



20
ICTY

1993 - 2013

20 Years of the ICTY

ANNIVERSARY EVENTS AND LEGACY CONFERENCE PROCEEDINGS



UNITED NATIONS - NATIONS UNIES

International Criminal Tribunal for the former Yugoslavia
Tribunal Pénal International pour l'ex-Yougoslavie

20 Years of the ICTY

**ANNIVERSARY EVENTS AND
LEGACY CONFERENCE PROCEEDINGS**



UNITED NATIONS - NATIONS UNIES

**International Criminal Tribunal for the former Yugoslavia
Tribunal Pénal International pour l'ex-Yougoslavie**

20 Years of the ICTY

ANNIVERSARY EVENTS AND LEGACY CONFERENCE PROCEEDINGS

The ICTY conference *Marking the Twentieth Anniversary of the Tribunal* and this publication would not have been possible without the generous support of the European Union and the Governments of Switzerland, Luxembourg, The Netherlands, the Republic of Korea and the Open Society Justice Initiative.

20 Years of the ICTY

ANNIVERSARY EVENTS AND LEGACY CONFERENCE PROCEEDINGS

A publication of the ICTY Outreach Programme

Editor-in-Chief:
Magdalena Spalińska

Editors:
Helena Eggleston, Rada Pejić-Sremac

Transcribing and editing:
Maja Drakulić, Slavica Košća-Vrlazić, Suzana Szabo, Jasminka Šturlić

Proofreading:
Nicholas Beston

Design:
Leslie Hondebrink-Hermer

Photographs:
The ICTY Outreach Programme, Zoran Lešić

Printed by:
Grafika Šaran, Sarajevo, Bosnia and Herzegovina
2014

Circulation
2,700



The ICTY Outreach Programme
is generously supported by the
European Union.

This publication contains the transcript of live audio recordings of the Marking the Twentieth Anniversary of the Tribunal conference, and as such it may contain minor speech-related errors. The transcript has been carefully edited to ensure clarity for the reader, without infringing upon the original content of recorded speakers.

Table of Contents

Foreword by the ICTY President Theodor Meron.....	7
---	---

20 Years of the ICTY: Anniversary Events

20 Years of the International Criminal Tribunal for the former Yugoslavia.....	10
Exhibition in The Hague.....	14
Exhibition in Sarajevo.....	15
ICTY Defence Legacy Conference.....	16
ICTY Legacy Conference in Sarajevo.....	17
ICTY President Visits Tomašica Mass Grave and the former Omarska Camp.....	18

Conference Proceedings: Marking the Twentieth Anniversary of the Tribunal

Opening Remarks.....	20
Keynote Speech.....	26
Panel 1:	
Assessing 20 Years of the Tribunal.....	32
Panel 2:	
Tribunal and Local Judiciaries: Lessons Learned in Victim and Witness Support and Protection.....	56
Panel 3:	
Reparations for War Crimes Victims in the former Yugoslavia: In Search of the Way Forward.....	77
Closing Remarks.....	102

Foreword

The creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 was a momentous point in the history of international law. For the first time since the crystallisation of international humanitarian law in the Geneva Conventions of 1949 and the Genocide Convention of 1948, the international community agreed to the establishment of an international court that would determine individual criminal liability for international crimes on the basis of the rule of law. In the twenty-one years of its existence, the ICTY has spearheaded a true revolution in international criminal law. The ICTY's contributions to the development of international law, both substantive and procedural, and its role in ensuring accountability for crimes of the greatest magnitude and severity that would have gone unpunished cannot be overstated. Its accomplishments, including its unprecedented success in securing the arrests of all 161 individuals indicted, have exceeded even the most optimistic expectations.

Since the creation of the ICTY, numerous other tribunals for the adjudication of international crimes have emerged. The apogee of this golden age of international criminal law was the creation of a permanent judicial mechanism for international crimes, the International Criminal Court, which fulfilled a long-held dream of many generations of academics and lawyers. These achievements, however, were only made possible because of the success of the ICTY, which proved the erstwhile unthinkable – that the international community can reach consensus and act in the face of mass atrocities and that a day of reckoning will befall those who perpetrate them.

To mark the Tribunal's accomplishments and celebrate the 20th anniversary of its establishment, a conference took place in Sarajevo, in November 2013. Over 200 participants from all walks of life gathered at what used to be the epicenter of the Yugoslavian conflict to examine and dissect the Tribunal's legacy both locally and internationally. That two-day conference resulted in numerous valuable contributions, the edited versions of which are now compiled in this publication for the benefit of the greater public. As the Tribunal approaches the completion of its mandate, it is my hope that the fruitful proceedings of that conference will assist the future generations of historians, academics, lawyers, and global citizens to appreciate the Tribunal's record and the significant challenges it has faced in delivering justice and ending impunity.

Judge Theodor Meron,
President

20 Years of the ICTY

ANNIVERSARY EVENTS



UNITED NATIONS - NATIONS UNIES

**International Criminal Tribunal for the former Yugoslavia
Tribunal Pénal International pour l'ex-Yougoslavie**

A photograph of a diverse group of people, including men and women of various ethnicities, seated in an audience. They are dressed in formal attire, such as suits and blouses. The focus is on a man in the foreground with white hair and glasses, wearing a dark suit and a blue patterned tie, who is looking towards the right. Other people in the background are also looking in the same direction. The overall atmosphere is formal and professional.

20 YEARS OF THE INTERNATIONAL FOR THE FORMER YUGO



A photograph showing a group of men in dark suits and ties seated in a row, likely in a courtroom or a formal hearing room. The men are looking towards the right side of the frame. The man in the foreground on the left is wearing glasses and a red and blue striped tie. The man next to him is wearing a blue suit and a gold tie. The background shows other people and a camera on a tripod.

CRIMINAL TRIBUNAL
OSLAVIA



On 27 May 2013 the ICTY celebrated its twentieth anniversary. The ceremony was held in the presence of His Majesty King Willem-Alexander of the Netherlands and attended by senior Tribunal officials, including President Theodor Meron, Prosecutor Serge Brammertz, and Registrar John Hocking, along with the Mayor of The Hague, Jozias van Aartsen, and Secretary-General of the Ministry of Foreign Affairs, Renee Jones-Bos. The United Nations Under-Secretary-General for Legal Affairs, Patricia O'Brien gave a keynote speech.

The ICTY Principals addressed an audience of over 200 guests and shared their reflections on the history and achievements of the ICTY.



Talking about the ICTY's numerous accomplishments, President Theodor Meron stressed the role of the many dedicated Judges, staff members and others who assisted the Tribunal in fulfilling its mandate. He added that the ICTY's achievements would not have been possible without the many witnesses who shared their experiences through testimony

before the ICTY. President Theodor Meron underlined that "the Tribunal's success is also a testament to the significant and continued support it has received from the UN, national governments, and international and non-governmental organisations, without which the ICTY would not have been able to function".



In his speech, Prosecutor Serge Brammertz pointed out that the Tribunal overcame some serious challenges over the last 20 years, including the accounting for all of the accused: “We have succeeded – against all the odds – in bringing all of the ICTY’s indicted persons

to justice.” He added that the ICTY has also helped usher in a new era of accountability for war crimes, creating “a powerful momentum behind the principle of international justice that will not be easily broken”.



Addressing the audience, Registrar John Hocking said that fighting impunity was not the only legacy of the ICTY: “There is a legacy developed on the margins of its courtrooms: behind the bars of a prison, on the pages of a dictionary, in cafes in the former Yugoslavia. It is the legacy of the ICTY’s world-class witness, defence, detention, language, courtroom, and administrative services; and its tireless efforts to bridge the 2,000 kilometres that separate The Hague from the Balkans.”



Exhibition in The Hague

President Theodor Meron and Mayor Jozias van Aartsen opened the ICTY's anniversary exhibition entitled "20 Years of International Justice" at The Hague City Hall. The exhibition highlighted significant milestones from the ICTY's two decades of operations, including the apprehension of fugitives, the Tribunal's findings on the crimes committed during the Yugoslav conflicts in the 1990s, and its outreach efforts in the communities of the region.





Exhibition in Sarajevo

The exhibition “20 years of International Justice” was moved from The Hague to the Historical Museum of Bosnia and Herzegovina in Sarajevo. The opening ceremony of the exhibition attracted a large number of guests, including academics and experts on transitional justice issues, as well as representatives of civil society, the national judiciary, and the diplomatic corps. To date, the exhibition has been visited by 10,000 visitors.





ICTY Defence Legacy Conference

On 29 November 2013, the Association of Defence Counsel Practicing before the ICTY (ADC-ICTY) organised its legacy conference. The keynote speech was delivered by President Judge Theodor Meron. The conference was attended by more than 300 participants from various courts and tribunals, embassies, universities, international organisations and the media. It brought together members of the ICTY Defence, Prosecution, Registry and Chambers, with a view to reflecting on the legacy of the ADC-ICTY in the context of the ICTY's 20th anniversary. The conference featured four panels with question and answer sessions. The panels focused on the "Rights of

the Accused", "Transparent Justice - The Defence Experience", the "Role of the ADC-ICTY" and the "ICTY Legacy". Speakers included the Right Honourable Lord Iain Bonomy, Judge Bakone Justice Moloto, Judge Howard Morrison and Novak Lukić, then-President of the ADC-ICTY, amongst other defence counsel.



ICTY Legacy Conference in Sarajevo



As part of the programme of events that took place in 2013 to mark 20 years since the Tribunal's establishment, a two-day conference entitled "Marking the Twentieth Anniversary of the Tribunal" was organised in Sarajevo, Bosnia and Herzegovina. The conference, held in November 2013 with the participation of President Theodor Meron, was the crowning event of the 20th anniversary activities held throughout the year.

Over 200 local and international stakeholders gathered at the conference to discuss aspects of the Tribunal's legacy in the former Yugoslavia. The gathering consisted of one day of working-level meetings, followed by a day of panel presentations and discussions with the public. Themes addressed during the conference ranged from the ICTY's overall accomplishments and the challenges it had encountered, to its contribution to the promotion of the rule of law in the region, the mechanisms for victim and witness protection in war crimes trials,

possibilities for a reparations programme for victims and the importance of regional access to the Tribunal's archives.

The conference was made possible through the generous support of the European Union, the Governments of Switzerland, Luxembourg, the Netherlands, and the Republic of Korea, as well as the Open Society Justice Initiative.





ICTY President Visits Tomašica Mass Grave and the former Omarska Camp

As part of the visit to Bosnia and Herzegovina in November 2013, President Theodor Meron visited the Tomašica mass grave near Prijedor, which was discovered a few weeks before. This site is thought to be the largest mass grave in Bosnia and Herzegovina, containing hundreds of bodies of people allegedly killed by Bosnian Serbs in the summer of 1992. The President visited Tomašica as exhumations were on-going and stated that the experience was like standing “face to face with horror”.

The President, accompanied by a group of former inmates, also visited the former detention camp in Omarska where he heard about their experiences and suffering. In addition, the President met with members of associations of victims from all ethnic groups in Prijedor.



20 Years of the ICTY

CONFERENCE PROCEEDINGS



UNITED NATIONS - NATIONS UNIES

**International Criminal Tribunal for the former Yugoslavia
Tribunal Pénal International pour l'ex-Yougoslavie**

Marking the Twentieth Anniversary of the Tribunal 27 November 2013

OPENING REMARKS

Judge Theodor Meron, President of the ICTY

Excellencies, Ladies and Gentlemen, I am delighted to welcome you today, here in Sarajevo, as we mark together the twentieth anniversary of the establishment of the International Criminal Tribunal for the former Yugoslavia – and consider the legacy that the ICTY has created and continues to create today.

I am also very happy that we are marking the twentieth anniversary of the ICTY with such a distinguished audience. In this respect, I would like to extend a very warm welcome to Mr Bakir Izetbegović, the representative of the Presidency of Bosnia and Herzegovina, and to His Excellency Jurriaan Kraak, Ambassador of the Netherlands to Bosnia and Herzegovina, both of whom will be speaking to you momentarily. I would also like to extend my thanks to His Excellency André Schaller, the Ambassador of Switzerland to Bosnia and Herzegovina for joining us at this conference, and to the many other eminent representatives of states, the European Union and the OSCE who are with us today. Your presence is, in many ways, emblematic of the support and cooperation of countries that have extended to the Tribunal this cooperation in general, and in relation to this conference in particular. On behalf of the Tribunal I wish to thank you for your sustained commitment to and interest in our work.

I would also like to particularly thank the donors whose generous support made this conference possible: in particular the European Union, the Governments of Switzerland, Luxembourg, the Netherlands, the Republic of Korea, and the Open Society Justice Initiative.

We are also very fortunate to welcome to this conference a great many leaders and officials from the UN system, the OSCE, and other international organisations, representatives of the civil society and academia, from the judiciaries – and I am particularly happy to see here this morning President Kreso – ministries of justice of the states of the former Yugoslavia, from the local communities here in Bosnia and Herzegovina, and throughout the region. Although there are far too many of you to recognise by name, I hope that each of you knows how very appreciative I am – and we all are – that you have taken time to be with us and to contribute to the very productive and important dialogue that began yesterday and will continue today concerning the Tribunal's work and legacy.

Finally, I would be remiss if I did not acknowledge the hard work of many colleagues here and at The Hague in preparing this conference. I am particularly grateful to Ms Magdalena Spalińska, Ms Helena Eggleston and the other members of the ICTY's Outreach and Communications Section at The Hague, as well as to our chairman this morning, Mr Almir Alić, to Ms Ernesa Ademagić, and their colleagues in Sarajevo and Belgrade. I also wish, of course, to thank Mr Howard Tucker and the members of the Tribunal's security and administration teams who have been so tremendously helpful both before our arrival and over the past few days. You have each been instrumental in making this conference a success, and for this I thank you.

All that has been achieved over the past 20 years since the ICTY was established would not have been possible without those who believed in the ideals of international criminal justice, and worked diligently and with dedication to make it a reality. As the ICTY marks 20 years since its establishment, it is also moving to complete the remaining trials and appeals, and to transition the remaining functions to the new Mechanism for the International Criminal Tribunals. It is thus a very fitting time for us to pause and reflect on the legacy that the Tribunal will leave behind, and I am so grateful to all of you for joining us to do just that.

Thank you very much.

Jurriaan Kraak, Ambassador of the Netherlands to Bosnia and Herzegovina

Judge Meron, representatives of the Presidency, Mr Izetbegović, distinguished guests, Ladies and Gentlemen, dear colleagues, I am also delighted to see in the audience Madam Kreso, judge at the State Court, and I also see the Prosecutor's Office is represented here today. They are the key players in safeguarding the legacy of the ICTY in Bosnia and Herzegovina.

First of all, let me tell you that the Government of the Netherlands is pleased to be the co-sponsor of this conference together with our Swiss friends. As you all know, my country has a special relation with the International Criminal Tribunal for the former Yugoslavia. The ICTY, the first major international criminal tribunal since Nuremberg and Tokyo, has found a seat and a home in The Hague and has become an integral part of the makeup of that city. And apart from being a milestone in the development of international criminal law, the ICTY has played an important role in The Hague becoming the international legal capital of the world. Thanks to ICTY's pioneering efforts, the world has changed from a place where it was virtually impossible to bring the perpetrators of the most atrocious crimes to justice, into a place where such criminals are increasingly faced with criminal proceedings, and will have to answer to judges appointed by nearly all states on this planet.

My presence here today is a sign of the sustained political support of my Government to this independent tribunal of the UN and to its extensive legal, political and moral legacy. Even if no judgements have been pronounced yet, in the all-important and highly emblematic Mladić and Karadžić cases, I would like to point out that the legacy of the ICTY is already significant. As I said, the ICTY has contributed substantially to the development of international criminal law. The ICTY has given thousands of victims a voice. The Tribunal will leave behind an authoritative and comprehensive account of what happened, of where it happened and of who did what to whom during the wars in the former Yugoslavia. It has paved the way for the establishment of subsequent international criminal tribunals. And last but not least, the ICTY has also helped to strengthen national capacities in the fight against impunity.

Referring to this last aspect of the ICTY's legacy, my participation in this meeting this morning indicates that my Government attaches great importance to the political and principled responsibility of all governments in this region to give priority to cracking down, bringing in, and prosecuting persons suspected of war crimes before their own courts of law. Last July the ICTY made a transition into the Residual Mechanism. This means that this responsibility, now more than ever, rests upon the shoulders of national authorities. In addition, my Government is convinced that firm regional political support for the fight against impunity is indispensable. That is why the Netherlands welcomes the increased and improved regional cooperation in the fields of mutual legal assistance, extradition and information exchange. It is one of the few encouraging and positive elements I have found in the latest EU Commission Progress Report on Bosnia, but it is an important one.

A special word of thanks is due to the Bosnian and Herzegovinian Government for its support of a joint initiative of Belgium, Slovenia, Argentina and the Netherlands to draft a treaty on multi-national and inter-governmental cooperation in arresting and prosecuting those suspected of war crimes, crimes against humanity and genocide. This highly appreciated support from Bosnia has proved that this Government is convinced of the benefits of international legal cooperation, and takes seriously the obligation to prevent impunity in these cases.

Ladies and Gentlemen, the legacy of the ICTY needs to live on. For that reason, continued and principled political support for the ICTY – even if one does not agree with all of its verdicts – is an obligation of every state that wants to be a full member of the community of nations. Downplaying the importance of this Tribunal for political purposes is as undesirable as it is irresponsible. After all, full cooperation with the Tribunal remains an essential requirement for the stabilisation and an association process in the Western Balkans, and a condition for membership of that community of values, the European Union.

