

Annex

Outcome document of the Legacy Dialogues Conference of the International Tribunal for the Former Yugoslavia

Conclusions and recommendations*

The Conference of the *ICTY Legacy Dialogues* held from 22 to 24 June 2017 in Sarajevo, Bosnia and Herzegovina;

Recalling the special mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY or Tribunal) to bring to justice those most responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991 and thus contribute to the restoration and maintenance of peace in the region;

Given the pioneering role of the ICTY in international law, and the desire to reflect on its 24-plus years of experience with a view to helping others to build on its achievements;

Recognising that, as the first international criminal tribunal created by the United Nations, the ICTY has an important role in sharing its lessons learned with the international community, the region of the former Yugoslavia, as well as with current and future international courts and tribunals;

Recognising that the ICTY has served as a cornerstone in the fight against impunity for crimes committed in the former Yugoslavia and beyond, transforming the landscape of international humanitarian law and contributing to the development of international criminal law;

Having considered the conclusions and recommendations of the various expert panels on ICTY legacies discussed at the final ICTY Legacy Conference, and suggestions made by members of the audience;

In gratitude to all the participants, experts, and donors of the Legacy Conference;

Presents the following conclusions and recommendations in order to assist national and regional courts, as well as present and future international courts and tribunals in the pursuit of justice, and to assist the legacy projects of the ICTY:

Conclusions: normative legacy

1. The ICTY's normative legacy will continue beyond its closure to inform the work of national, regional, and international jurisdictions.
2. The ICTY has made a rich contribution to the development of international humanitarian law, in particular with respect to non-international armed conflict.
3. The ICTY has filled legal gaps regarding definitions of international crimes and has significantly influenced the drafting of the Rome Statute of the International Criminal Court.
4. The ICTY's jurisprudence has served as an important resource for national, regional, and international jurisdictions, as well as for other accountability mechanisms.

* The text of the annex has been reproduced as received, without formal editing.

5. The ICTY has contributed to the establishment of specialised war crimes Chambers in the region, along with inspiring the development of their jurisprudence and procedures.
6. The ICTY's jurisprudence has been used in creative ways by national courts, including beyond the criminal field.

Recommendations: normative legacy

1. Other courts, national, regional, and international, should consider the judgements and decisions of the ICTY as an important source of inspiration and valuable repository of international law.
2. ICTY judgements should, where possible, be integrated into the jurisprudence of national jurisdictions in the former Yugoslavia.
3. The lessons of the ICTY are relevant in terms of realistic expectations of what an international court or tribunal can achieve, and therefore expectations should be managed from the outset to avoid disappointing victims and affected communities, and the wider international community.
4. The ICTY manual on developed "best practices" should be updated for use by other national, regional, and international courts and tribunals.
5. Consideration should be given to making use of ICTY jurisprudence beyond the field of international criminal law.

Conclusions: gender justice

1. The ICTY has shown that it is possible and necessary to undertake the prosecution of sexual and gender-based violence.
2. The ICTY's experience shows there are numerous misconceptions in the way criminal justice actors perceive sexual violence crimes.
3. Gender bias often results in a disproportionately low number of female witnesses.

Recommendations: gender justice

1. Gender perspectives should be integrated into substantive, procedural, and institutional aspects of international criminal law.
2. The understanding of gender should be expanded beyond the issue of sexual violence at the national, regional and international levels, including by looking at other crimes through a gender lens.
3. National, regional, and international institutions dealing with war crimes should consider appointing a focal point for women to assist on gender issues arising in the work place.
4. National, regional, and international courts and tribunals should ensure equal representation of males and females at all levels, including among judges and in senior management positions.
5. War crimes courts should develop a comprehensive institutional framework to provide greater accountability for gender-based crimes that links prosecutions to affected countries.

