



ICTY Legacy Dialogues

22 - 24 June 2017

Sarajevo, Bosnia and Herzegovina

A conference reflecting on the legacy of the ICTY
and how others can build upon its achievements

Conference Concept Paper



UNITED NATIONS
International Criminal Tribunal for the former Yugoslavia

ICTY Legacy Dialogues

I. Introduction

As the ICTY prepares to close down at the end of 2017, ensuring that the work and achievements of the ICTY are accessible and impactful for stakeholders in the region of the former Yugoslavia – and abroad – is more important than ever.

Building on the efforts already undertaken by the ICTY in generating legacy discussions and legacy-related projects,¹ the Tribunal will hold a final legacy conference in June 2017 to contribute to the ongoing debate among a wide variety of stakeholders. This occasion offers an opportunity for local, regional and international actors to discuss aspects of the Tribunal's role and legacy in several key areas.

The goal of the conference is to enable others to build on the achievements the ICTY has made over its 24 year history. The vision is for a series of dynamic dialogues with those who can take what the ICTY has developed forward into new areas, with a particular focus on the role of national actors. The conference will explore how the work of the ICTY can feed responses to conflict-related atrocities and crimes at a national level in a number of fields, while also benefiting from the transfer of insights gained at the national level.

At this conference, legacy will not simply be addressed as a static assessment of the ICTY's work, but rather as a dynamic discourse and transformation process – a sharing of experience and knowledge. Only through a dynamic and open process will the ultimate goal of advancing and bolstering the rule of law be achieved.

II. Conference Structure

The conference will take place over three days from **22 to 24 June 2017** in the city of Sarajevo in Bosnia and Herzegovina. The conference venue will be at a hotel (location TBC).

The conference will be attended by approximately 300 people, including ICTY judges and staff, local stakeholders representing a diverse range of roles from across the region of the former Yugoslavia, as well as international experts and academics. A significant proportion of participants will be from the former Yugoslavia, including associations, victims, youth, lawyers, journalists, politicians, NGOs, academics, representatives of the media and the broader public. It is important to have a wide representation of different actors participating in the conference and to take a comprehensive approach in organising it. With this in mind, groups and individuals from the region are invited to be co-organisers of side-events.

The conference will consist of moderated panels and will be complemented by a series of side-events, including thematic round-table discussions. The conference will also feature a number of opening speeches, as well as a keynote address. The keynote address will set the tone for the conference and lay some groundwork for the debates and deliberations.

¹ ICTY Conference - Marking the 20th Anniversary of the Tribunal, Legacy of the ICTY in the former Yugoslavia - 2012 Conferences, ICTY Global Legacy - 2011 Conference, International Conference - 2010. For more information go to: <http://www.icty.org/en/outreach/legacy-conferences>.

The composition of panels will reflect diversity, taking into account, *inter alia*: gender; geographic representation; professional background; participation in proceedings; officers from other courts and tribunals; and expertise in the relevant areas of discussion.

At the conference presentations may be given in English or B/C/S with simultaneous interpretation into the other languages.

Panel discussions

At the heart of this conference will be a series of panel discussions. The panels will be composed of up to five participants and are aimed at creating an open dialogue on the issues covered. Each panel will discuss a key element of the ICTY's legacy and will be chaired by a moderator.

The format of each panel may vary according to the topic with some, for example, taking the form of presentations followed by questions and answer sessions, while others will involve interactive discussions through moderated questions or have a main speaker with commentators. All conference participants will be invited and encouraged to take active part in the sessions.

Ninety minutes will be allotted to each panel. The panel topics are discussed below.

Side-events

A series of side-events specifically designed for this occasion, such as speeches, round-tables and documentary screenings, will be held with the aim of fostering further reflection and dialogue on the key issues of the conference.

Highlighted among these side-events will be the launch of the B/C/S version of the book titled "Prosecuting Conflict-Related Sexual Violence at the ICTY," edited by Prosecutor, Serge Brammertz and Deputy to the Prosecutor, Michelle Jarvis, as well as a series of interactive Q & A sessions with the Principals of the Tribunal.