Once again, the largest burden to do justice to the legacy of the ICTY in Bosnia and Herzegovina rests now on the shoulders of the authorities of this country, and the role of the State Court is crucial in this respect. I would like to recall that through the State Court, Bosnia and Herzegovina was the first country in the Balkans able to try its own war criminals in its own specialised court and on its own territory. Current attempts to undermine and weaken the State Court are reasons for great concern to my Government, because completing the process of bringing perpetrators to justice for the crimes committed during the wars in the former Yugoslavia is vital for a lasting reconciliation.

Ladies and Gentlemen, let there be no doubt about our position. We are not indifferent to the sensitivities that the complexities of this region's recent history have caused. Coming to grips with them, we know, is painful; we know it is difficult and we know it takes a lot of courage on behalf of all parties and institutions involved. But we also know that it is inevitable. Needless to say, my Government, and for that matter everybody who cares about Bosnia, my country was upset to learn that 10 war criminals were released from prison in Bosnia last week, pending a new trial. These are people who have been convicted of very serious war crimes, including genocide in Srebrenica. Their release is very difficult to explain to the public at large in my country and incredibly distressing for the survivors in Bosnia, who have our deepest sympathy. My boss, Minister of Foreign Affairs Frans Timmermans, has strongly urged Bosnia and Herzegovina to take appropriate action. My Government trusts that all measures will be taken to prevent any more convicted war criminals being released unnecessarily and to assure that they serve their sentences. This, Ladies and Gentlemen, is essential to Bosnia's credibility.

The Netherlands will remain committed to the ICTY and to its legacy. We will continue to support its contribution to peace and stability in the region, to reconciliation, and support the Tribunal in its fight against impunity. The Tribunal's Outreach Programme encompassing multiple transitional justice mechanisms will continue to play a pivotal part. Transitional justice aims to build a bridge between the past and the future by dealing with past human rights abuses, while trying to ensure that such abuses never happen again.

To conclude, Ladies and Gentlemen, distinguished guests: we will continue to focus our efforts on maximising the ICTY's legacy both through the commitment to its completion strategy and with regard to the establishment of the Residual Mechanism. In short, we will remain committed to the ICTY and continue to support its contribution to lasting peace and stability in this part of our beloved continent.

Thank you very much.

Bakir Izetbegović, Member of the Presidency of Bosnia and Herzegovina

Your Excellencies, dear organisers, participants of the conference, dear Ladies and Gentlemen, I wish you a warm welcome to Bosnia and Herzegovina. Thank you for inviting me to speak at this conference.

This conference has been organised on the occasion of the twentieth anniversary of the ICTY with the goal to open the discussion on the role, significance and results of the Tribunal from its establishment until today. Evaluating the results of the ICTY, its contribution, legacy, and the message it has left to the victims and criminals, to countries and nations, to international politics, law and justice, to contemporaries and our children, the present time and the future, I must say that I have mixed feelings. Before I explain this, let me emphasise several important facts.

Bosnia and Herzegovina is, without any doubt, the country that suffered the most after the breakup of the former Yugoslavia. Brutal aggression was launched against it, and genocide was committed against Bosniaks. Recently, I have visited Tomašica near Prijedor, the biggest mass grave since the Second World War in Europe, where over 400 bodies of killed men, women and children have been found until now. It is estimated that about 1,000 bodies will be found. I would like to appeal to all those who have a conscience to visit horrible places like Tomašica, places that, unfortunately, Bosnia and Herzegovina is abundant with, to get the first hand impression of the crimes, outside the sterile courtrooms, parlours and cabinets. Mr Meron has done this and paid tribute to innocent victims.

Ladies and Gentlemen, I cannot help thinking that there are two Tribunals. The first one, established in 1993 by the UN Resolution 827, affirmed by the Prosecutors and Judges who had enthusiasm and full awareness of doing something special of historic value. That Tribunal sent encouraging messages to the world that crimes had to be punished, that this was a civilisational achievement and a moral debt to the victims. The first Tribunal is something that I keep in high regard. The hopes and beliefs of my people, especially of the victims' families, that there is justice after all in this world, were woven into its work. This Tribunal has passed some historical judgements for Bosnia and Herzegovina, placing its stamp on the truth about the siege of Sarajevo and the genocide committed in Srebrenica.

The ICTY has also given a great contribution to international criminal law and promoted principles of human rights protections on the international level. Special emphasis needs to be made that rape, i.e. sexual violence during an armed conflict, has been recognised for the first time as a crime against humanity.

Unfortunately, in the time that followed, the ICTY strayed from its original

ideals and hopes. In the silence behind the curtains, a new and different ICTY was developed. The Tribunal got tired – according to contemporary analysts and numerous intellectuals – under the pressure of the great and the powerful, and its only goal became the completion of its job. It is as if this new ICTY is looking at the crimes and victims through different eyes. How else to understand the appeal judgements regarding the military and intelligence leaders and police officials for command responsibility? They are morally and legally disquieting, to say the least. It is impossible to explain to legal experts, let alone the victims, how the indicted, who were sentenced to 20 years or more, were fully acquitted in the appeals proceedings. It is pointless to talk about the knowledge or ignorance of the Judges of the same Tribunal, where some of them pass verdicts of 20 years or more, and others fully acquit those same people. How much sense does that make? Those responsible for crimes at the highest level - those who planned, instigated and organised the crimes - are evading justice.

Command responsibility became almost impossible to prove. Planners, those who issued orders and organisers became untouchable, protected from criminal prosecutions. Victims are wondering in what kind of world we are living. Is justice reachable to regular people, or is it the privilege of the mighty ones? How valuable is a life of a regular person in the Balkans? Those who issued the orders, those who planned the crimes and genocide, who took lives of tens of thousands of people, are going to spend altogether several decades in comfortable prisons throughout Europe. What message is thus sent to the victims, and what message to the planners of the future wars?

Ladies and Gentlemen, the ICTY has not completed its job yet. There are several important, key trials left. On one occasion, the first president of Bosnia and Herzegovina said: “Even the war criminals, and all other criminals, have their rights. Their right is the right to receive a fair sentence, mental relief through just punishment.” He also said another thing that I am going to repeat: “We believe in justice although it is often slow.”

Despite everything, the citizens of Bosnia and Herzegovina still believe that the ICTY will complete its job by following its initial idea of universal justice, equity and humanity. We believe that justice is obtainable, and that the ICTY has a historical role in obtaining it. The interest of the victims has to be back in focus, and their interest is justice. It is not only in the interest of the victims but in the interest of everyone who wishes to live in a better and safer world.

Thank you.

KEYNOTE SPEECH

Judge Theodor Meron, President of the ICTY

Just a few months ago, on 25 May 2013, we marked an important milestone: the passage of 20 years since the establishment of the International Criminal Tribunal for the former Yugoslavia by the United Nations Security Council in Resolution 827.

The decision taken back in 1993 by the Security Council was historic. After half a century of inaction following the trials of Nazi leaders for war crimes and other violations at Nuremberg, the international community joined together and issued a strong response to atrocities being committed during a period of fierce armed conflict – a response grounded not in recriminations or retribution, but in the rule of law and the idea of principled accountability.

When the ICTY was created, many had their doubts as to whether it would accomplish all that was hoped, and whether the broader ideals embodied in Resolution 827 would ever become a reality. They had doubts that there would be arrests, doubts that there would be trials, and doubts that the court that they were creating on paper would become a viable and venerable institution.

In the early years, the Tribunal certainly faced its share of challenges, and some of those challenges persist even to this day. Some of our rulings, both then and now, have been controversial. Some claim that the Tribunal's decisions have failed to give victims justice, while others question the ICTY's impact on regional or national reconciliation or its contribution to the historical record.

It must be remembered, however, that the mandate of our Tribunal is quite limited: the Tribunal is tasked with determining the individual criminal responsibility of those who stand accused of serious violations of international law, and it may only find an accused guilty where that guilt has been proven beyond reasonable doubt, in accordance with the law and on the evidence presented.

It is by paying strict and sober adherence to this mandate that, in the 20 years that have passed since the Tribunal was founded as the first international criminal court in the modern era, that the ICTY has put to rest the early doubts and arguably surpassed expectations in important ways. Indeed, many of the advancements made since 1993 in the world of international criminal justice more generally were made possible thanks to the ground-breaking example set by the Tribunal.

Through its decisions and judgements, the ICTY has established key precedents

in the areas of international criminal and humanitarian law, precedents that have not only been applied in the Tribunal but have guided the work of other international courts and judicial authorities in domestic jurisdictions. The Tribunal has also developed an important body of procedural jurisprudence addressing international fair trial rights and international standards of due process.

But this is not the entire legacy the Tribunal. Although the ICTY is a court mandated to try individuals for serious violations of international humanitarian law, in trying these cases, our court has also prided itself in having at its core a deep commitment to and respect for human rights, and for due process of law in particular. Fair trial rights, such as the right to be presumed innocent until proven guilty, and the right to a fair and public hearing are not simply at the core of our Statute – they are fundamental concerns the import of which informs how our trials and our appeals are conducted, day in and day out, and the structure and the myriad of services provided by the Tribunal’s Registry.

Fair trial rights are the focus of a great many of our decisions and judgements, and our rulings in this regard embrace a wide range of topics, from the sufficiency of an accused notice of the nature and cause of the charge against him, to the adequacy of the time and facilities granted for the preparation of his defence, to the availability of the translation of certain documents and judgements in a language that the accused can understand.

Outside the courtroom, the Tribunal has crafted practical processes and procedures dealing with everything from the enforcement of sentences to the protection of victims and witnesses, processes and procedures that serve as valuable models for other international courts.

And through its trials and the dedicated efforts of both the Prosecution and the Defence, the Tribunal has become the guardian of an extraordinary quantum of evidence and information concerning events during the conflicts in the former Yugoslavia, creating an archive of material that will serve students and researchers for generations to come.

Perhaps more fundamentally, the ICTY has demonstrated that it is possible to try even the most complex of cases, involving allegations of some of the worst crimes imaginable and brought against senior military and political leaders; to do so fairly and soberly; and to do so not once or twice but time and again. Importantly, ever since 2011 when the last fugitive was transferred to its custody, the Tribunal has been able to claim an unrivalled 100 percent enforcement rate, with all 161 of those indicted by the Tribunal accounted for.

In many ways, the ICTY has helped to usher in a new era of accountability: an era where the clear expectation is that the international community can and will

react to heinous crimes committed in times of armed conflict and in times of peace; an era where the human dignity of all persons is valued and where there is an obligation on the part of the international community to act to stop the commission of atrocities and to bring those accountable to justice and to account. The work of the ICTY has demonstrated that such action can be taken, that principles can win out over impunity, and that heinous crimes can be punished, whoever their architects may be.

We see evidence of the rise of this new era of accountability when we look at the international and hybrid international courts and tribunals now present on three continents, including the world's first permanent International Criminal Court, the ICC in The Hague. And we see signs of this new era truly taking hold when we look at the growing number of cases being brought in national jurisdictions, from here in the former Yugoslavia to Latin America, involving allegations of crimes committed in times of armed conflict.

In reflecting on the work of the ICTY over the past 20 years and its achievements, it is easy to attribute much of what has been accomplished to the Judges, the Registrars, the Prosecutors, the defence counsel, and the exceptional staff who have worked tirelessly to turn what was only a dream at the time the ICTY was created into a functioning and fair reality.

But there are others who have made the ICTY's achievements and milestones over the past 20 years possible – others to whom I want to pay tribute today. All that we have accomplished at The Hague would not have been possible without the sustained support of the international community over the years. But it also would not have been possible without the tireless efforts, dedication, and courage of people here in Sarajevo and elsewhere in the countries of the former Yugoslavia. These are the people whom I wish to honour today for their contributions to the work of the ICTY over the past 20 years.

First and foremost, we must recognise the important role played by individuals who have summoned the courage to come forward and give evidence about what they have seen and heard, and in many cases about the tragic and horrifying events that they have survived. Hundreds and hundreds of individuals have travelled far from their homes to testify before our court, often being asked to speak about some of the most difficult events imaginable. Countless other individuals have likewise given evidence or statements, facilitating the prosecution and defence investigations that are so essential to the preparation and trial of a case.

Without the bravery of those who have stepped forward, it would have been far more difficult for the Tribunal to carry out the mandate with which it was entrusted: to try the cases of those accused of being most responsible for serious violations of international law here and elsewhere in the region. Without those

men and women who have been willing to speak for all to hear, and to tell personal stories of strength and horror, of heartbreak and resilience, it is difficult to imagine that the Tribunal would have been able to achieve all that it has.

In other words, in a very real way, the Tribunal's accomplishments are – thanks not just to the diligent efforts of my many colleagues in The Hague but to the courage and commitment of individuals here in Sarajevo, elsewhere in Bosnia and Herzegovina, in Croatia, in Serbia, and throughout this region – individuals who have stepped forward to give their evidence when it mattered, individuals who have made our work possible and have helped to bring about the new era of accountability which we are entering now.

If the ICTY's accomplishments over the past 20 years would not have been possible without the dedication and bravery of scores upon scores of individual witnesses, they also would not have been possible without the cooperation that we have received from states – states around the world, but especially here, in this region.

Without a police force of its own to conduct investigations and obtain evidence, the Tribunal has been, and continues to be, reliant on the cooperation of states for assistance. The Tribunal has likewise been dependent on states to ensure that those who have been charged with crimes before the ICTY are arrested and transferred for proceedings in The Hague.

And this may be the right moment in which to express my deepest gratitude to the Government of the Netherlands, our host Government which has done so much to make the operation of the Tribunal day after day possible and without whose political support we would never, ever have had Mr Mladić at The Hague – and I thank you, Mr Ambassador.

In the early days of the Tribunal, some states were reluctant to step forward and offer assistance. The investigations that could be concluded and the timing of our trials were impacted by this reluctance.

But over time, as the conflicts receded, as the Tribunal began to demonstrate in concrete terms what it could and would accomplish, and as the states of the former Yugoslavia in particular came to demonstrate a strong commitment to supporting the Tribunal's work, this reluctance started to disappear. States instead began to cooperate in earnest – sharing information and evidence, facilitating investigations and court proceedings, and – importantly – ensuring the arrest and transfer of those accused before the Tribunal.

This cooperation has not only been critically important to the Tribunal; it also demonstrates more broadly a commitment to the rule of law and to the

international community's vision of accountability reflected in the establishment of the ICTY two decades ago, and sets a model for other states to follow.

I salute the states – and the many individual state authorities and officials – that have stepped forward to assist the Tribunal in the fulfilment of its mandate over the years and, through their invaluable contribution and cooperation, have demonstrated their support for the goal of ensuring fair and just proceedings and respect for the rule of law.

As we marked the twentieth anniversary of the Tribunal a few months ago, we were also completing our preparations for another milestone: the opening of a new Tribunal, the new Mechanism for International Criminal Tribunals, an institution tasked by the UN Security Council with taking on certain key functions of the ICTY and the ICTR, as the ICTY moves to complete its remaining trials and appeals and to close its doors.

The Mechanism's responsibilities range from hearing any appeals filed against the trial judgements issued in the Šešelj, Karadžić, Hadžić, and Mladić cases to ensuring ongoing witness protection and support services, and from managing the ICTY's archives to providing assistance to national jurisdictions in their own investigative and prosecutorial endeavours. I am honoured to serve as the President of the Mechanism, and very much hope that, in the years ahead, the Mechanism will build strong and cooperative relations with the states of the former Yugoslavia.

Even as the Mechanism moves to take its place as the newest tribunal in the universe of international criminal justice, my colleagues in The Hague and I remain focused on ensuring the orderly, responsible closure of the ICTY – and most importantly, the completion of its mandate.

But the completion of the ICTY's mandate has also been made possible in part by the actions of those in the region, and particularly those in Bosnia and Herzegovina. This is because, thanks to advances made in the capacity of the local judicial system, the Tribunal has been able to refer several cases of intermediate and lower level accused indicted before the ICTY for trial in courts here in Sarajevo and elsewhere in the region.

Indeed, over the years, the Tribunal has undertaken numerous initiatives to support the work of legal professionals and institutions tasked with handling war crimes here in the former Yugoslavia, transferring expertise and practical knowledge. These efforts have contributed to the establishment of specialised organs for war crimes investigation and adjudication, the increased capacity of non-specialised courts to adjudicate war crimes cases, and the implementation of international standards and best developed practices within the local judiciaries

in an array of contexts. My colleagues and I have been both proud and honoured to share our experience with our colleagues here in the region in an effort to create, to help and to facilitate this capacity building.

Just as importantly, however, we at the Tribunal are so very grateful to all the many individuals who have dedicated themselves to ensuring that local judiciaries have the capacity and tools to continue adjudicating war crimes cases in accordance with the highest international standards even after the Tribunal closes its doors. And again, I would like to express my deep admiration to Madam Kreso.

We are grateful because not only national judiciaries and countless other individuals and interested entities made it possible for the vast majority of cases related to the conflicts to be tried here in the region – thus helping to establish an invaluable local ownership of the processes at stake. They have also taken, and continue to take, critically important steps towards carrying the Tribunal’s own legacy – the legal and practical precedents it has set, the evidence it has gathered, and the experience it has gained – forward into the future. And in doing all of that, they are turning one of the Tribunal’s greatest achievements – the opening of a new era in which accountability will be the rule – and not the exception – into a reality: a reality that cannot and shall not be ignored.

Thank you very much.