6. Guidance documents need to be adopted by judicial institutions in order to ensure a standardised approach by judicial actors towards victims within different institutions and professions.
7. Future courts and tribunals should grant women equal access to justice in national jurisdictions, including access to compensation.
8. A comprehensive training program for all relevant actors in war crimes proceedings should be implemented in relation to conflict-related sexual violence crimes and address the stereotypes and misconceptions that can thwart accountability efforts.

Conclusions: non-judicial legacy

1. There is no universally accepted definition of 'reconciliation'.
2. Empirical research suggests that tribunals are often trusted locally if they confirm narratives that are shared by the affected group.
3. Memorialisation of sites of mass atrocities can be seen as a way of bringing the ICTY closer to local communities and acknowledging the suffering of the victims.
4. Under very specific circumstances, it is possible for international courts and tribunals to deter violence against civilians.
5. The creation and work of the ICTY inspired the international concept of transitional justice.

Recommendations: non-judicial legacy

1. Future international courts and tribunals should support efforts dedicated to strengthen local civil society initiatives on accountability and reconciliation.
2. Future international courts and tribunals should commit early on to outreach and media initiatives, which promote memorialisation in the effort to combat denial.
3. Encourage civil society's continued commitment to remind communities that an historical record exists in order to never forget and to acknowledge the pain and suffering of victims.
4. Societies should not solely rely on factual truths, but also explore common understandings or values (meta normative truths) as a way to break down barriers to reconciliation.

Conclusions: operational legacy

1. It is essential to make information and evidence collected for international war crimes proceedings available in corresponding national proceedings.
2. The work of a commission of inquiry preceding the establishment of an international court or tribunal can provide an important starting point for shaping an investigation and prosecution strategy.
3. War crimes prosecution offices will invariably have to prioritise which crimes to prosecute, taking into account factors such as the gravity of the crimes, the main features of criminality during conflict, crimes committed against males and females, and which perpetrators bear the greatest responsibility.

4. War crimes prosecution offices will need to think creatively about strategies to overcome operational difficulties and be prepared to propose novel procedures to facilitate their work.
5. A prosecution office will need to understand the political environment in which it works, while ensuring that its work is not affected by political considerations.
6. Peer-to-peer models for national capacity building are preferable to traditional training methods. In particular, models that allow for sustained and practical follow-up and problem solving on specific issues are the most effective.
7. Having technology in place to ensure a well-structured and easily searchable database for a war crimes evidence collection is essential from the moment of the establishment of prosecution offices.

Recommendations: operational legacy

1. Significant attention should be paid to ensuring accurate and comprehensive metadata for evidentiary items to facilitate the searching and tracking process.
2. Prosecution offices should establish a special team to facilitate the work of fugitive tracking, including through the development of sources, collation of intelligence information, and by creating task-forces of relevant agencies.
3. The prosecution should continuously re-analyse its evidence, particularly as new material is collected that may shed new light on crime base, linkage and objectives in leadership cases.
4. The international community should consider strategies for facilitating the collection and preservation of DNA evidence from conflict crime scenes, even when no jurisdiction is yet available to prosecute the commission of these crimes.
5. Capacity-building initiatives should be preceded by a comprehensive needs assessment.
6. National, regional, and international courts and tribunals should consider developing strategies to facilitate capacity building for war crimes accountability from the moment of their establishment.
7. Strategies should be put in place to ensure access by other relevant criminal justice actors, to information or evidence through electronic databases, while protecting the confidentiality and security of such data. Training for those criminal justice actors to effectively search databases should also be available.

Conclusions: defence and fair trials legacy

1. Access to defence is a key indicator of fair trial rights as basic human rights.
2. The convergence of common law and civil law systems has posed challenges for disclosure practices.
3. Each accused person should be entitled to qualified defence counsel with expertise in international humanitarian law and international criminal law.

4. Training initiatives for defence counsel are fundamental to achieving fair trial standards
5. The ICTY's jurisprudence is a valuable tool for the development of national legislation in the area of international criminal law.
6. The ICTY's experience has assisted national jurisdictions in enhancing the ability of States to exercise universal jurisdiction.

