



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

ICTY Closure

Address

by

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I am honoured to be here at this event that the International Tribunal for the former Yugoslavia has organised within the framework of the upcoming closure of the Tribunal.

Although the main event related to the closure of the ICTY will take place in The Hague later this month, with the participation of the Secretary-General, I wish to commend the initiative of the ICTY to organize an event also here in New York.

As we all know, the genesis of the ICTY took place within the walls of this building. In this regard, in my remarks today, I would like to return to the past and go back to 1993 in order to highlight how a perfectly orchestrated cooperation between the principal organs of the United Nations permitted the establishment of a unique institution, which has been fundamental and instrumental to the development of contemporary international criminal justice.

(1)



The establishment of the ICTY in 1993 had both an institutional and a legal impact.

(a) With regard to the impact on international institutions:

The Security Council passed resolution 827 on 25 May 1993, formally establishing the ICTY, the first criminal tribunal established by the United Nations and the first international criminal tribunal since the Nuremberg and Tokyo tribunals.

Through the adoption of this resolution, the Security Council had an impact on the interpretation of the Charter of the United Nations as well as on its own functions. The Security Council was indeed, first, acknowledging the existence of a close link between international criminal justice, and the purposes of the United Nations; second, assuming that criminal justice fell under its primary responsibility for the maintenance of international peace and security, as established in Article 24 of the Charter of the United Nations; and third, the Security Council was engaging in a progressive interpretation of Chapter VII of the Charter, in particular of its Article 41, by including the establishment of UN tribunals among the measures not involving the use of force to be employed to maintain or restore international peace and security.

If we go back to 1993 and read the legal doctrine of that period, but also newspapers or reports from intergovernmental and non-governmental organisations, we can only say, 24 years later, that there was a unique momentum. The level of support for this new interpretation of the Charter was



astonishing. Of course there were some voices that expressed their hesitation, in particular with regard to the legality of the establishment of the ICTY and, one year later, of the International Criminal Tribunal for Rwanda. The Appeals Chamber of the ICTY itself had to address this question, among others, in its innovative decision of 1995 on the jurisdiction of the Tribunal in the *Tadic* case.

But the institutional impact went beyond the Security Council. As I mentioned earlier, the cooperation between different United Nations organs was instrumental for the establishment and the operation of the Tribunal.

The Secretariat worked in close coordination with the Security Council, and the Office of Legal Affairs prepared the first draft of the Statute of the ICTY, annexed to Resolution 827, and assisted member States until its adoption. The Statute determined the Tribunal's jurisdiction and its organisational structure, as well as its criminal procedure in general terms.

Last but not least, the General Assembly provided its decisive support through the approval of important budgets, showing that the international community was willing to make considerable efforts to have the ICTY fully functioning.

(b) Let me now turn to the impact of the ICTY on international law:

It has been repeated many times that the ICTY established the foundations of international criminal justice and that some contemporary developments in international criminal law are



based on the precedents emerging from the ICTY, as well as the ICTR.

The impact of the ICTY goes beyond its own walls, . influencing both domestic and international criminal accountability. The ICTY has been the foundation for the existing international criminal justice “regime”. I believe it is fair to say that the ICTY can be considered the genesis of the “global culture of accountability”. While tribunals such as the ICTR and the Special Court for Sierra Leone followed the model of the ICTY, other institutions with some level of international participation or assistance have also been created and others may be created in the future.

In addition, some non-judicial international accountability mechanisms have been established in the last 12 months. In contexts where it is difficult to foresee effective accountability, there is an increasing appetite for, at a minimum, gathering and securing evidence in the meantime so that such evidence can be used in national, regional or international courts that may in the future have jurisdiction over these crimes.

In this regard, the General-Assembly established in December 2016 the new investigative mechanism for Syria to preserve and analyse evidence of violations of international humanitarian law and human rights violations. More recently, on 21 September 2017, the Security Council requested the Secretary-General to establish an Investigative Team to support domestic efforts to hold ISIL (Da’esh) accountable, by



collecting, preserving, and storing evidence in Iraq of acts that may amount to war crimes, crimes against humanity and genocide committed by the terrorist (group) ISIL (Da'esh) in Iraq.

I should also note that, while we are here, the Assembly of States Parties to the Rome Statute of the International Criminal Court has started today its sixteenth session. Without the ICTY, and then the ICTR, there might never have been a permanent International Criminal Court.

