensure that those who have been charged with crimes before the ICTY are arrested and transferred for proceedings in The Hague.

In the early days of the Tribunal, some States were reluctant to step forward and offer assistance. The investigations that could be concluded and the timing of our trials were impacted by this reluctance.

But over time, as the conflicts receded, as the Tribunal began to demonstrate in concrete terms what it could and would accomplish, and as the States of the former Yugoslavia in particular came to demonstrate a strong commitment to supporting the Tribunal's work, this reluctance started to disappear. States instead began to cooperate in earnest—sharing information and evidence, facilitating investigations and court proceedings, and—importantly—ensuring the arrest and transfer of those accused before the Tribunal.

This cooperation has not only been critically important to the Tribunal; it also demonstrates more broadly a commitment to the rule of law and to the international community's vision of accountability reflected in the establishment of the ICTY two decades ago, and sets a model for other States to follow.

I salute the States—and the many individual State authorities and officials—that have stepped forward to assist the Tribunal in the fulfilment of its mandate over the years and, through their invaluable cooperation, have demonstrated their support for the goal of ensuring fair and just proceedings and respect for the rule of law.

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As we marked the twentieth anniversary of the Tribunal a few months ago, we were also completing our preparations for another milestone: the opening of the new Mechanism for International Criminal Tribunals, an institution tasked by the UN Security Council with

taking on certain key functions of the ICTY as the ICTY moves to complete its remaining trials and appeals and close its doors.

The Mechanism's responsibilities range from hearing any appeals filed against the trial judgements issued in the *Šešelj*, *Karadžić*, *Hadžić*, and *Mladić* cases to ensuring ongoing witness protection and support services, and from managing the ICTY's archives to providing assistance to national jurisdictions in their own investigative and prosecutorial endeavours. I am honoured to serve as the President of the Mechanism, and very much hope that, in the years ahead, the Mechanism will build strong and cooperative relationships with the States of the former Yugoslavia.

Even as the Mechanism moves to take its place as the newest tribunal in the universe of international criminal justice, my colleagues in The Hague and I remain focused on ensuring the orderly, responsible closure of the ICTY—and most importantly, the completion of its mandate.

But the completion of the ICTY's mandate has also been made possible in part by the actions of those here in the region, and particularly those in Bosnia and Herzegovina. This is because, thanks to advances made in the capacity of local judicial systems, the Tribunal has been able to refer several cases of intermediate- and lower-level accused indicted before the ICTY for trial in courts here and elsewhere in the region.

Indeed, over the years, the Tribunal has undertaken numerous initiatives to support the work of legal professionals and institutions tasked with handling war crimes cases here in the former Yugoslavia, transferring expertise and practical knowledge. These efforts have contributed to the establishment of specialized organs for war crimes investigation and

adjudication, the increased capacity of non-specialized courts to adjudicate war crimes cases, and the implementation of international standards and best developed practices within the local judiciaries in an array of contexts. My colleagues and I have been both proud and honoured to share our experience with our colleagues here in the region in an effort to facilitate this capacity-building.

Just as importantly, however, we at the Tribunal are so very grateful to all the many individuals who have dedicated themselves to ensuring that local judiciaries have the capacity and tools necessary to continue adjudicating war crimes cases in accordance with the highest international standards even after the Tribunal closes its doors.

We are grateful because not only have national judiciaries and countless other individuals and interested entities made it possible for the vast majority of cases related to the conflicts to be tried here in the region—thus helping to establish invaluable local ownership of the processes at stake. They have also taken, and continue to take, critically important steps toward carrying the Tribunal’s own legacy—the legal and practical precedents it has set, the evidence it has gathered, and the experience it has gained—forward into the future. And in doing all of this, they are turning one of the Tribunal’s greatest achievements—the opening of a new era in which accountability will be the rule and not the exception—into a reality: a reality that cannot and shall not be ignored.

Thank you very much.