

ICTY Basic Information

(From the ICTY Website: <http://www.un.org/icty/glance-e/index.htm>)

1. SPEARHEADING THE SHIFT FROM IMPUNITY TO ACCOUNTABILITY

- In the words of the United Nations Secretary General Kofi Annan, during his visit to the Tribunal in 1997,

"impunity cannot be tolerated, and will not be. In an interdependent world, the Rule of the Law must prevail."

- By holding individuals accountable regardless of their position, the ICTY's work has dismantled the tradition of impunity for war crimes and other serious violations of international law, particularly by individuals who held the most senior positions, but also by others who committed especially grave crimes
- Thanks to the ICTY, the question is no longer *whether* leaders should be held accountable, but rather *how* can they be called to account
- The effect of criminal prosecutions and proceedings on leaders, be they civilian or military, local or national, is their removal from office permanently if found guilty
- By trying individuals on the basis of their *personal* responsibility, be it direct or indirect, the ICTY *personalizes* guilt. It accordingly shields entire communities from being labelled as collectively responsible for others' suffering
- For the first time in legal history, an indictment was filed, by the ICTY Prosecutor, against an acting Head of State, Slobodan Milosevic, for crimes allegedly committed while he was in office. Other individuals holding the highest political and military office have also been indicted
- This paves the way for the reconciliation process within the war-torn societies of the former Yugoslavia

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2. ESTABLISHING THE FACTS

- As the work of the ICTY progresses, important elements of a historical record of the conflicts in the former Yugoslavia in the 1990's have emerged. Facts once subject to dispute have been established beyond a reasonable doubt by Judgements
- Trials at the ICTY have covered crimes and incidents across the former Yugoslavia and throughout the conflicts in the 1990's
- Admissions of guilt from a number of accused have also contributed to the establishment of the facts, too. In his Plea Agreement, Dragan Obrenovic provided valuable insider military information and cooperated well beyond what was required under the Agreement. Obrenovic made the following statement during his Sentencing Hearing,

"In Bosnia, a neighbor means more than a relative. In Bosnia, having coffee with your neighbor is a ritual, and this is what we trampled on and forgot. We lost ourselves in hatred and brutality. And in this vortex of terrible misfortune and horror, the horror of Srebrenica

happened."

"I will be happy if my testimony helps the families of the victims, if I can spare them having to testify again and relive the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world."

- The determination beyond reasonable doubt of certain facts is crucial in combating denial and preventing attempts at revisionism
- It is now not tenable for anyone to dispute the reality of the crimes that were committed in and around Bratunac, Brcko, Celebici, Dubrovnik, Foca, Prijedor, Sarajevo, Srebrenica, and Zvornik to name but a few. As other trials are completed, further facts will be established regarding these and other areas in the former Yugoslavia

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3. BRINGING JUSTICE TO THOUSANDS OF VICTIMS AND GIVING THEM A VOICE

- Through its work, by holding senior individuals responsible for the crimes committed in the former Yugoslavia, the Tribunal is bringing a sense of justice to the many thousands of victims across the region
- Victims play a crucial role in the proceedings at the Tribunal as witnesses, contributing to the process of establishing the truth by talking to investigators and/or by giving testimony in court. In many cases, this requires considerable courage on the part of the witness
- To date, over 3,500 witnesses have taken the opportunity to tell their stories while testifying in court. Through this, they have contributed to the creation of elements of a historical record. The Prosecution has also interviewed 1,400 other potential witnesses. This has given victims and witnesses a real sense that they and their communities are involved in the work of the Tribunal
- The ICTY guarantees that the suffering of victims across the former Yugoslavia is acknowledged and not ignored
- One witness, a 54 year-old housewife from Bosnia and Herzegovina who testified in the trial of the three men she held responsible for the death of her husband and her neighbours stated:

"I really wanted to go to The Hague. I wanted to see the [three defendants] and to ask them why they did it. Why did they kill all these people? Why did they destroy our village? We had such good relations. We were good neighbors. I just wanted one of them . . . to tell me why they did that."