PANEL 1

ASSESSING 20 YEARS OF THE TRIBUNAL

Moderator:

Anisa Sućeska-Vekić, Country Director, Balkan Investigative Reporting Network (BIRN) BiH

Panellists:

- **Judge Theodor Meron**, President of the ICTY
- **Meddžida Kreso**, President of the Court of Bosnia and Herzegovina (BiH)
- **Kathryne Bomberger**, Director-General, International Commission on Missing Persons (ICMP)
- **Prof. Robert Cryer**, Birmingham Law School
- **Nataša Kandić**, Project RECOM

Moderator, Anisa Sućeska-Vekić

Hello to everyone once again. Ladies and Gentlemen, your Excellencies, I wish to introduce to you the members of the panel that will talk about the assessing of the 20 years of the ICTY's work. We will provide you with an overview of the situation and then debate on the legacy of the Tribunal.

Once again, I will introduce Judge Theodor Meron, the President of the ICTY, Ms Meddžida Kreso, the President of the Court of BiH, Ms Kathryne Bomberger, Director-General of the International Commission on Missing Persons, Professor Robert Cryer of the Birmingham Law School, and Ms Nataša Kandić, founder of Humanitarian Law Centre, who is representing here Project RECOM.

We have already heard Judge Meron who spoke about the importance of the International Criminal Tribunal for the former Yugoslavia; the accomplishments of the Tribunal which are numerous, of course – starting from the establishment of the proceedings in international criminal law, its influence on the development of law for criminal justice, processing of war crimes and so on. However, there were numerous criticisms on account of the Tribunal coming from those for whom the Tribunal was working for, which is the victims and the public.

Now I will leave the floor to President Meron, to address us once again, and perhaps add some more details to what he already spoke of. Namely, what is the assessment of the Tribunal after 20 years of its work.

The floor is yours, President Meron.

Judge Theodor Meron, President of the ICTY

Thank you very much, Madam Moderator.

I spoke at some length, and I think we will use our time much more effectively if I were to waive my time and give it to my distinguished colleagues, the panellists. But let me add one thing to the lengthy speech which I gave earlier. I think that I can be enormously proud of the achievements we have made.

We started from scratch, after half a century of impunity since Nuremberg. We had to start from establishing the first set of Rules of Procedure and Evidence because we did not have anything. We did not have computers, we did not have defendants, we did not have staff, and we started from having even a part-time Prosecutor. Because of the credibility that we have established in our work and the growing support of governments, eventually we arrived at this incredible record: of having 100 per cent record of arrests. Very few countries would be able to achieve this record and I am sure that in this respect we are the envy of many police and judicial institutions in the world. But we have also shown that we can try case after case, applying the entire panoply of due process and human rights, and that we only convict when there is enough evidence to convict somebody beyond reasonable doubt.

Our work is still work in progress and I suggest to all of you to wait until we have completed our work to judge it holistically. I am quite sure that one day you will join me in a feeling of very strong pride about the work of the Tribunal. Here I will end with that and leave the floor to my distinguished co-panellists.

Moderator, Anisa Sućeska-Vekić

Thank you, Judge Meron.

The legacy of the Tribunal was mostly seen in the development of the judiciary in Bosnia and Herzegovina. The Court of Bosnia and Herzegovina was the first one to start processing war crimes, the most severe crimes that were committed

on the territory of Bosnia and Herzegovina and it is probably the court that has, in the seven years of its existence, created some of the biggest achievements in such processing of cases where over 250 indicted persons were convicted for war crimes committed on the territory of Bosnia and Herzegovina.

The Court of Bosnia and Herzegovina has been a pioneer in the region and it is still a pioneer when it comes to court practice in this region. However, in the recent years, the legacy of the Tribunal – meaning the transfer and the implementation of best practices – has been reduced in terms of public perception, because of the latest actions of the Court of BiH, regarding ending the transparency of trials, introducing anonymisation of court decisions, and particularly the recent releases of persons previously convicted for genocide.

The President of the Court of Bosnia and Herzegovina, Meddžida Kreso, will tell us a bit more about the legacy, the practical examples of the legacy of the ICTY in the work of the Court of Bosnia and Herzegovina.

Meddžida Kreso, President of the Court of BiH

Dear Mr Meron, Ladies and Gentlemen, dear guests, it is my pleasure to attend this conference today and to share with you my views on the importance and the role of the International Criminal Tribunal for the former Yugoslavia regarding the building of the legal framework and practice of the courts in Bosnia and Herzegovina, and regarding the processing of the war crimes cases. I will try to be brief and speak of the perspective of the Court of Bosnia and Herzegovina and the basic elements of the legacy of the ICTY.

First of all, I would like to emphasise the specific position of the Court of Bosnia and Herzegovina regarding this issue. Namely, Resolution 1503 of the UN Security Council of the 28 August 2003 establishes that one of the key preconditions for implementation of the completion strategy of the work of the ICTY is the establishment of a special department for war crimes within the Court of Bosnia and Herzegovina, and later on transferring certain cases based on the Rule 11 *bis* to this particular department. In that sense, it is very important to see the contribution of the ICTY to the establishment of this department and to creating conditions for its efficient work. The role of the ICTY and the Office of the High Representative in creating conditions for work of the War Crimes Department of the Court of Bosnia and Herzegovina, in line with the Resolution of the Security Council, was very significant.

I am particularly glad to be able to look back at the time before the establishment of this department in the presence of Mr Meron who at that point was also the

President of the ICTY. After adopting this Resolution, we had a very active period of promotion of the legal framework on the level of Bosnia and Herzegovina, with the goal of establishing an efficient Department for War Crimes at the Court of Bosnia and Herzegovina. Then and there it was really important to base our work on the Rules of Procedures, the organisational work and good practices of the ICTY.

I would also like to emphasise the importance of the legal solutions in the area of international humanitarian law which were taken over or created under the influence of the Statute and Rules of Procedure and Evidence of the ICTY, but also the relevant international conventions. A new criminal law in Bosnia and Herzegovina from 2003 actually included for the first time the new crimes that were not explicitly defined by previous laws. Primarily, by this I mean crime against humanity.

Also, of particular significance to us were the legal solutions related to protection of witnesses, which were also created on the basis of the rules and practices of the ICTY. So, based on the ICTY's solutions, we established a legal framework, defining the topic, the area of witness protection, and we also established definition and implementation of protection measures for witnesses under threat and vulnerable witnesses. So, now in the proceedings at the Court of Bosnia and Herzegovina we are dealing with those categories of witnesses. We have set different protection measures, making it possible for them to give their statements with less fear, or ideally, without fear for their own safety and the safety of their families. Additionally, on the level of Bosnia and Herzegovina, we have adopted and we are now implementing a special law defining the responsibility of the State Investigation and Protection Agency regarding the establishment and implementation of the witness protection programme.

Another important aspect of the legacy of the ICTY is the court practice. Detailed analyses and theoretical considerations of the status of certain crimes according to international humanitarian law, the defining of important elements of specific acts that were committed, and the standards that the ICTY has set regarding the proving of those actions are some of the most important sources that the Court of Bosnia and Herzegovina uses during the trials. Following the practices of the ICTY, the Court of Bosnia and Herzegovina has also started implementing the concept of joint criminal enterprise which is also a form of criminal responsibility – and that is an absolute novelty in the criminal legislation of Bosnia and Herzegovina. To this, we also have to add the ICTY's practice regarding command responsibility, especially when it comes to the standards of *de iure* and *de facto*, or the factors that have to be taken into account when evaluating the existence or non-existence of this type of responsibility.

Further on, another important element of the legacy of the ICTY is definitely the institute of use of evidence collected by the ICTY and the subsequent acceptance

of facts and evidence established in the verdicts of the ICTY. In war crimes cases, in order to prove different elements of crimes, for example armed conflict, widespread and systematic attack on certain area and so on, it is necessary to share hundreds of material and other types of evidence to prove a single act which is a general element of a crime.

On the other hand, in front of the same court, we have a large number of crimes committed in identical contexts and circumstances of conflict in a given area. In trying to establish more efficiency in the criminal proceedings related to war crimes cases, and in order to prevent addressing the same witnesses and their re-traumatisation, we have adopted the Law on Transfer of Cases from the ICTY to the Office of the Prosecutor of Bosnia and Herzegovina, and the use of evidence collected by the ICTY in the proceedings at the Court of Bosnia and Herzegovina. Through this law we have established a special regime for the use of evidence collected by the ICTY. This completely new concept was not accepted with understanding in the domestic expert circles. However, we can say that today this practice is alive at the Court of Bosnia and Herzegovina, and it is being more and more used by the defence.

All the foregoing practices and measures ensued from the legal framework and jurisprudence established through the proceedings before the ICTY. They are a novelty in the legislation and jurisprudence of Bosnia and Herzegovina judiciary, and they are of extreme importance because they were instrumental in creating the framework for efficient processing of war crimes before national courts, primarily before the Court of Bosnia and Herzegovina which uses it a lot. These novelties created a basis for the transfer of cases from the ICTY to the Bosnia and Herzegovina judiciary, enabling the judges of Bosnia and Herzegovina Court to complete all the cases transferred by the ICTY within a very short period of time, following the *11bis* Rule. I believe I can say with certainty that the Court of Bosnia and Herzegovina has shown over the past period of time, that war crimes cases tried before national jurisprudences, are, by respecting all international standards, not only possible but in many cases more efficient and cheaper than trials before international courts.

Of course, I have to note here that all of this would not have been possible without the tremendous support of the ICTY and other relevant organisations, including the Office of the High Representative, Organisation for Security and Co-operation in Europe and the Council of Europe. I hope that the Court of Bosnia and Herzegovina and the Department for War Crimes will continue to receive this support in the difficult work ahead of us.

This would end my brief introductory remarks. During the discussion we will have an opportunity to go into details about the elements that I have just mentioned.

Thank you for your attention.

Moderator, Anisa Sućeska-Vekić

Thank you, President Kreso.

Bosnia and Herzegovina is a country which had a huge number of victims that are registered as missing persons. It is unique that more than 70 per cent of the persons that were registered as missing during the war were accounted for, so this success is due to the cooperation of forensic experts of the Missing Persons Institute, victims and the Prosecutor's Office during the proceedings that were conducted before national courts.

I would kindly ask Ms Kathryn Bomberger, Director General of the International Commission on Missing Persons to tell us: In what way do you assess the work of the Tribunal in the last 20 years, and how much did it affect the finding of missing persons on the territories of Bosnia and Herzegovina?

Kathryn Bomberger, Director-General of ICMP

Thank you very much Anisa. It is an honour to be here, and I had the great honour and privilege to finally meet President Meron.

I think that today's discussion will focus a lot on the verdicts rendered by the ICTY which many considered to be controversial, but I would like to remind everyone that there is a longer process involved in the process of obtaining justice. Part of that process is, as Anisa noted, obtaining evidence for criminal prosecution purposes. This is a long, long process. It has been an extremely long process, not only for the ICTY, but for the countries in this region as well. Obtaining evidence, I think, is something brand new in the context of peace time and following conflict with the countries in this region.

I think that the legacy of the ICTY in the context of obtaining evidence is very new, I have to say. And what happened with the ICTY is unprecedented. I do not know of any other situation in the world where armies of archaeologists, anthropologists went out to mass graves sites, clandestine grave sites, following the end of hostilities, to collect evidence of crimes, of war crimes etc. In the process of doing so, they have also collected evidence not only of war crimes, but also skeletal remains of those who went missing. So, I would say, in the context of missing persons – to address Anisa's question – something unusual has happened.

Through the efforts of the ICTY, now, over 3,000 mass grave sites, clandestine grave sites have been excavated. This has not been done exclusively by the ICTY. Thankfully, all of the governments in this region, as Meddžida Kreso noted,

through their war crimes prosecutors – offices, whether it is in Serbia, Croatia, Bosnia and Herzegovina, and in Kosovo, under the auspices of EULEX, have excavated a large number of mass grave sites. How this evidence is used later on is something we can talk about. However, this is something brand new and we really have to analyse it in terms of not only the legacy of the ICTY, but in terms of what it is going to mean to future conflicts, as we look forward to Syria.

How is this going to happen? How do you to set up the mechanisms on an international and domestic level to be able to investigate such massive crimes? This is very, very difficult. As Anisa noted, in the context of the Western Balkans, over 40,000 persons went missing as a consequence of gross violations of human rights, war crimes, and other atrocities. Today, 70 per cent of those who have gone missing have been accounted for.

But this was not foreseen when the ICTY was originally created. Their mandate was to go out and collect evidence for the purpose of criminal prosecutions, and part of that process was finding mortal remains, looking at literature, looking at bulletins, looking at the evidence of crimes committed. However, no provisions were made at that time and it was impossible, if we turn back the clock, to actually identify those individuals that were being found. As a consequence, large numbers of mortal remains were handed over to local authorities, leaving it to them to identify these victims.

Many of the families of the missing and others who participated in that process are here today. They know how agonising that was in the beginning because they saw the mortal remains of their relatives being exhumed, they saw a process of justice beginning, which held out hope for them, but there were no means to identify the victims.

Simultaneous with the efforts of the ICTY, and I would say, the local governments here, there was progress in the use of forensic science which augmented the ability to provide accurate information based on evidence that was being collected. A new science came on the table, DNA technology, and the use of DNA in human identification cases. This allowed the large scale identification of those remains that were now being exhumed by the ICTY and other authorities and allowed, for the first time, a large scale process of identifications upon which most of the identifications in the former Yugoslavia are now based. But this has been a long, long process. So, excavating mass grave sites, ensuring that the ICTY was there and later on, handing over that process to local authorities and making sure that the prosecutors, war crimes prosecutors were in charge of excavating mass grave sites brought in something new.

So, what we were moving from in the 1990s is a humanitarian process of tracing missing persons to a law based process of investigating disappearances that are

connected possibly with war crimes. And that is a fundamental shift that I think we have to analyse and we have to take note of, and we have to make sure it continues. We cannot turn back the clock. The families of the missing not only want to know the identity of the missing loved one, they want justice.

So as we move forward now with how you collect information, how you conduct investigations, how you collect evidence, I think we have to know what happened here, because there were many, many problems. It was not a perfect process. But, as we look at the legacy and we look at other conflicts occurring at other places where this type of investigation can be applied, we have to take some of the lessons learned from the process here that were started by the ICTY and the governments in this region and see how we can apply them. But I think the primary legacy or lesson, I would say, we have learned, is that searching for missing persons needs to be based upon a rule of law based process and the ICTY has changed that in an unprecedented way – because it led to a process where families of the missing can hopefully have justice based on the accurate collection of information from mass grave sites, retention of that information, proper documentation for use in court.

Secondly, the use of modern forensic methods in the process of investigation which allows for accurate identification and accurate process and being able to provide that information for court purposes for the family of the missing is absolutely critical.

Third, the engagement of families of the missing – and I think that is what is important here today as we analyse the legacy – the families of the missing have been very much involved in this process from the beginning. I think that there has been a very good outreach programme, but also the governments of this region have created an environment of protection where there has not been a fear of reprisals for families of the missing to become powerfully engaged in this process. So I think these are some of the legacies that I would analyse in terms of the investigation of missing persons cases linked to criminal activity that are an important legacy left behind by the ICTY, and one that can be now analysed or applied possibly to other conflicts.

Moderator, Anisa Sućeska-Vekić

Thank you, Kathyne.

In the past 20 years of its work, the ICTY has collected a huge archive pertaining to the conflict in the former Yugoslavia. By making a decision to establish the Residual Mechanism, the ICTY decided to keep this archive in The Hague. Those

states which decided to open Information Centres will enable electronic access to this archive. The archive will, of course, be used by national judiciaries in processing of war crimes cases.

Professor Robert Cryer from Birmingham Law School will tell us how important the use of archive is per se for the legal community. Professor, I would kindly ask you to open some other issues that will be dealt by academia when speaking in connection with the legacy of the work of the ICTY for future generations.

Professor Robert Cryer, Birmingham Law School

Thank you very much for having me here.

As you mentioned, I can only speak from an academic perspective because that is all I really know about. In many ways, the history of modern international criminal law is coterminous with the history of the ICTY. And in many ways, the legacy of the ICTY, for me, is international criminal justice. I remember when I started to look at international criminal law in the early to the mid-1990s. In truth, there was not really an academic discipline of international criminal law worth a huge amount of study. There were some scholars that would work in the area: Professor Meron had begun working in the area just around that time. There were people who had been around, such as Cherif Bassiouni who had looked at international criminal law to a certain extent. But there were very small advanced communities of international criminal lawyers. And that all changed with the coming into being of the International Criminal Tribunal for the former Yugoslavia. And in many ways in fact, what we can say is, that the legacy of the International Criminal Tribunal for the former Yugoslavia began in at least 1994. And that was when the creation of the Rwanda Tribunal took place.

In 1994, the new Rwandan Government came to the United Nations and expressly said: “Why is it that we do not have a tribunal? Is it because we are African?” Had the ICTY not been created, it seems very, very unlikely to me that there would have been an International Criminal Tribunal for Rwanda. Furthermore, there would not have been a Special Court for Sierra Leone, and perhaps, as Professor Meron has already said, there probably would not have been an International Criminal Court.

For the most part of this past 20 years, it has to be said, the centre of attention of international criminal justice has been in many ways the Yugoslavia Tribunal because of the various “firsts” which it represented. It was the very first international criminal tribunal post-Nuremberg. Then early on in its practice, there was the ground breaking decision of Prosecutor v. Tadić which very much set the agenda

for international criminal law for a very long time. And indeed, a great deal of academic ink has been spilt on that case alone. Since then, the decisions of the Tribunal have been subject to huge academic scrutiny, both positive and sometimes not as positive. But each and every time the ICTY, in my view, has set the agenda for what is discussed in international criminal law. And that came through – I think – particularly, in the Rome negotiations.