For coordination purposes, those interested in organizing side-events should contact the Tribunal (Ms. Helen Freney at freney@un.org).

Outcomes

On the final day the conference will adopt a resolution containing conclusions and recommendations. These will emerge from the various discussions and are intended to lay the groundwork for future discussions on legacies of international courts and tribunals, including the transfer of insights between national and international jurisdictions.

A call for papers for the conference was issued at the end of October of 2016. Successful applicants have been invited to submit a full paper by 15 April 2017. Papers will be considered for presentation and discussion at the conference and/or for publication in an edited collection.

III. The Panels

1. Normative Legacy

This panel will discuss the highlights of the Tribunal’s normative legacy throughout its 24 years of existence, with a special focus on how ICTY jurisprudence has influenced national jurisdictions, in particular in the region of the former Yugoslavia, as well as how domestic law and jurisprudence have informed international justice. In the spirit of holding a dynamic discourse and sharing of experience and knowledge, speakers will discuss lessons learned and ways forward to ensure successful cross-fertilization among national, regional and international judiciaries.

The panel will cover topics including:

- Landmark ICTY decisions and the development of international criminal law during the ICTY’s lifetime;
- How to ‘translate’ legal concepts of international criminal law into national concepts, such as modes of liability, as well as how national jurisdictions deal with divergence in this regard;
- In terms of the procedural law and evidence in international criminal law, sharing of practices on fairness and effectiveness of proceedings;
- Offences against the administration of justice of international courts and tribunals and how national courts are dealing with these matters;
- How the ICTY has served as a catalyst for the establishment of specialised chambers or sections for international crimes within national jurisdictions in the region, and beyond.

Participants will include a former ICTY Judge, a judge of a national jurisdiction, academics and legal practitioners.

2. Gender Justice Legacy

The purpose of the moderated panel titled “Gender Justice Legacy” is to explore how women have contributed to and been a part of the justice process in a number of contexts and roles, both at the ICTY and in national jurisdictions now carrying out related work. The panel will discuss the experience of and contribution by women as witnesses, judges, investigators, analysts, prosecutors, translators/interpreters, VWS staff, and representatives of civil society, as well as the contribution of women to regional or international organizations working on related issues. The panel would provide a forum for discussing how the participation of women has shaped the legacy of the ICTY, and – in turn – how the ICTY’s work has shaped/may be shaping their experience, and what this may mean for women and girls in other jurisdictions in the future. The panel will reflect on the need for effectively integrating gender perspectives into not just the substantive, but also procedural and institutional aspects of international criminal law, and will look at the impact of such a legacy on transitional justice and the rule of law.

The panel will cover topics including:

- How women have participated in the justice process at the ICTY;
- The evolution of ICTY jurisprudence in relation to sexual and gender based violence (SGBV) and application of such jurisprudence in national jurisdictions;
- The importance of collaboratively working with civil society in identifying victims and witnesses (as well as in relation to advocating on broader reparations issues such as compensation);
- Protection of witnesses and victims, including victims of SGBV;

- Access to justice for women in national jurisdictions, including access to compensation/ reparations.

Panellists will include current and former ICTY OTP staff members, a female former ICTY judge, an academic, and a member of non-governmental organization.

3. Operational Legacy

The purpose of the “Operational Legacy” moderated panel is to show how the Office of the Prosecutor (OTP) has developed its working methods over the years, as well as how it has adapted to and overcome diverse operational challenges. It will look at the ways in which the OTP has contributed to transitional justice processes and the rule of law in national jurisdictions, as well as how national authorities are now applying and further developing operational strategies informed by the OTP’s experience.

The panel will cover topics including:

- OTP’s initial challenges in investigating and prosecuting war crimes;
- OTP’s lessons learned in capacity building in the region;
- Perspectives and operational challenges facing national jurisdictions, and potential and demonstrated solutions (including through the lessons learned and applied from OTP’s experience).

Panellists will include current and former ICTY OTP staff members, as well as a member of a national jurisdiction.

4. Defence and Fair Trials Legacy

This panel will discuss the role of defence in international criminal trials at international and national courts. The experience of defence at the ICTY will be discussed alongside defence at national courts in the region of the former Yugoslavia and around the world for cases conducted under universal jurisdiction, as well as the importance of having a robust defence in these proceedings.