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4. THE ACCOMPLISHMENTS IN INTERNATIONAL LAW

- During the 10 years that the Tribunal has been in existence, it has expanded the boundaries of international humanitarian and international criminal law. It has proved that efficient and transparent international justice is

viable

•The ICTY has been a pioneering institution that has set a large number of legal and institutional precedents:

- It has expanded upon the legal elements of the crime of grave breaches of the Geneva Conventions of 1949 by further defining the test of overall control, identifying the existence of an *international armed conflict*, and also the extended and exact definition of *protected persons* under the Conventions

- It has narrowed the differences that are perceived between the *laws or customs of war* applicable in internal and in international conflicts, thus approaching both standards for the *protection of individuals*

- It has identified a *general prohibition of torture* in international law which cannot be derogated from by a treaty, internal law or otherwise

- It has made significant advances in international humanitarian law pertaining to the legal treatment and *punishment of sexual violence* in wartime

- It has specified crucial elements of the crime of *genocide*, in particular the definition of the *target* of such crime, a group or part if a group of individuals

- It has made several pivotal determinations with regard to crimes against humanity committed against civilians, in particular that this crime can be committed not only as part of, but also just *during* an armed conflict, thus identifying a wide scope of protection

- It has specified the definitions of *enslavement* and *persecution* as parts of crimes against humanity, resulting in the first convictions after World War II for enslavement on the basis of a broadened definition

- It has identified and applied the modern doctrine of criminal responsibility of superiors, so-called *command responsibility*, clarifying that a formal superior-subordinate relationship is *not* necessarily required for criminal responsibility

- In the same vein, it has removed uncertainty about the *level of knowledge* to be expected from a superior, whose subordinates were about to commit crimes he did not prevent, or about crimes actually committed by them

- It has made numerous contributions to procedural law issues, some of which are in the areas of protective measures for witnesses, the confidentiality and disclosure of information relevant for the national security of States, guilty pleas of accused, and duress as a defence

•Finally, a number of other legal and technical facts about the Tribunal are relevant too:

- It was the first tribunal established under Chapter VII of the UN Charter as a measure to maintain international peace and security

- It was the first truly international war crimes tribunal

- It was the first international criminal court to enforce the existing body of international humanitarian law, and in particular judicially determine its customary law aspects

- It has created an independent system of law, comprising of elements from adversarial and inquisitory criminal procedure traditions
- It has established the most modern court facilities in the world, the layout and technical equipment of which will be copied and taken as a model in other modern courtrooms, for example the ICC and the Special Court for Sierra Leone
- It has established, developed and maintained an effective victims and witnesses programme
- It has established a unique legal aid system, and groomed a group of defence attorneys highly qualified to represent accused in war crimes proceedings
- The Tribunal has created a Judicial Database of all its jurisprudence, soon to be available on the internet, providing access to a vast amount of decisions and orders in and international procedural and criminal law

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5. STRENGTHENING THE RULE OF LAW

• In November 1995, upon the conclusion of the Dayton peace agreement, the Tribunal's then President, Antonio Cassese, commented as follows:

"Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have had to live under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus Peace and Justice go hand-in-hand."

- The Tribunal has been an incentive to reform the judiciaries in the former Yugoslavia and has been a catalyst for the creation of specialized war crimes courts in the region
- Courts across the former Yugoslavia have and will continue to benefit from the Tribunal's invaluable experience in dealing with war crimes
- To support the process of strengthening the Rule of Law, the Tribunal is actively involved in training legal professionals from the former Yugoslavia to enable them to deal with war crimes cases and be able to enforce international legal standards in their local systems
- As it is implementing its completion strategy, the Tribunal has given a new dimension to the principle that its jurisdiction runs concurrent to national courts by putting into place mechanisms for the transfer to national courts in the former Yugoslavia of some ICTY cases
- Through its central role in the so-called *Rules of the Road* system, the ICTY Prosecution has reviewed over 900 investigations files from prosecution offices in Bosnia and Herzegovina to verify that the inquiries were justified and whether any were related to ICTY cases in order to ensure freedom of movement across Bosnia and Herzegovina by preventing arbitrary arrests of individuals on war crimes charges
- The Tribunal's existence and achievements have promoted respect for the Rule of Law across the former Yugoslavia, vital for long-term stability

•The ICTY Judges and staff have extensively shared their expertise with those involved in the development of other international courts, such as the ICC and the Special Court for Sierra Leone

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Annex: THE COST OF JUSTICE

- The Tribunal's budget covers activities that would not be undertaken by a court in a national system, for example the running and management of its Detention Unit; the legal aid system; the witness protection and assistance programme; the capacity to translate documents and interpret proceedings; the ability to organize travel of investigators to collect evidence and interview witnesses; and the capacity to secure evidence, buildings, detention facility and staff
- The expense of bringing to justice those most responsible for war crimes and for helping to cement the Rule of Law in the former Yugoslavia pales in comparison to the true cost of the crimes: the lives lost, the communities devastated, the private property ransacked and the cultural monuments and buildings destroyed forever
- Bringing justice and accountability to the former Yugoslavia represents an investment in the peace and future of south-eastern Europe