Recommendations: defence and fair trials legacy

1. All international courts and tribunals should consider establishing associations of defence counsel to represent the interests of defence counsel and the rights of the accused and to ensure that professional standards are harmonised.
2. Consideration should be given to how the ICTY's disclosure systems could best serve other international courts and tribunals, as well as national jurisdictions.
3. Regular training on the jurisprudence and practice of international courts and tribunals should be available to lawyers working on war crimes cases in national jurisdictions.
4. The ICTY's developed practices could assist national jurisdictions where war crimes cases are conducted on the basis of universal jurisdiction, including through cooperation.
5. Information regarding the ICTY's jurisprudence and practices should be disseminated to national defence associations and offices where war crimes cases are conducted, to ensure equal access to such information. The ICTY should also provide national defence associations and offices with access to its databases.

Conclusions: the participatory legacy

1. Witness support is an important and integral part of court structures.
2. Witness needs are diverse and complex, and can last long after testimony has been given.
3. Seeking input from witnesses on their needs is critical to providing appropriate support.
4. Other actors, whether formal or informal, such as community support groups and NGOs, can form effective witness support networks.

Recommendations: the participatory legacy

1. Present and future international courts and tribunals should consider following the ICTY's witness-centred approach.
2. State authorities need to take responsibility for witness support, including by providing resources.
3. Prosecution offices should take proactive steps to locate and encourage female witnesses to testify in war crimes proceedings.
4. National, regional, and international courts and tribunals should consider a proactive approach towards witnesses, informing them of the types of support available.

5. National, regional, and international courts and tribunals should ensure continuing support to witnesses beyond their testimony.

Conclusions: historical legacy

1. Preservation of documents is a key foundation of international criminal courts. A living archive is critical for the success of legacy strategies.
2. Leaving an historical record is not necessarily a primary purpose of international criminal courts and tribunals, although a record may be established as a result of court proceedings.
3. The historical value of court records extends beyond judgements. These records must be read in context and a fuller picture may emerge through complementarity of courts and other justice mechanisms.
4. The value of evidence for purposes of historical clarification differs among types of evidence. In order to obtain a comprehensive account, it is necessary to compare findings and testimony across cases.

Recommendations: historical legacy

1. The ICTY should ensure that a permanent record of the crimes committed during the Yugoslav wars is available to the public in the region, in all local languages.
2. The ICTY's record of crimes should include, *inter alia*, judgements, decisions, transcripts of witness testimony, video recordings of court hearings, and exhibits.
3. The ICTY should have in place a long-term strategy to grant public access to archive material.

Conclusions: outreach legacy

1. The ICTY Outreach Programme has played a key role in building the capacity of national institutions dealing with war crimes in the former Yugoslavia.
2. The ICTY Outreach Programme has ensured access to information about the work of the Tribunal through its wide range of activities and its website.
3. The ICTY Outreach Programme's repository of legacy material about the work of the Tribunal will continue to be used in future public discourse on legacy.
4. Outreach programmes are a vital part of any judicial institution dealing with war crimes regardless of challenges in implementing their mandate.
5. The work of civil society, such as non-governmental organisations, victims' groups, and academia is fundamental to ensure that the legacy of the ICTY continues beyond the Tribunal's closure and has an impact on transitional justice processes.
6. Exchange and communication with key target groups, such as victims, politicians, journalists, civil society organisations, and academia is essential for outreach programmes to have an impact.

Recommendations: outreach legacy

1. Strong field presence of outreach programmes in the affected regions is crucial to enable them to communicate the work of judicial institutions to key audiences.
 2. Outreach programmes should be built as two-way communication tools which listen and react to the needs of the affected communities.
 3. Outreach programmes should be at the outset a core and appropriately funded function of national, regional, and international courts and tribunals dealing with war crimes.
 4. Information about the work and legacy of the ICTY should continue to be accessible in the official and all local languages of the former Yugoslavia through the establishment of the information centres.
 5. One of the key target groups of the ICTY's legacy should be youth.
-