I was a very, very junior, semi-official member of the British delegation to the Rome conference that set up the International Criminal Court. As a friend of mine was working for it, I was allowed to go along on one condition. And that condition was I did not open my mouth. I did do so and I listened. And what I heard, whenever something was going to be discussed, we would hear: “Tadić says this”, “Tadić says that”, and that was an important argument that was brought into being. And indeed, without Tadić, I think it is almost certain that the Rome Statute would not have had jurisdiction over war crimes in non-international armed conflicts.

Furthermore though, the practice of the ICTY on various different things: we have already mentioned victims, we have already mentioned witnesses. Even where it was not adopted in the Rome Statute or in the Rules of Procedure and Evidence, it was framed in the debate as to what needed to be done. What was often thought of as an abstract exercise of trying to create procedures, actually was made concrete by the practice of the Tribunal. And indeed, the practice of the Tribunal has been vastly influential in various other courses. The decisions of the Yugoslavia Tribunal have been very, very influential, as we have already heard, in the Bosnian courts.

Similarly, in the United Kingdom when dealing with international crimes, the UK courts are suggested to take into account decisions of international criminal tribunals by statute. Furthermore, the Bangladesh Tribunal, for example, has made extensive use of the ICTY jurisprudence. But so has the use of the Rwanda Tribunal, the Special Court for Sierra Leone, the International Criminal Court as well. Therefore, its practice is being vastly, vastly influential.

But also, from an academic point of view, it forms an absolute centrepiece of teaching people about international criminal law. So the cases of the Yugoslavia Tribunal remain on the agenda all the time where international criminal law is taught. And as such, that form of teaching in itself passes on the facts and the law that the Yugoslavia Tribunal has established, to new generations. And I think that is hugely important.

If we think back to 1993, the Stockholm International Peace Research Institute estimated that there were at least 13 conflicts ongoing during 1993 with over 1,000 deaths. Conflicts like those in Burundi, and that in Angola, which are

not really spoken about in the same way now as Yugoslavia. Why? Because there was not a tribunal. There was not something which was set up. There was not something which established the facts and established the law the way the Yugoslavia Tribunal did.

Therefore, I do believe that the teaching of international criminal law can, in itself, involve a form of memorialisation of the victims – in so far as these stories get told and passed on to future generations. On top of that, the archive of the Tribunal, which I think is a hugely important resource, will be looked at for decades by scholars, by lawyers, by anthropologists, by historians, and written about. And to finish off, I just simply want to say that what is written about is not forgotten.

Thank you.

Moderator, Anisa Sućeska-Vekić

Thank you, Professor Cryer.

During the war crimes trials, what comes out in the end is the court truth. We are witnesses of truth having multiple faces. But more and more is being said about the power that alternative mechanisms could have on the territory of the former Yugoslavia; to provide for reconciliation and improvement of relations between different groups that would be based upon those stories that were never heard in courtrooms. Also, to provide for alternative mechanisms to ensure compensation and to implement all the four pillars of transitional justice.

Nataša Kandić, a woman who for the last 20 years, actually over 20 years, has been working in the area of transitional justice ensuring rights for the victims on the territory of the former Yugoslavia, will tell us a bit more about RECOM, an initiative to help bridge the gaps that remain after the process that the judiciaries in the countries of the former Yugoslavia have been leading.

Nataša Kandić, Project RECOM

A small correction: I will stick to the topic – the assessment of the 20 years of the ICTY. And then, in the context of that main topic, I will say few words in the end about RECOM. For some of you, perhaps RECOM is not something that you are familiar with. The marking of 20 years of work of the ICTY is a good occasion to talk from different angles about its work. My angle is based on 20

years of research regarding documentation of war crimes. It is also based on support for establishment of criminal justice, overviewing the gaps that exist in the systems, and thinking of mechanisms that could potentially make for a more comprehensive, overall picture of what actually happened, why it happened, why the war crimes happened on the territory of the former Yugoslavia.

I selected several categories I will focus on, several issues that I will say a few words about because I think it could be an inspiration for you to discuss them later on. What is the very thing that we can say 20 years later? What was the ICTY's success?

I believe I had the privilege to be the first one from the NGO community to be invited by the ICTY prosecutors to help them in collecting and documenting the evidence of the witnesses regarding the war crimes that were committed on this territory. I remember those early beginnings because I followed closely the work of the ICTY and started with this enormous support in terms of documentation and in providing witnesses. But, in the end, I have to say, I feel sad. I feel quite disappointed by the current results of the work of the ICTY. At the same time, not everything is black and white. I still have hopes that things can be corrected in the times that are ahead of us.

What, in my opinion, is the success of International Criminal Tribunal for the former Yugoslavia? To put it simply, and it cannot be denied, the biggest value of the ICTY is that it finally stopped the practice of impunity for the high-profile perpetrators, leaders of the militaries, civilian authorities, police in the countries of the former Yugoslavia, and during the war – in the countries that were at that point only just gaining their independence. No one was to expect that some of the prominent creators of the peace agreements at that point and those who signed these agreements at that time, who led their nations and their countries at that time, were going to find themselves in front of the ICTY. That is how a signal was given that no one was going to be left aside. And this is something that actually did take place. We do have the persons that are indicted and that are convicted. High profile persons or previously high profile persons who were found responsible for what they did.

However, we have expected that the Hague Tribunal, in preventing this practice of impunity, was going to be able to prevent mass crimes. Unfortunately, we have the example of Srebrenica. And this is something we have to think of. We have to think that the ICTY or any other court still does not have an appropriate strategy to prevent what happened in such cases of mass crimes. So this is something that remains to be analysed by legal experts and strategists; trying to find an answer to the question how to deal with this issue in the future. How to prevent another Srebrenica happening anywhere in the world in the future?

The best thing about the ICTY is its legacy related to specific events, specific war crimes, and specific individuals who committed certain war crimes. And the part that sheds light on the responsibility of those who were indicted and convicted for specific crimes. This, in my opinion, is something that we can have the most use of in all the countries of the former Yugoslavia: to create guarantees that something like this will never happen again, and that the politicians will never again be in a position where they can manufacture wars where hundreds of thousands of people are killed.

This legacy is important if we take into account the fact that a large number of documents are public. A lot of materials are not public because the countries have exercised their right of veto on publishing or disclosing some of those documents. Had the ICTY not existed, we would not even have had a hundredth part of what we have learned from those documents, because we would not have had access to such materials, and we would have been deprived of our own autonomous conclusions on what actually happened, based on the facts that we were able to learn. Future generations would have stayed in the dark, and we would have never become aware of any of those things. So, this is all a fact. Despite the number of the documents that are closed, that were changed, still – there is a value in all this.

We have to overcome what happened to us in the past. At the same time, we have to keep in mind that it is high time we realised what are the mechanisms needed to overcome the limitations of criminal justice, so that the future generations could independently and objectively make conclusions about what really happened.

Was the ICTY successful in ensuring objective and impartial trials in the countries of the former Yugoslavia? It is an important question. I do not think it was. Let me give you an example. In Serbia, before the change of power, there was not a single war crimes trial. There were actually several attempts that were so weak, so shameful that they have to be mentioned for that sole purpose. In Croatia there were trials to others because it was considered that in Croatia everyone was a victim and that no one perpetrated a war crime. During those 12, 13 or 14 years the ICTY failed to enable national prosecutors' offices to understand the meaning of criminal justice, the post-war transitional justice, the rule of law; to understand what happens if the crimes that were committed are not punished.

However, it still ensued that war crime trials at domestic courts have become more frequent and that there is more objectivity as time passes. Of course, no one is satisfied and no one can be satisfied because there are no courts with the capacity to indict everyone who committed a war crime. That is also something that we have to come to terms with.

However, it is good that such trials exist. They do exist – despite all the deficiencies or the restrictions, all the partiality, those trials are still important.

It is important that they exist. There are cases which are focused on direct perpetrators, on individuals that the states engaged from criminal milieu. Even in such cases those trials are very significant because the families of the victims often say, for example in Kosovo: “We know it was not Milošević in person coming and killing someone in our village. We know that someone was sent by someone else, and those are the people we saw. And we want to see justice for us. We want those direct perpetrators punished for what they did.” So we can be pleased with that improvement – regarding the domestic processing of war crimes.

The problem is – and this is the most inconvenient thing, so I am very glad that Judge Meron is here with us, because it has to do with him as well – in the past years, trials are held which result in perpetrators being released, including the cases of command responsibility and of joint criminal enterprise. And this is not something that only NGO activists have been focusing on. Everyone who has been following and supporting the work of the ICTY for the last two decades – supporting the need that the ICTY exist and that the ICTY act the way it has been acting – has been focusing on it. There is now a serious expert discussion in the legal community, which is something that has to be taken into account at this particular point, but also in the future, once the ICTY continues its work in a different shape through the Residual Mechanism. Those acquittals are a large danger for us, and not for the Judges of the ICTY. They are a danger for us because they introduce us to this new situation of a complete confusion regarding the standards that have been established in the last 17 or 18 years. Suddenly, there are new legal standards bringing into question the facts related to state responsibility.

Let me try to simplify this. We are all aware that some of the crimes do lead to shedding more light on something that we all need to know: the responsibility of states. For example, the trials to the generals, command responsibility, joint criminal enterprise and everything else relevant in this regard, provided enough insight, or certain amount of insight, into the responsibility of states, even though we know that the ICTY only deals with individual criminal responsibility. It does not try states, nations or societies. Suddenly, however, we have new standards where this whole war, this whole horrible past that of ours is slowly being reduced to individual perpetrators. When we look at them, their biographies, their past, we see that most of them come from a criminal social milieu.

There are ICTY Judges who explain those new standards as a situation where instead of legal reasoning, political reasoning is applied. And this is not just a phrase. The verdicts are followed by short explanations. This is not a phrase. A serious analysis of both the verdicts and their explanations shows that the more acquittals there are, the shorter the explanations become. These explanations contain very scarce information on what actually was the decision making factor in deciding to acquit someone. Those political reasons that many people now keep referring to, steer towards different countries which at this point have their armed

forces on the territories of other countries. I will not go into the details of this. Perhaps this is a topic for a different discussion. But, let me just tell you that this particular issue has caused serious disappointment in all those who have been using their research capacity for years to support the work of the ICTY's Office of the Prosecutor, who have been trying to lobby for the ICTY, to assist its work.

There is one more thing about certain unrealistic expectations that we all have, including myself: whenever someone mentions the ICTY, even the Judges or the prosecutors of the ICTY, what always comes up is the word "victim" and the word "reconciliation". However, we all know that the ICTY has a single task, which is assessing the evidence and establishing criminal responsibility of those indicted. The ICTY cannot evaluate the victim's level of suffering. It is not its job, and reconciliation is not its task either. The ICTY establishes facts and we should then use those facts established by the ICTY to try to create something that goes beyond criminal justice, that has to do with our past and our future, and the future of the generations to come. Reconciliation is a really serious process. It is not a task of the ICTY, and this is something that everyone has to understand.

Question from the audience:

Zoran Pusić, President of the Civic Committee for Human Rights, Croatia

My hope is that one day war will be denounced as a means of solving conflicts between states and nations, and that one day we will perceive it in the same way we look at slavery today. This is my great wish and hope. I think that this court is a great step in that direction.

We are a non-governmental organisation in Croatia and we have always supported the Tribunal. We were criticised for years about it because allegedly we were not patriotic enough. In each of our societies, those who believed that crimes were actually crimes were denounced, and those who believed that a criminal does not belong to a nation and should be held responsible on his own were denounced as well.

Mr Meron mentioned this 100 per cent success, which is commendable. Nevertheless, in relation to this I would like to mention two issues: one is related to the Operation Storm which resulted in more than 600 civilian victims, more than 20,000 houses burnt, and more than 150,000 refugees. Yet, nobody has been convicted for that, neither in The Hague nor in Croatia.

And there is more to say about that. However, there is another question I would like to put, a very important question, I think, which has to do with a huge

discrepancy between the sentences that one could call even shameful if they were passed before some provincial courts in the region. What I am talking about is that in the Perišić case, in the first instance there is a 27-year sentence, and in the Gotovina case a 24-year sentence, and then in the appeal you have zero years. We have not received a good explanation as to how something like that could happen in one of the most prestigious courts. That is my question.

Comment from the audience:

Satko Mujagić, member of the Management Committee of the Association of Victims and Witnesses of Genocide, BiH

Good day to everyone present. I am Satko Mujagić, inmate from Omarska and Manjača talking on behalf of the Association of Victims and Witnesses of Genocide.

There are two comments I would like to make. I will try to be brief.

The first thing refers to what Ms Kandić said about the goals of the Tribunal and what is possible and what is not. Those were very interesting and clever words. I had an opportunity to speak to Mr Meron several times and I want to say that it is clear to me that the sentences and the judgements are not read anyhow, but what is important is that the public understands what is going on, because it is important to know what was happening in the former Yugoslavia during the war. But, what is more important is to make sure that the relations between nations get improved on basis of what was learnt.

Specifically, the judgements in the cases of Perišić, Stanišić and Simatović indicate, as you mentioned, a relation between the Tribunal and the concept of command responsibility that is unclear to me. One must, of course, know all the circumstances and I do not know them, but I do believe that the ICTY should look into the Taylor judgement because that was a judgement that clearly stated what command responsibility should be.

Secondly, I would like to invite all of you present here, even Mr Izetbegović, who unfortunately is not here anymore, and other politicians of Bosnia and Herzegovina, to stop abusing their position in such a way that they only talk about the victims of their own side. We should now pay respect to the victims of other sides as well. Eight years ago we started an initiative to build a memorial in Omarska. It still has not been built. However, in Trnopolje, you have a monument to Serbian soldiers who raped 12-year-old girls there. That is shameful. And I am ashamed even to be one of the citizens of Prijedor, although I have nothing to do with it. It is shameful for the town of Prijedor, for the state. But the thing is – we

are asking for something and they are not allowing it. We are demons but we are also demonising others.

I would like now to invite the authorities of Bosnia and Herzegovina to mark the Čelebići camp, to mark what was done by the Government and others under the control of the Army of Bosnia and Herzegovina, against the Serbs. I have read a lot about Grabovica and I am ashamed to be a Bosniak, although, again, I have nothing to do with it. I would like everyone to view us in the same way when we ask for our rights, not only because of the dead but because of the children, and because the history will not forgive us if we continue like this which can bring another war to the Balkans.

Comment from the audience:

Kada Hotić, Vice-President of the Association Movement of Mothers of Srebrenica and Žepa Enclaves, BiH

I would like to greet this gathering and say that I respect the speakers before me.

My name is Kata Hotić and I am here on behalf of the victims and mothers of Srebrenica. Some 20 days ago I had a meeting with Mr Meron. We discussed many problems and our differences. We may have expected too much from the Tribunal and other tribunals. I believe that the people at the Tribunal, officials, Judges and others are behaving according to the rules of the Tribunal. But the rules are set improperly; it is not institutions and organisations that are on trial there as the ones responsible for the evil. The aggression to Bosnia and Herzegovina has not even been named there. We called it aggression, but it is not even called that there. Individuals were tried, but can individuals use these planes, tanks, and carry out genocides? No, it must be that organisations are responsible for that.

The Tribunal is wrongly set up. And the Court of Bosnia and Herzegovina is wrongly set up as well. Those who wanted Muslims, Bosniaks to disappear from Europe, they projected this evil called aggression, using the former JNA weapons from Serbia and Montenegro. They wanted to destroy the political system of the former Yugoslavia, they wanted to achieve that Muslims disappear from the region. They are the ones who are instituting courts and rules of the court now. We cannot expect justice, because they have sentenced us to death in advance. [...]

Question from the audience:

Šuhra Sinanović, President of the Association of Women of Podrinje-Bratunac, BiH

Good day. I am Šuhra Sinanović, the president of the Association of Women of Podrinje-Bratunac. In May of 1992 there were 603 people who went missing, and there were 2,081 people who went missing in 1995 Srebrenica.

With all due respect to Srebrenica – there were so many victims there – but what about 1992? Or can we say that there was no genocide in Bratunac? Isn't a three-month-old baby also a genocide victim? Or a 110-year-old granny? It was all done by our neighbours.

I would like to tell the President of the Tribunal who went to Tomašica the other day: there are many other Tomašicas in Bosnia and Herzegovina particularly dating back from 1992 – that is when the genocide started, and it ended on 11 July 1995 in Srebrenica. How are you feeling today when you are among the victims Bosniaks? Here, in front of me, there is a mother who testified innumerable times at your Tribunal. She had lost two sons. She is from Bratunac and there are other mothers who had lost their sons. We trusted so much the indictments and the Hague Tribunal to give us at least a minimum justice. And what did we get? Ten convicts are already free and there are announcements about 21 more [...]

Comment from the audience:

Bakira Hasečić, President of the Association of Women Victims of War, from Višegrad, BiH

I will not pose any questions. I will make a proposal which I think is relevant for all of us. We have been hearing the same stories since the establishment of the Hague Tribunal and we have heard them innumerable times. We always received the same answer from the Hague Tribunal which is a big zero.

I would like to ask the President of the Tribunal to use his authority and reports that he sends to the Security Council yearly or twice a year. To use that influence to strengthen the Court of Bosnia and Herzegovina, and when I say the Court I mean the Chambers, especially the Chamber for War Crimes and the Office of the Prosecutor of Bosnia and Herzegovina, because with this composition of Chambers, with the number of prosecutors and investigators, I am afraid that in five to ten years they will have no one to try, and we as victims and eye witnesses will die.