The panel will cover topics including:

- Building a defence case in relation to international crimes, defence investigations, case management, trial advocacy and the challenges at both the international and national level;
- Exploring the adversarial system which has been largely adopted in the courts in the region of the former Yugoslavia, and how the practice at the ICTY has shaped how defence strategy has developed in the region;
- An analysis of the different structures for the defence organisations and offices at international and national courts;
- The rights of the accused, including fair trial rights and equality of arms and how this impacts the way proceedings are conducted.

Panellists will include Defence Counsel and ADC Members who have practised before the ICTY; lawyers who have conducted war crimes cases in the region of the former Yugoslavia to cover how ICTY jurisprudence is used in the region and the adversarial system which is now in place; lawyers who have conducted war crimes cases under universal jurisdiction; members of the judiciary who

have adjudicated on war crimes cases both internationally and domestically, specifically to comment on the importance of having a robust defence; representatives of defence offices and organisations both at the international courts and in the region of the former Yugoslavia, and academics who have conducted research into fair trial rights, including the rights of the accused before the ICTY and in war crimes cases in national jurisdictions.

5. Participatory Legacy: “The Witness Experience”

Approximately 5,000 witnesses have made 8,000 appearances in trials before the ICTY since its inception. This unprecedented number includes a wide cross-section of victims, “crime base witnesses”, “linkage witnesses”, and expert witnesses. The panel seeks to delve into the impact on national judiciaries of witness evidence before the ICTY. With a broader view, the panel will also turn to the role of victims, seeking reparations for witnesses/victims, and the determination of victim status.

The panel will cover topics including:

- Resources required to enable witnesses to tell their stories, including gender-sensitive and witness support;
- Lessons learned from the Tribunal’s Victim and Witness Section (VWS)’s pilot study project (released in 2016) that are of interest for national jurisdictions,
- Emerging issues, i.e., should post-testimony support include keeping witnesses informed, including giving them notice of (early) release dates of convicts;
- The continuation of ICTY protective measures by national authorities and the logistics and implications thereof.

Panellists will include an ICTY witness, a representative from the ICTY Victims and Witness Section, a representative of witness support and assistance programmes in the region of the former Yugoslavia, academics and experts on reparations, witness protection, as well as experiences from other regions.

6. Historical Legacy

The aim of this panel is to facilitate an expert discussion on the long-term historic legacy of the ICTY, starting with the Tribunal’s role in the creation of an historical record through the establishment of crucial facts about crimes. In addition, the ICTY will leave extensive records and archives as part of its legacy, including not only its judgements and decisions, but also transcripts of witness testimony and video-recordings of court hearings, exhibits, and other documents of great historic value. These records and archives will provide an important account of the events that took place during the conflicts of the 1990s in the former Yugoslavia and will constitute an extremely valuable source of information both for people in this region and elsewhere. Furthermore, the panel will look at the Tribunal’s various initiatives for public sharing of information, such as access to user-friendly judicial databases and audiovisual material or access to the records through information centres in the region.

The panel will cover topics including:

- How the ICTY’s work has contributed to the establishment of facts about historical events;
- Use of records and archives in justice, advocacy and reconciliation work in the countries of the former Yugoslavia;

- The contribution of information centres towards effective long-term access to the ICTY's records and archives;
- The ICTY as the first international Tribunal with an audiovisual collection of its proceedings (including an audio channel in B/C/S).

Panellists will include a current ICTY judge, a legal academic, an historian, and a journalist.

7. Outreach Legacy: “Communicating Justice”

If the ICTY's work and legacy are to have a positive impact on transitional justice processes in the countries of the former Yugoslavia, they need to be communicated and explained to the citizens and institutions in the region. The ICTY Outreach Programme has over the past 16 years developed a set of tools and projects aimed at bringing the work and achievements of the ICTY closer to the communities most affected by it. Yet, the need for outreach on the ICTY's work and legacy will not cease when it closes. On the contrary, it will be up to other actors to continue and enrich the communication of the ICTY's legacy. This raises a set of important questions for the future which the panel will attempt to answer.

