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STATEMENT

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Message by Judge Gabrielle Kirk McDonald on the Occasion of the Final ICTY Symposium

We can all be proud of the achievements of the ICTY. It offered the first proof positive that a system of international criminal justice was feasible, and thereby, led the way for the establishment of the permanent International Criminal Court. The Tribunal also developed a sound body of substantive and procedural law available for use by international and municipal courts alike. These contributions of law, and many others undoubtedly will be explored in some detail by the panels.

I want to speak, however, to a criticism that is lodged against the ICTY; namely, that it did not bring a lasting peace to the region of the former Yugoslavia. This is a correct assessment. However, it is not fair to dismiss any contribution by the ICTY in this regard, and especially at this early date.

Some even question whether the Tribunal's mandate included a charge to bring peace to the region. When we original 11 Judges took our oath of office in November 1993 while the conflict was still ongoing, we believed this to be our charge. In our first annual report to the United Nations, President Antonio Cassese stated that the Tribunal was "a tool for promoting reconciliation and restoring true peace." We believed the judicial process would exact individual accountability instead of "collective responsibility" and thereby contribute, albeit gradually, to a lasting peace.

It is true that there continue to be acts of revenge and retribution among the same ethnic factions that fought each other in the 1990s. In order to have a lasting peace, it must be preceded by a reconciliation among these groups. It is unrealistic to expect such reconciliation to have been accomplished by any court of law that was disconnected culturally, institutionally and physically from the region. And certainly not in 24 years.

The Tribunal, however, did help to promote reconciliation by demanding accountability for crimes committed. This had long been absent in the region. Opposing ethnic groups have each carried their version of atrocities going back to World War II and beyond, without there being any dispassionate assessment of the truth. Not only did the Tribunal assign culpability, its judgements also made broader factual and legal findings based on evidence, tested by the rigors of trial, that constitute a historical record of what transpired. When the climate in the region is right, and with the availability of other tools of transitional justice, these judgements can be utilized in a reconciliation process, should the people of the region embrace it.

Furthermore, in the interest of advancing lasting peace, the ICTY has helped to advance the rule of law in the region by increasing the capacity of the municipal institutions to conduct their own war crimes trials.

Although the ICTY is closing at the end of this year, President Agius has said this will not end its relationship with the region of the former Yugoslavia. I believe that the ICTY can

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enhance its legacy and continue to promote peace efforts by encouraging and facilitating the full and effective use of the ICTY Information Centres by those in the region. There are any number of ways to maximize the value of digital access to the ICTY's records, but depositing them in the Centres is not enough. The Outreach Programme established important connections with the community and these should be utilized in conjunction with the Information Centres to counteract the virulent propaganda that paints the Tribunal as having not been impartial. Also, consideration should be given to working with other groups that advance the legacy of the ICTY, such as the SENSE Transitional Center in Pula which has a library of videos of the ICTY proceedings and other useful material.

Reconciliation is a long process. It has been said that it took two generations in Germany, even with the concerted support of the community. The ICTY has made immeasurable contributions to the jurisprudence of international criminal law. Trials, however, should not be considered ends unto themselves, but a means to promote a more peaceful world.