And again, organise a donor conference as it was done at the time of the

establishment of the Court of Bosnia and Herzegovina. Strengthen it, even at the expense of the victims, because the only satisfaction that we get is – valid judgements, to see the people convicted. That is what I am asking of you. Do anything you can to strengthen the Court of Bosnia and Herzegovina, and when I say that I mean the Office of the Prosecutor. You can do that if you will.

Comment from the audience:

Božica Živković Rajilić, President of the Association of Women Victims of War of Republika Srpska, BiH

My name is Božica Živković Rajilić, President of the Association of Women Victims of War of Republika Srpska.

We are talking about 20 years of work of the Hague Tribunal. Twenty years is not little and of course, some results must come out of that. You have enumerated positive achievements, but I am telling you there is work for 20 more years. There is a lot that has not been initiated either before the ICTY or the Court of Bosnia and Herzegovina.

Because I am speaking on behalf of women, and on behalf of several associations from Republika Srpska., I would like to stress that there are no indictments in existence for the suffering at Ozren, in Dobrovoljačka, Bihać or Tuzla. Since the President promised next time to visit Serbs mass graves, trust me, there are those we can take you to.

Also, there are no proceedings before any court for the suffering of women from Republika Srpska. Is it because these women suffered only because they were Serbs? I understand these 21 criminals from Foča have been convicted, and I welcome that. But I want the same to be done for the other side. The evidence exists and we have handed over two volumes of evidence to the Hague Prosecutor, Mr Brammertz. It is important whether this will be prosecuted at all. [...]

Question from the audience:

Munevera Avdić, President of the Organisation of Shahid Families and the Families of the Fallen Fighters of the Municipality of Kotor Varoš, BiH

My name is Munevera Avdić and I am the representative of the Organisation of Families of Killed and Missing Persons from Kotor Varoš. I have a specific question for President of the Tribunal, Mr Meron.

Mr President, truthfully, tell me: do you feel any sympathy for the families of the victims? You visited Tomašica yesterday, I think for the first time. The speaker before me, the representative of victims, said that we can expect more Tomašicas from 1992. Can you please give me a specific answer to that question? [...]

Question from the audience:

Marija Slišković, President of the Association of Women in the Homeland War, Croatia

My name is Marija Slišković, from the Association of Women in the Homeland War.

I have given this book to Mr Meron. It is a book of testimonies of raped women from Eastern Slavonia and raped men from Manjača.

Mr Meron, I have no illusions about justice for all the victims. The whole process was too politically driven, so that politics permeated every layer, even civic associations. My question to you is: how can we establish good relations and trust without making sure that justice is done? There were no proceeding for all these victims; nobody at the Hague Tribunal was charged with rape. The women have no status, no rights, and they see all this as one huge injustice. Mr Meron, how can we have faith in justice if no proceedings have been initiated for such war crimes?

Moderator, Anisa Sućeska-Vekić

President Meron, there is a whole list of questions that need to be answered by you. However, if we continue asking questions, we will never get any answers. I will summarise some of the questions that we heard in other comments.

The first question was whether the Hague Tribunal will do anything to make public the documents Carla Del Ponte had received from Serbia under a special agreement, related to the aggression on Bosnia and Herzegovina.

The second question was what your feelings were in front of the victims from Srebrenica and did you feel any sympathy with the victims and their families?

Another question was related to judgements concerning Operation Storm and will the regional prosecutors continue dealing with this topic because the mandate of the Tribunal is already over?

We also had other questions related to Operation Storm. We are talking about those trials that were not conducted before the Croatian justice system. There is also the question, as the gentleman put it, whether the Tribunal will use its influence to help other processes in relation to Operation Storm to be conducted?

Also, there were questions about unprocessed crimes against Serbs and Croats both in Bosnia and Herzegovina and Croatia. Since we know that the ICTY does not start new processes, this question probably relates to its influence in the region.

Judge Theodor Meron, President of the ICTY

Thank you very much, moderator, for the very useful summary of the questions. I will try to make some comments on the questions. You have summarised and perhaps made some additional comments.

Let me start with the question about the agreement between the Prosecutor Carla Del Ponte pertaining to certain crimes. I simply do not know much about it. Judges do not know much about agreements that prosecutors conclude. The Prosecutor, as you know, according to our Statute, is an entirely independent institution.

I am surprised to repeatedly hear the question how I felt about the feelings of victims in Tomašica. I am amazed that this question has been repeatedly asked of me. You know a little bit about my history. And when I was in Tomašica, I spoke about certain grave personal recollections from the Second World War. So, please do not ask me that question because I find it offensive to me, I find it offensive to all people who survived the Second World War, and I do not believe that my relations to the victims of the conflict in Yugoslavia justified that. Let us not just be carried away, and let us be fair. Do you want to know what I felt? I felt total empathy. I felt the grief that you have felt. And therefore, because you disagree with some aspects of our work, to accuse the President of the Tribunal – a President with his own personal background, who spent part of his childhood in a forced labour camp – is something that I think is really not quite appropriate. I will not say anything about it. This question has been asked in many variations, and calibrations. I think I have answered it now.

I have been criticised by the people from the other ethnic communities, from the Serbian and Croatian community, about why I went to Tomašica. I find this question also quite amazing. Tomašica is, first of all, the largest grave being excavated at the moment. It is also the most recent grave. Would you have expected the President of the Tribunal to come to this conference in Sarajevo and not accept the very kind suggestion that I heard at The Hague from the

Mothers of Srebrenica that I should go to Prijedor, that I should go to Omarska, that I should go to Tomašica? My answer to those who feel, and I know they feel deeply, about my not going to other graves, to graves where Croat or Serb victims are buried, is this: Yes, please, tell me where which grave to go to, and I will be more than happy to go. On my next visit here I promise to honour those graves in the same way that I have honoured the graves in Tomašica. I simply have not been given either locations or invitations of this kind before yesterday. I will be happy to do it next time.

About cases which have not been tried: you all know that international criminal justice will never, ever reach all the people who have committed war crimes because our capability, our capacity will always be limited. In terms of which crimes we prosecute, which crimes we try, the selection of those crimes is, as I am sure many of you know, not a question of the choice for a judge, or a chief justice or the President of the Tribunal. It rests totally in the hands of the Prosecutor who is an independent institution, and who, I am sure, does an excellent job, or tries to make an excellent job. It is thanks to him that we have had so many convictions. He looks at evidence, he prepares the indictment, the indictment is confirmed, and we prosecute, we try cases presented by the Prosecution.

With regard to the ten persons who have been mentioned repeatedly, that case pertains to the State Court of Bosnia and Herzegovina, and the very distinguished President of that body is on my right. I will not purport to answer it. But I will say this: I personally have been, as she herself has acknowledged, quite active in helping during my previous presidency in the early 2000, helping the establishment of the War Crimes Chamber in the State Court of Bosnia and Herzegovina. We tried to help with know-how, with resources. One of you has movingly asked me to try and help or use my influence – you probably overstate my influence – but to use whatever influence I have to help that Court. I am very happy to use this occasion right now to say that I have the utmost admiration for your work, and you will have from me all the help that you will need, and to the extent that I can encourage anyone in particular to help you with the resources. I am available, happy to do that.

If I may be allowed now, just for a moment, to go beyond the scope of those specific questions. Let me start again: I realise that we have not satisfied the victims. Perhaps it is a mission impossible. Perhaps no international criminal tribunal can satisfy all the victims from all the different communities. But let me say this: we are certainly trying, doing our best. In fact, it is perhaps unfortunate that out of the various criminal courts and tribunals that have been established, the role of victims is recognised in only one of them – in the International Criminal Court, which gives the special recognition to the role of victims. Victims, as such, are not given this kind of status, this kind of position in the *ad hoc* criminal tribunals. That does not mean that in our daily work as judges who read and hear the evidence,

who are terribly troubled by the immensity of crimes that we have to deal with day in and day out, the picture of the victim is not centrally before us.

But, for example, I know that many of you are concerned about the issue of reparations to victims. My predecessor President Robinson and I have time and again asked the UN Security Council to create some kind of a fund, a foundation which will provide the victims of the terrible events which occurred in the former Yugoslavia, to receive not only verdicts that they expect, but also material compensation. And time and time again, we have been told that there are no funds, and so we cannot help you. Is this a good situation? It is not. I think that your request to continue demanding some kind of a compensation fund is a correct one, but it does not depend on Judges.

I know that many of you are concerned about the contribution that we have made, or have not made, to deterrence. Nataša Kandić spoke about Srebrenica. In fact, it is so disappointing that several years after the establishment of the Tribunal, an atrocity of the dimensions, in factual and legal terms, of Srebrenica could have occurred. But do remember – and I share your disappointment about this – this was still an infant Tribunal, established just two years before Srebrenica. Let us hope that the cumulative impact of international courts and tribunals will over time create a real element of deterrence which was missing in the former Yugoslavia, and which is missing elsewhere. Because despite the establishment of those courts and tribunals, we see that crimes are being committed in all the continents, and they continue, and this is something which is still lacking.

Let me tell you this: the more prospects there is that a criminal is brought to justice, the more effective the notion of deterrence will be. And I hope that a day will come before long that deterrence will not become something about which law professors write and judges speculate, but it will be something which will be real and have a real impact, impact against the commission of atrocities which still happen in many countries.

Nataša said something and others referred to it – and I must say that I always admire Nataša very much and I respect her tremendously – about the role of state and the role of individuals, and the criminal dimension. Now, the fact is that we are guided by statutes which are our legislative instruments. The Statute of the ICTY and the Statute of the ICTR, the statutes of other international criminal courts and tribunals give us one narrow mission, not five or ten missions. We have no authority whatsoever about criminalising or dealing with even civil responsibility, not only criminal responsibility, of governments. We only have the power to deal with the individual accused. Our role is to decide applying the law and the evidence, whether an individual defendant, an individual accused, individual appellant with regard to him, whether his or her guilt has been established beyond reasonable doubt. We do not adjudicate states. And it

is perhaps one of the greatest achievements of international criminal justice that while in the past crimes committed in time of war would lead to more wars and bitterness, like following the Treaty of Versailles which made some contributions to the wars that followed. We do not incriminate the whole communities and do not say that Bosniaks or Serbs or Croats are guilty. We just have a mandate which is a progressive mandate, a mandate of the future where an individual is guilty. So we have to keep those issues separate.

I know that you are disappointed about one or two reversals of convictions. But please look at the picture as a whole. Let not two or three acquittals – about which you are not happy – take you away from the whole vision, of incredible achievements which are being made. This regards the case of Stanišić and Simatović, which was mentioned by several of you. I did not sit on the case, it was a trial case, and as you may know it is subject to appeal. We do not know yet the final outcome.

But give us the credit of thinking that the Tribunal is still the work in progress. And I had some moving appeals from my friend from the Mothers of Srebrenica about the work which remains to be done. Yes, the work remains to be done. Give us the credit, give us the patience, and give us the tolerance until we have finished our job. Our job is not yet done, and I am sure that one day even the greatest critics of the Tribunal will join with me, in seeing the positive, how in working in terribly difficult circumstances we were guided by one thing – somebody said I did not talk about justice, but justice is the whole thing this is about – justice and fairness.

Nataša, let me tell you this: you and I would not like to live in a society in which the prosecution had 100 per cent success record in prosecuting – not you, not I, not anybody. And therefore, the strength, the health of international tribunals must be judged by the fact that from time to time we also have an acquittal, on our norms, on norms that we believe in. And let me tell you: I do not believe for a moment that we have changed the standards. Give us time and you will accept it too.

Thank you very much.

PANEL 2

TRIBUNAL AND LOCAL JUDICIARIES: LESSONS LEARNED IN VICTIM AND WITNESS SUPPORT AND PROTECTION

Moderator:

Amela Ćosović-Medić, Coordinator, Justice and Security Sector, UN Development Programme (UNDP), BiH

Panellists:

- **Mirsada Malagić**, Former ICTY Witness, BiH
- **Sara Rubert**, Support Officer, Victim and Witness Section, ICTY
- **Slavica Petković**, Head of the Department for Victims and Witness Support, Higher Court, Serbia
- **Nikica Hamer Vidmar**, Head of the Independent Sector for Victims and Witness Support, Ministry of Justice, Croatia
- **Muris Brkić**, Investigator, Office of the Prosecutor, BiH
- **Mats Mattsson**, Head of the Executive Division, EU Rule of Law Mission in Kosovo (EULEX)

Moderator, Amela Ćosović-Medić

Good afternoon, Ladies and Gentlemen. Thank you so much to all of you who are going to continue with us with this session today after such an amazing movie* which left us all speechless, particularly our witnesses who are here today with us.

This session will be really a difficult one. We will try our best to allow everyone to say what is closest to them in terms of supporting witnesses, offering them not just support, but physical protection, and whatever else they need in order to ensure they are able to deal with the trial, to tell their story, and to ensure, as they said, that history does not really repeat itself, but that they are able, in the best possible way for them, to say what happened to them so that justice is available and accessible to all of those who deserve it.

This session today is something that is ensuing from the discussion we had yesterday. I will just open with a few key remarks and say that the problem of

* The ICTY documentary *Through Their Eyes: Witnesses to Justice* was screened on the onset of this session. It can be viewed on the ICTY's website: <http://www.icty.org/sid/11527>.

the support and the help that we need to offer to all the witnesses and victims is not just a problem for Bosnia and Herzegovina. Thanks to this conference, organised and prepared and supported with the help of the ICTY, the same issues and problems are being seen throughout the region, in Croatia, Serbia, Kosovo, and Albania. So, I can honestly say that the same problem and issues are arising in all of the stories and everything that we have heard.

There are key things that we cannot say are necessarily conclusions, but they are most certainly recommendations, lessons learned, suggestions and comments we would like to share with all of you, and that is that the victims and witnesses are the key to any court hearing, to any case that needs to be heard. Unless we are able to provide support, help and assistance to those victims and witnesses, we will not have a prosecution, we will not have the cases, and we will not be able to write something to be left with us – the legacy to all those who will come after us – and to say what really happened. Therefore, the need for coordination of activities, of national partners, of the donor community, the international community, NGOs is an absolute must.

With the ICTY being able to share with us the lessons, the key points learned, we are sincerely hoping that there will be those strong enough to take on from the ICTY the key lessons learned, and to ensure that the good work and results are continued. What was also really important, as a few donors said yesterday, the national partners, the state needs to own this. Therefore, we need to ensure that whatever we do on the ground, as donors, as international community, as NGOs, we have partners in local government, among the states who own this, which are with us together. They need to own it, they need to have a sense of ownership, and take over the responsibilities which are also down to them.

The lack of political will that we are experiencing not just in Bosnia and Herzegovina, but across the whole region, is the key issue and a challenge that needs to be addressed. Therefore, we hope that coordination amongst the donors, international community is the key way and a step to go forward to ensure that we get the state partners to join us to make sure that we have them fully participating and working with us.

There is also something that has been stressed, and I need to repeat it today, and that is regional cooperation. There are a few memoranda of understanding and agreements between different countries, Bosnia and Serbia, and Bosnia and Croatia. However, we need to say that it is not enough that these countries just work within those existing legal frameworks because some prosecutors and judges are able to share the experience and work well together. The regional cooperation is an absolute must so the victims and witnesses in different countries can testify just once if needed to be so, but the case can be heard regardless of where these victims or witnesses are currently living.

Finally, if we do all of this and try to do our best to provide support and help and assistance to victims and witnesses, the key question that came out of yesterday's discussion is: What is it in it for the victims and witnesses unless they are supported after the trial ends? Have they been just used for the case to be heard? What happens to them after everything is ended, the case has been brought to trial, and there is punishment? Are they really left on their own? Unfortunately, at this point, we could honestly say: Yes, they are. They are left on their own because there is no referral mechanism. There are no institutes out there to provide them with the psycho-social support, with the development assistance, with more than just being heard throughout the court hearing in the cases. They need more, and therefore we jointly need to also continue working on the referral mechanism to ensure that we pull together and coordinate approach by different institutes which will offer support to the victims and witnesses after the court trial is ended, so that they do not feel just being used and useful throughout the trial. They need someone out there to refer to once the case has been brought to justice.

Without going further through the lessons, I am going to now leave you throughout the panels which will be sharing with you all of the key lessons and some examples and advice from different regions.

I am going to hand over to Ms Mirsada, the victim and witness from the ICTY court hearing who will be telling you her own story in her own words.

Thank you.

Mirsada Malagić, Former ICTY Witness, BiH

Ladies and Gentlemen, dear organisers of this gathering and everyone present, I would like to extend my greetings to all of you. It is my great honour to have this opportunity to address you and take part in this conference.

Given the fact that I have been a witness before the ICTY on many occasions, today I will speak from the point of view of a woman, a mother from Srebrenica who lost almost everything in the war. In 1992 I lost my house and other property, and later on, after the fall of Srebrenica, I lost my husband, children and many members of my family and friends.

Can you imagine that nobody feels guilt about this? Nobody is guilty for expelling thousands of families from their homes, for hundreds of children left without fathers, women without their husbands, and us, mothers without their sons. This is how the war criminals plead when they appear before the court of justice.

At the beginning I had huge hope, just like all other genocide victims, that justice would be served on the criminals. However, it was very slow for us as victims. All eyes were set on the Hague Tribunal. In order to help survivors, in order to prove what was going on in my town over the period of three years, and show the scope of crimes that occurred when Srebrenica fell, I decided to appear before the ICTY. Back in 2000 I testified in the Krstić case, in 2011 in the Tolimir case, in 2012 in the Karadžić case, and recently in 2013 in the Mladić case. In the Court of Bosnia and Herzegovina I testified in the Trbić case. All my testimonies were public.