As seen with the ICTY, it is important to remember that any ad hoc tribunals, and any investigative mechanisms engaging with victims, may give rise to entities that are necessary in order to discharge the residual functions arising from international criminal justice. These functions include not only witness protection, but supervision of enforcement of sentences, petitions for early release, contempt cases, review of judgments and sentences, and management of archives. States need to be aware that when they create any of these structures, it is a long-term process and these structures will likely need to exist for a period of time that goes beyond the collection of evidence or the delivery of judgments. The failure to account for these long timelines can lead to fatigue regarding financial support.

II.



As we are in a legacy event, let's now look into the future and reflect on four specific areas that could be improved in the future and which could concern all international and tribunals with any sort of international participation or assistance. One is of a financial nature while the three others relate to efficiency and governance.

- (1) The ICTY benefitted from funding through assessed contributions of UN Member States. However, the length of the trials and the cost has raised questions about the financing of these types of mechanism and the possibility of improving efficiency. Several other institutions that have followed the ICTY have been financed through voluntary contributions. Finding resources to sustainably support these institutions remains a problem.

Already today, as members of the international community consider creating new institutions as the ones described above, funding for some of the existing hybrid institutions that are voluntarily funded has largely dried up, putting at risk the orderly conduct of the judicial process.

- (2) When we talk about efficiency, the issue of the length of the proceedings has been identified as a concern, in particular for those who fund the tribunals. It appears that one reason that funding erodes over time is



that the cases take so long. Of course, the cases are complex and the proper administration of justice requires that issues be adequately investigated, proved, and judged. But there is no requirement that the decision in a criminal case stand as the definitive historical treatment of a particular incident, nor is it necessary that an accused be tried of all crimes that he or she may possibly have committed. There is an element of discretion that perhaps can be applied here.

- (3) There is also an opportunity for ad hoc international criminal tribunals and hybrid tribunals to further develop mechanisms of governance of their activities. There should be a way of monitoring judicial productivity to ensure expeditious resolution of cases without endangering judicial independence, as happens in national systems. Comparable oversight should also exist for investigations and prosecutorial functions. In addition, there are increasing calls for judicial accountability and for the need for mechanisms for responding to complaints to ensure procedural fairness and certainty for all involved when allegations of judicial misconduct arise.
- (4) Last but not least, the treatment of victims. The very nature of the most serious violations of international law leaves a victim vulnerable and often in need of assistance. Victims are, often for the very first time, involved in a



criminal justice system and may have to speak to police officers, investigators, lawyers and judges and ultimately go to court. Victims can find these processes confusing and overwhelming, particularly when they have an international component. A reflection needs to be undertaken to seek to ensure that victims are recognised and treated with respect and dignity; that they are protected from further victimisation and intimidation from the offenders and further distress when they take part in the criminal justice process; that they receive appropriate support throughout proceedings and have access to justice.

III.

This brings me to the conclusion.

The Security Council established the International Tribunal for the former Yugoslavia, a first measure addressing both the prosecution of those responsible of serious violations of international law, but also a moral duty. With such a measure, the global community reaffirmed its commitment to addressing the impunity that had caused so much pain and sorrow.

I wish however to finalise these remarks with one aspect of the ICTY legacy which is potentially the most meaningful for ordinary people living in the former Yugoslavia, and the one where the consequences of the ICTY's work may be felt the longest, which is memory and the fight against denial.



In this regard, ICTY decisions have been a major step for the establishment of the truth about the war and the terrible atrocities that were committed. Atrocities which affected generations of citizens, and which marked history. But the work on truth and memory goes beyond international criminal justice. It is a shared responsibility of the international community in its most genuine sense, a responsibility of “we the peoples of the United Nations”.

Years ago, in November 1999, the then Secretary-General, Mr. Kofi Annan, issued his report on the fall of Srebrenica, stressing that the international community as a whole had to accept its share of responsibility for the ethnic cleansing campaign that culminated in the murder of some 7,000 unarmed civilians in Srebrenica. In a recent novel from a young Italian novelist, Marco Magini, *Come fossi solo*, he summarises the situation in a very graphic way, saying that “in Srebrenica, the only way to remain innocent was to die”. The report of the Secretary-General, which provides detailed information on the tragic history of Srebrenica, can also be read as an acknowledgement of the importance of recognising facts and establishing the truth.

With the delivery of the last appeals judgment of the ICTY, on 30 November 2017, in the *Prlic et al.* case, we can now say that justice has been delivered. But we still need to take care of the memory. And this is an effort that should never stop.

Thank you for your attention.