The panel will cover topics including:

- What the ICTY Outreach Programme has done to encourage and empower regional actors to continue and take over its efforts and projects;
- The ongoing and planned activities of local actors aimed at communicating the ICTY legacy;
- What the goals of outreach activities should be after the closure of the Tribunal;
- The needs of local communities in respect of the ICTY's legacy;
- The responsibilities of different societal actors such as politicians, journalists, lawyers, or civil society in communicating the ICTY's legacy.

Panellists will include representatives dealing with outreach from the local war crimes judiciary, civil society organizations focused on transitional justice, journalists with extensive experience in covering the work of the Tribunal, and politicians familiar with the importance of ICTY outreach, legacy and public information.

8. Non-Judicial Legacy

The judicial work of the Tribunal is just one piece of a larger puzzle. The idea behind this panel is to raise the question of the extent to which – if at all – a judicial institution can, and should, contribute to peace and reconciliation in post-conflict society. In other words, it will examine what the Tribunal was intended to achieve, as well as what it was never meant to achieve as a court of law with a limited mandate. This in turn creates debate on how to fill the gap through non-judicial mechanisms. The idea is to encourage a fruitful and forward-looking debate on how to rebuild post-conflict societies and work towards reconciliation and sustainable peace.

The panel will cover topics including:

- The broader topics of transitional justice and non-judicial accountability mechanisms;
- The significance of memorialisation for combating denial;
- Peacebuilding and strengthening the rule of law at the national and international levels;
- Reception of trials in media, education, historical representation, and art (*i.e.* films, literature);
- Strengthening civil society initiatives on accountability and reconciliation.

Panellists will include a political scientist, a representative of civil society, a legal academic, and a transitional justice expert.

IV. Benefits of the conference

The ICTY Legacy Dialogues conference will play a critical role in the conversation on the ICTY's legacy in the former Yugoslavia. This conference will contribute significantly to the ICTY legacy goals:

- to identify best practices, achievements and challenges resulting from over 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.

Just as important as the structured aspects of the conference will be its provision of a space for informal conversation and networking among conference participants. The conference will bring together a wide range of participants and will therefore offer opportunities for dialogue among those who have a broad spectrum of perspectives and level of involvement with the work of the Tribunal.

V. Logistical information

Further details, such as those relating to participation, venue and media are being finalised and will be made available as soon as possible. In the meantime, for more information please contact the Tribunal at ICTYlegacydialogues@un.org.

VI. Provisional Agenda

Thursday 22 June 2017

- 8:00-9:00 Registration and Welcome
- 9:00-9:30 Conference Inauguration and Keynote Speech
- 9:30-11:00 **Panel I: Discussion on Normative Legacy**
- 11:00-11:30 *Coffee Break*
- 11:30-13:00 **Panel II: Discussion on Gender Justice Legacy**
- 13:00-14:30 Lunch Break and Side Events:
Launch of the B/C/S version of the book "Prosecuting Conflict-Related Sexual Violence at the ICTY"
- 14:30-16:00 **Panel III: Discussion on Non-Judicial Legacy**
- 16:30-18:00 Side Events
- 21:00-22:30 Reception

Friday 23 June 2017

- 9:00-9:30 Opening Session
- 9:30-11:00 **Panel IV: Discussion on Operational Legacy**
- 11:00-11:30 *Coffee Break*
- 11:30-13:00 **Panel V: Discussion on Defence and Fair Trials Legacy**
- 13:00-14:30 Lunch Break and Side Events:
(i) Briefing on access to the ICTY Archives; (ii) Discussion of witness needs post-testimony with representatives from the region.
- 14:30-16:00 **Panel VI: Discussion on Participatory Legacy: "The Witness Experience"**
- 16:00-16:30 *Coffee Break*
- 16:30-18:00 **Panel VII: Discussion on Historical Legacy**

Saturday 24 June 2017

- 9:30-11:00 **Panel VIII: Discussion on Outreach Legacy: "Communicating Justice"**
- 11:00-11:30 *Coffee Break*
- 11:30-13:00 **Closing Session: Conclusions and Recommendations**