On the fifteenth anniversary of the fall of Srebrenica, I found my husband and younger son who was only fifteen at the time, and buried them at the Potočari Memorial Centre. I buried my other son two years later, and with him all the hopes I had that somebody is still alive.

Every testimony before the ICTY had its gravity because whenever I prepared for it, I went through the Srebrenica events again. It is not easy at all. It is difficult to look in the eyes of a monster who killed everything you had. The only thing that remained is to prove that he was guilty, to prove the truth and the things that were going on at the time. In doing so, starting with leaving my home for The Hague and coming back home again, I received huge support from the ICTY's Victims and Witness personnel. They were my physical and psychological support before, during and after the trial. These people were with me all the time. They and other ICTY staff deserve commendations. However, once you go back home, all care ceases.

What to say 18 years after the fall of Srebrenica? It is difficult to struggle with life which is more difficult than before. Wherever you go, genocide is denied, and victims and perpetrators are equalised. The claims that this was the civil war in Bosnia and Herzegovina are spread, and you are all aware that it is not true. Is it not a crime to destroy three generations of people? And this is what was done by the Army of Republika Srpska once they entered Srebrenica. I have this example in my family: my father-in-law Omer Malagić, born in 1926, his three sons, one of them my husband Salko Malagić, his three grandsons, two of whom are my sons, Elvir and Admir Malagić. There were thousands of similar families in Eastern Bosnia.

Although I am happy that the ICTY exists and functions, once we speak about judgements, I have to admit that I am not always satisfied, particularly when we speak of acquittals. One man who committed crimes or assisted in the committal of crimes is arrested and convicted, he spends two thirds of his sentence in imprisonment, and he is later released – it all happened over these past 18 years – and now - he is happily living with his family. At the same time, the victims in Bosnia and Herzegovina are still searching for the mortal remains of their beloved ones. The worst thing is that you think that it is going to be easier once you find

them. However, it is only then that you lose any will to live, and then you need help and support. I personally think, as a victim and a witness that we are left to our own devices. We are worried about our own security and the security of our family that remained to us.

I will not feel good anywhere in the world. This suffering, the war, the killing of my family members and all this injustice harmed my health a lot. Whomever you turn to seek help, starting with municipal and cantonal authorities, including different ministries, you come to a closed door. And we always receive the response that everyone does his or her work in accordance with the law. Then I wonder in accordance with what law I lost my husband and children. Why was I persecuted? I testified on several occasions before the ICTY. Representatives of our authorities believe that this is my personal problem, and this leaves me speechless without any hope for a better tomorrow for my family.

Finally, from this position I want to send three messages, three suggestions.

First, the Ministry of Education and Culture of Bosnia and Herzegovina should organise in all schools one-day visits to the Memorial Centre Potočari, valley of white gravestones, lest it be forgotten.

The second message to the state, federal and cantonal institutions, is that victims and witnesses should not be left alone, that they should give us greater support in resolving our difficult everyday problems, because – please, believe me – it is difficult to live as a tenant at this age, to pay the rent, having given so much for one's country.

The last and most important message is to the ICTY and its judges. They should put themselves in the position of victims, and punish the criminals with the highest and adequate punishment, as they deserve. Otherwise, instead of Karadžić, Mladić and others, you will bear on your own conscience over 10,000 people from Srebrenica, and all other innocent citizens throughout our Bosnia and Herzegovina.

Thank you for listening to me.

Moderator, Amela Ćosović-Medić

Thank you, Mirsada.

Sara Rubert, Support Officer, Victim and Witness Section, ICTY

I will just try to tell you the conclusion we came to yesterday after a discussion with a bigger group of people representing different countries from the former Yugoslavia. I will talk from the perspectives of the ICTY and the Victims and Witnesses section.

We all know that the Tribunal is close to its end and the completion strategy is being implemented. We discussed yesterday that there will be this Mechanism for International Criminal Tribunals which will take the place of the current ICTY. We also discussed that the MICT, this Mechanism, will be based in The Hague. Thus the field offices that are now trying to bridge the gap between The Hague and the region where we work will not exist anymore. So, the problem is how we are going to bridge this gap, because the Mechanism will be so far away from the people for whom it should work. The question is how we are going to do that?

Yesterday we had lots of discussion and especially with our local partners about how to strengthen our relations with them. Unfortunately, during our discussion some problems that came up we would have to talk about. First of all, we have to register that there is a lack of trust in the justice system. We work with witnesses every day and are aware of this mistrust. On the other side, I am happy to say that all the participants have trust in the fact that there is a need for a support and protection of witnesses and victims. Therefore, we have to answer the question how we are going to provide the support and protection to these witnesses if they do not trust the justice system which should provide these services. We are trying to find an answer to these questions, but they are hard to answer.

Our suggestion from the ICTY's Victims and Witness section, and also from our other colleagues, is that we should follow a so-called proactive approach. What do we mean by this? We think that all witnesses should be able to have the services that we provide, but it should not be the witness who goes to the institution or the authorities to find the services. It should be the other way round. It is the institutional authorities, the Tribunal, the local courts, the section for victims and witnesses that should come to the witnesses. Yesterday we talked extensively about the work in the field, meaning that we should also be able to reach all the people who live in very remote, rural areas where these services are usually not available.

Talking about this proactive approach yesterday, we also touched upon the problems which are related to it. First of all, it is the lack of resources when it comes to our local partners. We discussed the fact that especially the local courts in Bosnia, Croatia and Serbia – and there are also participants who will talk about the situation in Kosovo – should be provided with resources that will enable them to reach all the witnesses. Sometimes it is just about logistic costs or transportation means. Another point that we touched upon is that we should be able to set

standard procedures, because what we have noticed is that there are discrepancies in the way witnesses and victims are treated depending on their country of origin, and even within the same country, depending on where they live.

Further to our discussion, we are always limited to our mandate, and I am happy that Mirsada also acknowledged that the shortcomings of our work, the Victims and Witnesses Section, are in the post-testimony phase. I completely understand when Mirsada says that, after giving their testimony, many witnesses just felt abandoned. This is because our mandate is to provide support and protection only for the time they are testifying, and before they travel to The Hague. We are absolutely aware that after testimony there are so many problems that are not addressed and this involves the psychological well-being of witnesses, the economic situation, where they live, their legal problems and so on.

Yesterday with our colleagues from Croatia and Serbia, we also discussed the fact that sometimes we have to rely on a good referral mechanism or network. This means that we have to refer our witnesses to civil society organisations working in the region, in Bosnia, Croatia and Serbia. We also discussed the fact that sometimes this is a hard task, because we know that in rural areas, unfortunately, there are not so many services available. We also know that sometimes we have to be careful when we talk about the areas in the former Yugoslavia where the conflict is in a way silent but present. Therefore, we sometimes need to ask witnesses to report their concerns to the police, but it can happen that there are people in the police stations who were actually involved in crimes during the war. So, there are problems that still need to be sorted out.

To come to a conclusion about what I wanted to say today, I will just repeat what Amela mentioned before, and then I will give the floor to our colleagues from Croatia and Serbia. Basically, what we have established as a very important task for the future is what Amela mentioned before: the harmonisation of procedures and being able to provide the same kind of services to all witnesses and victims all around the region without making difference between them.

That is it for now. Thank you.

Slavica Peković, Head of the Department for Victims and Witness Support, Higher Court, Serbia

Good afternoon to everyone.

A lot was said about what witness support services do. We have seen some of it in the documentary, and we have heard some of it from our colleague Helena

from the Tribunal's service. This ICTY service has been an ideal to all of us in the region. It was a model on which we tried to establish our own services to help the people coming before the court to share their most horrible experiences.

The services were established in 2005 or 2006, depending from one country to another. I am not only talking about the service in Serbia, but also on behalf of our colleague Alma, of the Court of Bosnia and Herzegovina, and the colleagues from Croatia. However, the joint conclusion that all of us working in those services have come to is that, despite the years of existence and considerable experience in the work with witnesses and victims, our services are still not sufficiently recognised, and their role regarding the witnesses, courts and the prosecutors' offices is still not recognised to the full extent.

It has been said several times that witnesses are the main source of evidence. I do not like using that terminology; it is not the witnesses who are the sources, but rather their statements are the sources of evidence. However, it has to be said that their role in the cases of war crimes is huge and they do require special attention. The events they witnessed happened many years ago, and it is difficult to talk of those experiences even in front of people that one is friendly with, let alone in the court, in front of people they have never seen before. We have been doing our best to help them as much as we can, to make testifying as painless as possible for them, to avoid re-traumatisation. That helps the whole proceedings because stable witnesses give better statements.

The primary emotion they experience is characteristic to all the witnesses. It is fear, uneasiness, distress, helplessness. In this documentary we have seen a reaction of a woman witness who said: "I am looking at a man who did what he did, but I do not recognise him." There are situations at our national courts where direct perpetrators are behind the bars, and it often happens that a witness, that is the victim, sees the perpetrator for the first time after the torture committed by that person. And people take this very hard.

Also, I have noticed that many witnesses take it upon themselves to deal with this big burden of providing a testimony. In the end, everything depends on witness statements and cases are built on them. Witnesses believe that if they omit or forget something, that case will fail.

In the Republic of Serbia and in the Republic of Croatia we have been trying to provide assistance to witnesses who appear before courts, both during investigations and court trials. That turned out to be a very valuable experience because, that was the witness's first contact with an institution, with the proceeding itself. However, both the Republic of Croatia and the Republic of Serbia went through a change of legislation, specifically the Criminal Procedure Act, where the prosecutor-led investigation was introduced.

We work at the court and our service is based at the court, and at that point of the change, our service was excluded from this very important phase of the process. We believe that it is a serious handicap for both the witnesses and the Office of the Prosecutor. I have already said that the situation we have in Serbia is quite similar to the situation in Croatia. In Bosnia and Herzegovina there are services that were established with the Office of the Prosecutor as well, which is really important for the witnesses.

One more thing I would like to emphasise is that even though nothing has been formalised yet, even though there is the prosecutor-led investigation in Serbia, we still provide assistance to certain witnesses in war crime cases because the Office of the Prosecutor has recognised the need for a service of this type and for our assistance.

As someone said earlier, and I have to reiterate it, the existing regional cooperation is of extreme importance. The cooperation that in certain situations was based on personal connections was later on raised to a higher level. However, what is important is to further the existing cooperation with the goal of providing even better and more efficient assistance to witnesses. Our cooperation between the services in the region is reflected in direct communication, exchange of relevant information, with the goal of providing good quality, efficient support to witnesses.

There is one more thing I cannot resist mentioning. We have all seen this documentary. We have all heard and seen stories like this before, perhaps not all of us with this particular type of a story, but most of us have. All of us working in the support services encounter stories like this on a daily basis. I remain speechless every time. Right now I feel so shaken that I would rather not say anything because it really hurts me to hear about the experiences of these people who suffered so much. All of us working in support services are enthusiasts and humanists, and we all want to help people.

However, we should be taken care of as well. There has to be supervision for the employees of the support services because we might burn out, and that can negatively impact our health, both our psychological and physical health. If we are not in good shape, we cannot be of much assistance to others.

That is all from me for now. Thank you.

Nikica Hamer Vidmar, Head of the Independent Sector for Victims and Witness Support, Ministry of Justice, Croatia

Good afternoon to everyone. It is really difficult for me to add anything after Ms Mirsada because she gave some recommendations and advice. I can repeat some of the things she said, as we spoke about this yesterday.

It is a fact that support services are very much needed and useful. This documentary has shown some of the experiences. We have heard the comments of the victims as they leave our waiting rooms, and they say: “I was not alone. Someone was with me. Someone was there to help me. I did not feel lonely. Someone was there to make me feel safer.” The problem is, however, what happens to the victims once they leave the courtrooms. They are left on their own. Who needs them then? Who finds them interesting after the trial? The reality is that in all of the countries of the region, most of the care for the victims before, during and after the trial is taken by the NGOs. Those of you who are victims know very well that no one would help you, so you established some of the NGOs yourselves to help each other.

The question also is whether the countries that we come from have any interest in helping you and your organisations, by taking some of your burden onto their shoulders. The example from Croatia is that NGOs are mostly located in urban parts of the country, and there are a number of victims that were never reached by them. Some victims are not able to receive any help because they live in remote and sparsely populated areas, and no one even knows about them.

One of the conclusions was to send a message to the authorities that they need to take some of the responsibility to help. There has to be a service to provide either free assistance to victims, from now on and, if necessary, until the end of their lives, as well as in different aspects of their lives – psychologically, socially and economically. When one comes to a trial, it is often because of one’s own motivation and someone else’s invitation; you would probably not go there on your own just to appear at the trial. It is therefore very important that the authorities become interested in dealing with the victims’ problems, and providing legal foundation to guarantee their rights.

The question is also raised as to whether we even know how many victims, living and deceased, there are. We need to have these statistics so that we try to help them the best we can. We need to find capacities to help all these people, even those that are not with us any longer. I think this is a matter of how to convey these messages to those who need to hear them and make decisions on national levels that would contribute to achieving results in that respect.

Thank you.

Muris Brkić, Investigator, BiH Office of the Prosecutor

Ladies and Gentlemen, after Mirsada, what can I say? It would not even be serious if I tried sharing with you any dry facts about how we have been working at the Office of the Prosecutor of Bosnia and Herzegovina and what we have accomplished. So, let me try to give you an overview of what we have been doing in the past nine years.

I worked in the Witness Protection Department, and later as an investigator I joined Team 6. We mostly deal with investigations related to Srebrenica in July 1995, but we also cover other crimes that took place in other parts of the country. It goes without saying that everything that we have been applying we learned from the ICTY, i.e. from the ICTY's support services and their investigators. After the Law on Transfer of Cases and Brioni Agreement on establishing efficient witness protection, we entered a period when we slowly started applying those practices and examples that we learned from the ICTY.

We would not have been able to do this without international assistance and the Office of the Registrar. In the beginning, the most important thing was the creation of the witness support network. At the time, that seemed to be a good project. The initial Registrar had an idea that witness support is the best protection of witnesses. So, through this network that was established back then, the victims were to be provided with an opportunity to freely move and cooperate with the Office of the Prosecutor of Bosnia and Herzegovina regarding the cases that were tried at the Court of Bosnia and Herzegovina. This was the biggest mistake, in my opinion, that was made at the very beginning regarding the investigation of war crimes cases, and Witness Protection service. The mistake was that this only covered the cases that we tried at the Court of Bosnia and Herzegovina.

In the last nine years we have all kept learning, and I am talking about the lessons learned. However, the only party that learned nothing from all this seems to be the state of Bosnia and Herzegovina. The state never got involved in this whole process. What we have heard from Mirsada – this is not even something that one can feel at the court, not something that you can try to present to others who should use it for prevention. For example, the state failed every single time whenever these issues were discussed.

In the early days we tried to expand witness protection to all war crime cases, even though we also had cases of organised crimes. However, it was impossible to bring this down to the cantonal or local level because there always was political resistance. The same happened with the recent proposed changes to the Witnesses Protection Act where, for instance, Republika Srpska believes that this is just another transfer of responsibility because if the SIPA would simply be doing its job on the territory of the whole country. So, this is the problem we have always had.

I believe that some of you in the audience may think I am guilty of some of the things the Office of the Prosecutor has not done or has done in the wrong way according to them. So, aside from the division of witnesses vulnerable or under threat, we also have the insider witnesses without whose assistance we would not be able to work on our cases.

Associations and the Office of the Prosecutor are, naturally, never pleased with the verdicts, whereas the Court seems to be the only one satisfied with its work. In the light of those recent events I have had the opportunity to talk to witnesses and victims who survived executions, and who were terrified after the perpetrators had been released from prison. When the new trials were prepared, those witnesses or victims said: “After I testified and they were still let go, what would it change if I gave my testimony again?” This is something that I have heard a lot. We are the ones working with the witnesses and victims, while the state always forgets its responsibility towards these people.

One improvement that we have introduced at the Prosecutor’s Office – and we have the Department for Investigations and Witness Support – is that we have recognised this need to establish this relationship with the witnesses who are vulnerable or under threat because of the nature of the crimes that they witnessed.

The state – I have to say this once again – keeps failing. I have read on official web sites that there is no understanding whatsoever for the position of the witnesses and the psychological aspect of the witness testimonies. One of the most recent things that I have read is: “The District Court in Eastern Sarajevo has become one of 11 courts in Bosnia and Herzegovina that took part in the project Support to Justice financed by the EU, and introduced the video conference system, thus improving the technical conditions for the war crimes trials.” I do not think that any technical equipment can make or help someone give a better statement. Reasons and motives for giving a testimony differ. What we are trying to do is provide support to the witnesses during and after the investigation when we enter the trial phase, and this is similar to what the colleagues from the courts do. They started the way we did – through the Office of the Registrar and with the help of the ICTY. However, the problem is what happens to the victims and witnesses afterwards, after the case is closed.

Mats Mattsson, Head of the Executive Division, EULEX

Thank you. Dobar dan (Good afternoon), Ladies and Gentlemen.

I would like to say something about the lessons learned from Kosovo’s point of view. Kosovo is a small post-conflict legal order, and there are special difficulties

when it comes to, most of all, witness protection.

I am now representing Kosovo and EULEX in Kosovo. Kosovo is a very small geographic area. The size is, of course, not the only problem in Kosovo. The administration in Kosovo is weak, and the administration in Pristina does not have full control over the territory of Kosovo.

A special problem in Kosovo is the clans, or what others call the “big families”. That is, so to say, all relatives, cousins, and cousins’ cousins, and so on. They form clans. And these big families have a strong social control in society. Their strong control is much stronger than the administration in Kosovo has over the people in Kosovo. This “big family” has a special impact on the major problems of the rule of law in Kosovo, and that is corruption, organised crime and war crimes, all of them being interconnected.

The corruption, you could say, has two faces. One is the positive one, which is that you are offered a gift, and you get a gift. But in Kosovo there is also – because of the construction of Kosovo consisting of big families and clans – a negative side, meaning that if you do not accept the bribe, you will be also punished. So you will have double reasons to accept the bribe. I think this makes it a little bit special.

This leads to a very big problem when it comes to us, in the rule of law business, to try to build up a witness protection system that will function. You can say that all the witnesses have to be transported out of Kosovo. It is not really possible to have anyone who is an insider, or others, left in Kosovo.

I think this is a conclusion: the witnesses need support, all the support that we have heard about here, from the panel before. They also need the support from a good, well-functioning witness protection programme and there has to be some kind of a trust in the legal system and in the witness protection programme. This, for Kosovo’s part, I think, is especially important now because EULEX is on the way out. We are phasing out of Kosovo, and in the future there has to be a functioning witness protection programme.

I think that it is also very important that the countries in the region help and assist Kosovo and the witnesses in these matters.

Thank you.

Moderator, Amela Ćosović-Medić

Thank you so much.

Before I summarise, I would very much like to leave this panel available to any questions and comments from you, the audience, because that way we will effectively have something even more constructive. We had our own conclusions, recommendations and lessons learned, but we would also like to hear from you any questions and comments you may want to share with us here today.

Comment from the audience:

Munira Subašić, the Association Movement of Mothers of Srebrenica and Žepa Enclaves, BiH

While listening to Mirsada, I somehow experience Srebrenica again. I thank you, Mirsada, and all the mothers who work for the cause of truth and justice.

As regards the witness support, we were witnesses, we, the Mothers of Srebrenica and Žepa enclaves, before the ICTY and the BiH War Crimes Court. Sometimes I find it funny to hear of any support. I will give you one example. I received a summons from the Court of Bosnia and Herzegovina, and if I did not appear, I would be fined 5,000 convertible marks (KM). But nobody prepares me in any way whatsoever. Sometimes I am hungry because I did not have time to eat, so I have a sandwich and they say they would deduct 2.10 KM from 15 KM. Sometimes I take a cab for 23 KM. Nobody asks me how I am and nobody sees me off. The trial ends, then families curse my mother, I get upset and curse back. I take a cab back home and cannot sleep the whole night. First I am angry with myself for accepting it, and later I am angry with the judiciary.

Then all kinds of projects are developed by the UNDP, the Swiss Embassy and many different sorts of organisations. They act cleverly, but victims have no use of that.

This is just a sort of introduction, just to tell you what kind of support we receive from them. I am really disappointed. No, I do not ask anyone to pay me, but there is no dignity in the treatment of witnesses. [...]

Comment from the audience:

Gordana Đikanović, Association of Families of Kidnapped and Murdered People from Kosovo and Metohija

Although this is more of a talk for legal experts, judges and lawyers, even we, lay people who carry the burden of these events should have an opportunity to speak. So, I will speak in lay terms, and apologise to those who know law better than I, as I believe most of you do.

As regards Serb and non-Albanian victims – I will talk about Kosovo and Metohija – no one who ordered and committed crimes has been punished. The ICTY has raised several indictments, and it all ended in fiasco for a lack of evidence. My association believes that this failed because of insufficient witness protection. The witnesses disappeared and were nowhere to be found, which resulted in acquittals.

We have no better experiences with the Kosovo and Metohija courts either. They are combined courts where both local and EULEX judges work together. I will give you just one example: the Banzić case in Prizren. That name does not mean anything to you, but perhaps Mr Mattsson may recognise this case. There were two women victims who went to Prizren five or six times as witnesses. Five Albanian men were arrested and indicted; when I say Albanian, I mean ethnic Albanians, but I am not trying to equalise the Albanians that I am talking about now with the whole nation. Those two women – one was raped and the other's husband was killed – recognised the men who had committed the crime, and it seemed that the justice would be satisfied. However, in the end, two or three received conditional sentences, and others were released.

The biggest problem that we, as associations, encounter in our work – trying to help the victims, so that justice for them and their families is served – is that witnesses get old, die, and there are fewer and fewer of them alive. Even if they find the courage to testify, it still does not mean that justice will be satisfied, that verdicts will be satisfactory, in line with their expectations. The biggest problem, to summarise, is that the witnesses are getting old and dying, and there is no institution, at least in Serbia, and I do not think at the ICTY either, where witness statements might be used as evidence even after their death.

We keep running in circles and years are passing by. It has been 15 years since the first kidnapping, since the conflict in Kosovo and Metohija took place, and in Croatia and Bosnia and Herzegovina it is even longer. So we are really afraid that in the years to come not much will be resolved.

Thank you.

*Comment from the audience:***Emo Čekić, Association of the Families of Missing Persons from Vogošća, BiH**

My name is Emo Čekić. I come from Vogošća, Association of the Families of Missing Persons from Vogošća.

I will follow up on witness protection. I have been following trials and I see that nobody takes care of these poor witnesses when they come to trials. I cannot say that the prosecutors are the ones who should take care of witnesses, but this gentleman was right to say: “Our state has done nothing to protect those people who give evidence of crimes.” It is really impossible to live through these trials, and then get out of the same door together with me: I, being the one who monitored the trial, and the person, being a witness at the trial.

All of us should be concerned about this: what will happen after these people are released from prisons? I already hear some people say: “We will no longer testify and give evidence because our voice is not heard, and criminals are set free. Why then do we, the victims, expose ourselves to something we do not deserve at all?”

Thank you.

Mats Mattsson, Head of the Executive Division, EULEX

I can respond very shortly about the witnesses. I heard the question “Why do we, victims, actually give testimonies?” It is a very good question, and I know everyone who has been working as a prosecutor – I have been in that for over 20 years – knows it is not always they are treated badly. This is something that I think all justice systems have to try to improve. It is very much with the help of other organisations outside the justice system that I think may actually build up and provide assistance. So they need a lot of support, and in the long run I think it is better to have that kind of support.

I can also comment on the war crimes investigations, and Kosovo was mentioned. There is a big problem in the war crimes investigations and this is why the witnesses are so important. The big problem is that the victims and witnesses, and the perpetrators live in different countries. The countries are more or less defending the guys that are within their territory. This is not specifically related to Serbia, Kosovo, Bosnia, Croatia. They are all states because they have borders and internal administration. This makes the work of investigating these crimes complicated.

The only solution that I see is improved and increased cross-border cooperation. That is extremely important. The judiciary and the prosecutors have to be able to speak to each other, to really be on speaking terms. That is the only solution. I worked here in Bosnia in 2004 and 2005, and now for a year and some months I have been in Kosovo working on these things. I can say it is absolutely important that you and all the politicians, police officers, prosecutors and judges should work on cutting down the problems of communicating directly, face to face. That is the only solution I can see. Then it will be possible for brave witnesses to come forward. The witnesses that do come forward are brave because they are badly treated, and they are coming forward anyway. And that is very admirable.

Thank you.

Question from the audience:

Bakira Hasečić, President of the Association of Women Victims of War, BiH

I am afraid that we are telling this – all our sorrows, suffering and hardship that we have gone through as victims – only to ourselves and to those who work with witnesses and victims. I can see that those who hold our destiny in their hands are not present here. We know that the ICTY is nearing its end, and we should not discuss victims and witnesses, us who appeared before the ICTY. Some of us are satisfied and others are not.

The first time I was in the ICTY, I travelled on the same plane with the defence counsel of the war criminal. I felt like jumping on his head, but he managed to escape taking another flight to Belgrade.

I believe that Ms Sara Rubert is well aware of how many identities of protected witnesses in war crimes cases have been disclosed in the past three or four years. Although many of us asked to appear publicly without any protection, they would not let us. We know what kind of responses we received from the ICTY. So we should not fool ourselves. The ICTY's treatment of victims and witnesses is no better than that of the BiH Court – nothing but procedures. There is one difference: you travel there by plane, and here you take a taxi, or they come to pick you up, but you do not go on foot.

What is important for Bosnia and Herzegovina is that the Law on Protection of Witnesses under Threat and Vulnerable Witnesses is very bad. The court needs us while we are at the stand, and once we leave, nobody cares any more. There is a lady in the courtroom who asks you if you need anything, and you can help yourself to juice and a cup of water. There is a bed, and sometimes Bakira takes a

rest as she waits the whole day for her turn. Then you are there until three or four in the afternoon, and you have to pay for a sandwich of 2.65 KM which is then deducted from a daily allowance of 15 KM. This happened to me during one trial.

And there are other women who suffered more than myself, raped women who lost all their family members, as this lady sitting over there and many other mothers. Is there anything worse than losing your children? It is one of the worst crimes imaginable. But what can you do? Is this going to be left on paper? Is it going to be an exchange of stories? What will be done to improve this situation?

We can see how victims are treated in victims and witnesses departments at lower instance courts. We know what the situation was in East Sarajevo. We struggle to get witness support in the Prosecutor's Office in court, and it is probably due to the UNDP, or someone else, it exists now. In Republika Srpska this job is envisaged, but deleted from the budget. We attended a trial in Bijeljina where a victim, who was a minor girl at the time of the crime, came across a war criminal in the corridor. So they do not have a separate department.

What can be done to remove war crimes trials from lower instance courts where they are not sufficiently equipped? We are aware that the international community will not be here all the time. But if the international community equipped one such court, whereas the other side is obstructive and unwilling to hire two more employees, what can we do to press them? What can we do in Bosnia and Herzegovina, and how can we strengthen and equip the Court and the Prosecutor's office? [...]

Comment from the audience:

Ahmed Grahić, President of the Union of Bosniak Associations of the Missing and Captured, and President of the Association of the Missing Persons of the Municipality of Zvornik, BiH

I kept silent, and silent, and silent for years. And I am still silent. This means that I am not happy about many things that have been happening, with everything that has been done to us so that we as victims not feel not even one per cent of satisfaction that would be acceptable for us.

My name is Ahmed Grahić and I am the President of the Union of Bosniak Associations of the Missing and Captured, and the President of the Association of the Missing Persons of the Municipality of Zvornik.

I had an opportunity to follow the trials in Belgrade. I will not talk about the witness protection now, but would rather reflect on the Office of the Prosecutor of

Bosnia and Herzegovina. There is a category of witnesses that no one cares about and no one even asks them to give testimonies. Those witnesses have information on mass graves sites, and they are very important for us. We are aware that in 10 years there will be no need to prepare witnesses or ask for their protection because they will die of old age, and there will be no witnesses left. What is important for us is how to encourage a potential witness who can show us today – tomorrow may be too late – the location of mass graves.

It is really sad that in Bosnia and Herzegovina we are still looking for over 8,000 missing persons. Are you aware how enormous this number is? I am not dividing this number into Bosniaks, Serbs or Croats. Eight thousand missing persons!

I would like to appeal to the Office of the Prosecutor, and I see Mr Brkić is here. Please, Mr Brkić, can you try to do something to compel other institutions dealing with these issues to try to reach these witnesses? To me it would be important if someone could point to a mass grave site where one or two or three hundred bodies can be found. This, I think, is more important than being a witness who testifies at the court, and then the indicted person is released for a lack of evidence. Please, do deal with this problem.

Thank you.

Question from the audience:

Zijad Smajlović, Association Justice, Peace and Return, BiH

The title of this panel is Tribunal and Local Judiciaries. As a witness, I was expecting more. It is the fact that there are fewer and fewer witnesses because age does its work. I would like to congratulate to all the witnesses who came forward because they are truly brave people. [...]

I could have about 10 questions. For example, what is to be done with 26,000 persons who are potentially involved with Srebrenica? No one was brought before the face of justice and half of them are in Serbia. Then we hear the prosecutor from Serbia saying that his credibility is endangered by such and such verdicts. However, we know very well that his credibility is endangered because he is not doing his job. 26,000 people are potentially responsible for the genocide in Srebrenica, and we know that genocide did happen in Srebrenica as it was confirmed by judgements in the Krstić and Tolimir cases, and by three or four judgements at the Court of Bosnia and Herzegovina. These are the facts, and no one can ignore them. I am sorry that the Chief Prosecutor from Serbia is not here any longer, so that I can ask him when he is planning to start doing his job because approximately 60 percent of the people are hiding in Serbia. That is how endangered it is.

I have one more question for the Office of the Prosecutor of Bosnia and Herzegovina. Why do the persons who have been involved in the genocide in Srebrenica work in state institutions? There were about 810 of them, and now there are about 550. Knowing that, what can witnesses or victims expect when they go to court to witness against a criminal if they see this very person at the table across, as an investigator, judge, or as a member of State Investigations and Protection Agency, or intelligence agencies where these people work.

Associations have given full support to the BiH High Judicial and Prosecutorial Council, but – please understand – only to the extent of the HJPC doing its job, bringing the criminals to the face of justice. However, if that Court relativises the crimes, as the ICTY has done in its last several verdicts, they will not get such a support. All they can expect are protests outside the Court building.

Muris Brkić, Investigator, BiH Office of the Prosecutor

I would not want us to close this panel without replying to this lady regarding the exhumations and the Srebrenica list.

Two years ago, when the Prosecutor's Office of Bosnia and Herzegovina took over the exhumations, I thought things were going to move fast because we had a special department dealing only with that. However, we fell into a trap, and worked on exhumations without directly relating them with the cases or the crimes committed. We still have a problem with information sources because they come from the Missing Persons Institute. Often we do not know whether these sources are immediate perpetrators or witnesses to the crime. This is something that I am not pleased with, but we simply do not have that information without which we cannot lead the proceedings. We only deal with exhumations, that is, with finding of the mortal remains.

Regarding the Srebrenica list of over 23,000 people, the mistake was made by the commission that was working on this case. Everyone who received a salary in July 1995, and was in the units in that area, was put on the list of participants. Three years ago, we were literally swamped with cases against police officers who were suspended because there was an investigation conducted against police officers from the RS Ministry of Internal Affairs. It took a year to prove that they did not participate and commit the criminal offence they were charged with. So this was a sort of pressure used against the Office of the Prosecutor because during an investigation we have to prove not only that something happened, but we also have to remove the doubt that something did not happen.

Moderator, Amela Ćosović-Medić

I have to say that a clear message coming out of all this – using Ms Mirsada’s words she said at the beginning – is that hope for justice is why you all came and told your stories. However, this process is simply seen as justice coming too slowly and sometimes too late. Clearly, the message is that in the field of victim and witness support there is so much more work to be done across the region and across all of the countries of the former Yugoslavia.

I can only say that everything we said on harmonisation, on the regional approach, on making sure that everybody has access to justice, indicates that we need to work strongly together to ensure that the state, the national ownership is also there. We need to continue to do this work. Unless we do so, the question is whether there will be victims and witnesses left to tell their stories and whether justice will be served. So, there is the field that we need to continue working on, and even with the ICTY, as somebody said, there will be lessons learned and shared, and a message from the ICTY. I am sure that amongst those will be also those who will say what was good, where the improvements can be made, and where they are going to find national partners to share their stories and continue their work even after the ICTY finalises its work.

With that and no further comments, I am going to end this panel and invite you all for a coffee break before the next panel starts.

PANEL 3

REPARATIONS FOR WAR CRIMES VICTIMS IN THE FORMER YUGOSLAVIA: IN SEARCH OF THE WAY FORWARD

Moderator:

Jonathan Sisson, Regional Dealing with the Past Advisor, Human Security Division, Swiss Federal Department of Foreign Affairs (FDFA)

Panellists:

- **Alexandros Zervos**, Deputy Chef de Cabinet, Office of the President, ICTY
- **Peter van der Auweraert**, Head, Property, Land and Reparations Division, International Organization for Migration (IOM)
- **Juergen Schurr**, Legal Advisor, REDRESS, UK
- **Sandra Orlović**, Executive Director, Humanitarian Law Centre (HLC), Serbia
- **Andrew Mayne**, Representative, UN High Commissioner for Refugees (UNHCR), BiH
- **Henrik Villadsen**, General Legal Counsel and Head of Legal Affairs, EU, BiH
- **Thomas Osorio**, Advisor, Rule of Law and Human Rights, UN Development Programme (UNDP), BiH

Moderator, Jonathan Sisson

As you know, this is a conference commemorating the twentieth anniversary of the International Criminal Tribunal for the former Yugoslavia in The Hague, which was established in 1993, under the premise of justice in addressing the terrible crimes that were committed, and were being committed at the time when this Tribunal was established. It is also in the year of 1993, twenty years ago, that the Special Rapporteur of the UN sub-commission, the UN Human Rights Commission in Geneva, presented his first report on the issue of the right to reparations. This was Mr Theo van Boven – some of you might know him – presenting his report on the right to reparations. This report was then further developed within the UN system, and eventually in 2005 it became the Basic Principles to reparations. This is really the founding document, one of the primary documents establishing the right of victims to reparations. We will be hearing more about that document this afternoon.

Actually we are looking at a long history, not only with regard to the issue of justice and the judicial procedures that we have heard about during this conference, but also with regard to the issue of reparations. This afternoon, we have gathered a number of experts and resource people around this table as panellists to present some of the reflections that have gone on around the issue of reparations in the former Yugoslavia, in the Western Balkans, particularly with regard to a report which was commissioned by the ICTY and carried out by the International Organization for Migration. The author of that report is here, together with his colleagues from that office, so we will have an opportunity to learn more about the specific recommendations presented in that report commissioned by the ICTY.

Yesterday, in the first day of this conference, we had a working meeting, taking advantage of the presence of experts at this conference and resource people, to reflect upon the issue of reparations ensuing from this report, and not only focusing on this report. We are going to share with you some of the outcomes and findings that were formulated at that working meeting yesterday. We have a rapporteur from that session yesterday who will present those findings.

Then we would like to engage in a discussion at the panel on a number of issues ensuing from the working meeting yesterday and in connection with the report, perhaps, more importantly, ensuing from reflections of this audience here, this afternoon. What we are proposing to do is not to begin with the panel discussion and presentations, but to begin with you.

One of the important issues raised in connection with this report was that any comprehensive programme on reparations should be developed with a victim-centered approach. We have heard that there are a number of representatives of victims' organisations in this room, a number of you who are working with victims' organisations or are victims yourselves. We would like to give you first the opportunity to share with us your experiences with regard to the issue of reparations and what you think is needed today in the area of reparations. So, what do victims want with regard to reparations?

What do you think should be done with regard to the issue of reparations?

Comment from the audience:

Murat Tahirović, President of the Association of Victims and Witnesses of Genocide, BiH

Thank you for changing the course of order. My name is Murat Tahirović and I am the President of the Association of Victims and Witnesses of Genocide.

What do victims want? Several things, when we speak about reparations. Probably we speak a lot about material compensation, money that the victims should receive. However, this is only one element necessary for the victims to be adequately involved and included in life of the rest of the community.

What is more important, in my opinion, than the material compensation is lustration which has been neglected in Bosnia and Herzegovina, and failed later. It was given up on altogether. Most of those who took part in the crimes are now part of the authorities, starting from local communities all the way to higher level institutions; unfortunately this is not something which would provide the victims with greater satisfaction and enable their adequate participation in society. [...]

Comment from the audience:

Jasmin Mešković, President of the Camp Inmates in Bosnia and Herzegovina

Reparations are a very important problem that former camp inmates face. During the break I talked to Mr Peter van der Auweraert, and I must say I have not seen a better report than the IOM's report dealing with those key problems, namely the reparations for torture victims. Camp inmates are the only category that has not resolved their issue yet. There is not a single letter written on this. We worked on a proposed law and submitted this bill to the institutions of Bosnia and Herzegovina, and we expect it to be discussed by 10 December this year.

I liked three key issues that the International Organization for Migration defined in their report, primarily establishing the exact number of torture victims. The second information pertains to the reparations for torture victims in accordance with the economic situation in the country. And the third is the memorialisation of the sites of their suffering.

I would kindly ask you – on behalf of the Association of Camp Inmates of Bosnia and Herzegovina which has 59 associations and represents 55,000 camp inmates – to exert your influence in discussions with the authorities regarding the rights of torture victims. I have already submitted this proposed law to Mr Peter van der Auweraert and I hope that he will find time to translate it into his official language in order to be ready for the next meeting on Friday with representatives of the Council of Ministers.

This is our last chance that we enact this law on the rights of torture victims. It is planned that this should be a unique law. I am not referring to Bosniak victims only, Serb victims only, or Croat victims only. I refer to all camp inmates in general. Please make any effort necessary in the talks with the authorities of Bosnia and

Herzegovina and exert your influence so that this law is finally passed.

I would like to extend my congratulations to those who worked on the report on reparations for torture victims on the territory of the entire former Yugoslavia.

Comment from the audience:

Branka Antić-Štauber, President of the Association Power of Women, BiH

Good afternoon. Thank you for the excellent conference organised in Sarajevo today. I would like to congratulate you on the twentieth anniversary of your work, regardless of all negative or positive comments. My name is Branka Antić-Štauber. I am the President of the Association Power of Women. For almost 20 years I have been working with victims.

What I would like to say, as a doctor – I am not a lawyer or anyone who should judge anyone's guilt or innocence – is this: I maintain that the difference between justice and fairness should be made. Fairness is what our victims need; fulfilment of one part of reparations, or more precisely, of the part that relates to the rehabilitation of the victims. Through proper rehabilitation, the tension that we have witnessed here today would be reduced. By rehabilitation and meeting all social, health, psychological, economic and material needs, we can reach a situation where persons traumatised by war events – not to mention the multiple problems of women who are war rape survivors – we can attain a situation of redress. Many institutions are needed to help those women. I talk to these women, their husbands, their children, their grandchildren on a daily basis. We have a concentric circle of extending the trauma to future generations. We will not be a healthy society unless we have a proper rehabilitation, remedy and satisfaction of all the needs of these people who are true heroes, who suffered so much and survived.

One more thing which is very important: children and work with children – we must not forget this – and the trans-generational transfer. If we do not work with victims today, we certainly will not have a good future. In other words, if we follow this model, it is certain that we will not have a good future, and we all strive towards that.

*Comment from the audience:***Marija Slišković, President of the Association of Women in the Homeland War, Croatia**

Let me speak once again about the women from Vukovar: women who were raped, women that have only been discussed in the last two years since this book was published.

What women of Vukovar always emphasise and what they truly want is justice. Without justice we remain in a situation where the memory of a nation contains only things that can cause bad relations between nations in the future.

One more thing, as the doctor said earlier: what is necessary is psychological assistance. For the first time this year, women who were raped, in Croatia have been receiving organised therapy. I believe too much money has been spent on different types of support to civil society while victims have remained aside.

Legal assistance is something that those women do not receive even today. And that is something that we have been working on, something we have been insisting on. The UNDP gave certain funds as support to the Ministry of War Veterans to make a law. However this it is not clear to me because these funds amount to less than the price of a new car for the Government of Croatia. So, the law is obviously not going to be adopted this year. We hope for the next year and we hope that it will finally be the first law covering the segment of women that are raped, and the rights of those women. This law is probably going to be useful to other countries as a starting point of some sort. [...]

*Comment from the audience:***Fikret Grabovica, President of the Association of Parents of Murdered Children in Besieged Sarajevo, BiH**

I am Fikret Grabovica, President of the Association of Parents of Murdered Children in Besieged Sarajevo. Several sentences only, because I didn't have the opportunity to speak earlier. [...]

As far as reparations go, I think they are very important for several reasons. I will state only two practical reasons that are of concern to the population that I represent. Since many parents who lost their children had children again in the meantime, some of them much later in life, and some of those parents lost even two children during the war, and they also have families again; they are all much older parents now trying to educate those children. Their economic situation is not good and education is very difficult and expensive in Bosnia and Herzegovina.

So, many of those parents are not able to provide appropriate education for their children.

In addition to that, many parents – we can even say all the parents who lost their children during the war in Sarajevo – have fallen ill with different illnesses, and they need treatment and psychotherapy. They need to be taken care of. But all that costs a lot, and they cannot afford it. As a result, they are in a very difficult situation, and many of those people would really need reparations.

Moderator, Jonathan Sisson

Thank you very much for those comments.

I would like to come back to our panel. My intention in the opening of the session in this way was really to inform our discussion based on your reflections. Because I think that experts, people that deal with these issues on a daily basis, are the people sitting in this room in various functions, particularly the victims themselves who have been heard directly, but also those who have been working with victims as we heard as well.

Several issues were raised. If I could just try to summarise: the issue of material and non-material forms of compensation or reparation. Many people would say: it is not about the money, it is about education for children, it is about health services, it is about – as we heard – providing conditions so this could be a healthy society.

Looking at the remarks on this side, about the second generation, the trans-generational effects of violence and trauma – consequently, we are actually looking towards the future, providing conditions for a healthy future.

The issue of lustration was mentioned; the fact that the people who are responsible for crimes are still in positions of power and authority in this country and elsewhere in the region. The issue was also mentioned particularly with regard to the issue of benefits for people who were interned in camps and also rape victims. Very different issues, torture victims, rape victims have to be dealt with in a different way. These are also gender issues at stake here. So how do you develop a reparation policy which is gender-sensitive and victim-sensitive at the same time?

Of course, what belongs to this is also the legal framework. How do you develop a legal framework which will serve these different needs? And is there a regional approach to this, or it has to be done on a national level because each country has its national legal framework.

I would now like to go back to our panel and begin reflection, and respond to those issues raised by you. First we would like to feature the report. One of our members of the audience mentioned specifically the IOM report. I would like to call on our colleague from the ICTY, Deputy Chef de Cabinet, Alexandros Zervos, to tell us a little bit about why it was that the ICTY gave a mandate to the IOM to prepare this study on reparations.

Alexandros Zervos, Deputy Chef de Cabinet, Office of the President, ICTY

Thank you very much, Jonathan. On behalf of myself, President Meron and the entire ICTY, I would like to thank you for all your assistance and for chairing this panel. I would also like to thank Peter van der Auweraert for the really fantastic report which will form the basis for the discussion today. And indeed to thank all of you who have braved it out till this last panel of the conference and who have already provided such interesting and stimulating comments on which we can base our discussion.

However, let me go immediately into the background issue. As President Meron noted in his keynote address today, the mandate of the ICTY was very clear and very limited from the start: to try particular individuals accused of crimes within the Tribunal's jurisdiction and to establish whether they were proved beyond a reasonable doubt to have committed those crimes. The ICTY through its operations, and indeed other tribunals, as they began to operate, quickly understood that such trials were not sufficient to address the entire trauma that exists, all the problems which come in post-conflict situations and which are caused by these crimes.

Many ICTY Presidents, including the former President Judge Patrick Robinson and Judge Theodor Meron, approached a multitude of interlocutors, including the Security Council and others, specifically on issue of reparations, asking that the international community supplement the work of the ICTY and expand into that field. Very honestly, when the Presidents approached the international community on reparations, the reactions were very negative. The ICTY was told to focus on its mandate. Any time the issue of cash or material goods was approached, donors were not happy at all. So, facing this particular response, the Tribunal decided to task or ask for the assistance of the IOM, to explore potential possibilities for moving forward on the reparations issue. Because the Tribunal saw reparations and broader issues to be so important, we thought we needed a fresh look, since our activities and efforts were, as clear to everyone, not successful up to that point.

We got this very useful report which, among other things, provided the basis for discussions, which is why we included this issue in our twentieth anniversary conference. It also looked that the report had a very interesting perspective, which was that the ICTY may not be the right institution to move this forward. The question of which institutions are the correct ones to address this issue of reparations and make sure it works is welcomed in our discussion.

Finally, I just wanted to say that I was so encouraged by Mr Tahirović's comments about how reparations go broadly beyond the material issues, and encompass a whole range of things. I think that is the very sort of material we should keep in mind as a useful contribution as we move forward in our future discussions.

Moderator, Jonathan Sisson

Thank you, Alexandros.

Now a few words of explanation why we are having this panel at the ICTY conference. Let us just move on directly to Peter van der Auweraert. The IOM was mandated to produce a report on reparations, large scale reparations from a comprehensive perspective. So, Peter, could you fill us with some of the details, some of the main points of the report that you produced?

Peter van der Auweraert, Head, Property, Land and Reparations Division, IOM

Thank you, very much. Let me first start by thanking the ICTY, the former President, and some of his former collaborators who are here today, who work today for other organisations, and by thanking the current President of the court for asking the IOM to do this work. I thank you very much and I think it is very appropriate that in a conference on the 20 years legacy we talk about reparations. And that is not the fault of the ICTY, but the 20 years of its legacy are also a legacy of the international community which has invested all its resources in punitive justice.

We have heard a lot of criticism today about things that could have been done better, but the fact remains that there has been an enormous investment, material, political, and technical in punitive justice. If we compare the amount that the international community has invested in restorative justice, in reparations for victims, we see that it is very small, compared to the efforts that have gone into punitive justice.

This is not unique to Bosnia. An example that I like to use, where the IOM has been involved in assisting the government in providing reparations, is Sierra Leone in Africa. When we look at the trial of Taylor who was one of the warlords – the amounts may not be entirely correct – but the cost of the trial was about 250 million dollars to have one person convicted. At the same time, the international community – and to give it with some order: UN organisations, UN Women, the IOM, the UN Peace Building Fund – we were all struggling to get together 6 million dollars to provide reparations to thousands of victims. So this issue of where the international community puts its money is in 250 million dollars on the one hand, 6 – 7 million dollars on the other hand. That is not an argument to say that the ICTY or the Sierra Leone Court should have received fewer resources – that is clearly not an argument. But the argument is that the victim side also needs this type of investment and this type of resources.

The second thing: a thank you note to the associations and the people here in this room that were very willing to give their time to talk to us about what they feel about reparations. I can imagine that 20 years after the conflict ended and another international person coming to ask you “So what exactly is it that you want?”, you may be tempted to say “Please, I do not want to waste my time any more on discussing the same issue over and over again”. I very much appreciate that people took their time, both the people in this room and the people to whom we spoke – they are mentioned at the end of the report – thank you very much; we would have not been able to do the report without your input.

Let me be very blunt in terms of that I am not going to go into the details about the report – the report is out there; I have presented it already here in Sarajevo, where a number of you were present also. I think, as international community but also as national governments, we have to reflect on how can it be that after all the money that has been invested in Bosnia and Herzegovina, we still have situations for victims of sexual violence, people who were tortured in camps and have not even been recognised, do not have access – the parents, as we have been explained in Sarajevo – to psycho-social care, health care. How can that be?

That was for me maybe the most shocking finding. Initially, despite all the efforts, despite all the work that civil society organisations are doing, there are really people out there who have not had access to the most basic of health services or psycho-social services. So, where has all the money gone? And the international community has put enormous amounts of money in the Balkans.

Yes, I understand, reparations are politically sensitive and they comprise all sorts of issues, but frankly, that is something that we need to talk about. Why is it that there are victims out there who are not recognised, and they do not have access to services? And when you talk to the international community, donor states, governments, they will say: reparations are too expensive. What you will

say is: Well, it is not even about additional money, it is the question of how you are spending resources that are there today. Reparations, providing people with access to basic services, are not very expensive and there is money available to spend, and more could have been done with the money that is out there.

I think that is one of the key findings. I think that the key issue that the report hopefully raises is this issue of that it is really not that complicated to do, frankly. It is not rocket science to make sure that people have access to the services that they need and I think more could have been done with the resources that are out there.

In terms of what the report tried to do – I was very encouraged by the kind words that were spoken earlier – it is not to say: Oh, here is a model of reparations and please go ahead and implement what we are suggesting. It is rather to help the discussion and say: Let us break down this issue of reparations into a number of issues that we need to discuss together. Who are the victims? What type of benefits do victims need?

I was very encouraged – and this is very important – with this message that you are giving also to the governments: for the victims it is not about the money only. Material reparations are important, but there is also the symbolic element of recognition. And recognition does not cost millions of dollars. That is something that can be done. It is not just the material aspect; it is also about access to basic services.

So, I think, we try to maybe break down reparations as a concept into hopefully useful topics that we can discuss and that politicians need to discuss to move from: Yes, everyone has a right to reparations, to: How do we actually set up a programme?

I wanted to highlight maybe some of the points that in the different presentation have raised some discussions. I think that the first of the issues which we tackle in the report, and Jonathan mentioned it, is: should efforts be done on international level or on regional level? In the report based upon the consultations that we had, on the considerations that we listed, there is a suggestion that a regional approach may be more appropriate.

One important element for me there – and that is not me, but that is what I learned from people – is this element of recognition. Is it really possible for victims to be recognised, if there is not a regional effort for recognition? Because people do need to be recognised by their own community. Everyone recognises their own victims. The question is how we get to a point where everyone together recognises that in all communities there have been victims.

I think one of the great things of the law that will hopefully be discussed on 15 December in the Parliament, is exactly that it looks at victims of torture. Not

Bosnian victims, not Croatian victims, not Serbian victims, but people who had been subject to torture. And how do you get that element to apply to all of the victims – the recognition – if you do not do a regional effort? It does not mean that national effort should not go forward, but hopefully, eventually, at least in the report we suggest that regional effort might be the best approach.

We also discussed the issue, and maybe that is already too technical – and I will be happy to discuss it on a separate occasion – but one of the questions that are often raised is that we talked about reparations. Are they related to the violations or are they related to the damage that people individually suffered because of the violations? In the report, based upon international experience in other countries, we suggest that, given the thousands and thousands of victims that are there in the former Yugoslavia, it will be almost impossible for a reparations programme that tries to be comprehensive to look at each individual and identify exactly what that person lost. We have seven people who are victims of torture. Is it really possible in each case to identify: This person – that has been the effect, that person – that has been the effect? Is that feasible or is it better to think about reparations that are based upon violations – everyone that has gone through torture has a right to a remedy – and link it not to the specific damage but to the violation? So, that is one of the conceptual issues that we discussed in the report.

Maybe as a final point, I think that it is an important message to give to the governments, also. First of all, I think there is a consensus amongst people who work on these issues and the people in the room here that a comprehensive reparations effort is required, and that it is important to pursue different initiatives. For example – we have discussed this earlier – I think that the law for torture victims is important and that the Parliament should adopt it. It does not mean that that would be the end. That would be the first step and then still all the victims also need to receive similar type of treatment, in a way.

I think, a comprehensive effort is critical and it is important to highlight it to the governments. And that is what I mean when I mention the work a lot of you have been doing on strategic litigation: when governments say: “Well, we cannot afford to do reparations, comprehensive reparations, because it is too expensive”, we have to say: Well, it is not a matter of are you going to spend resources. If you are not taking proactive action in establishing comprehensive reparations programme, you will have courts, like the European Court and the Human Rights Court that will tell you to pay money. And if you are a politician, what is the best thing to do? Is it better to be proactive and actually have a law and take credit for setting up a programme, or is it better to pay out compensations when the Court in Strasbourg forces you to do so? And I think it is really important as a message. Reparations are not an optional thing, they need to be done.

Let me end this with the next steps, because we have been going around

presenting the report. We have been in Kosovo, we have been in Serbia, we have done a presentation here in Sarajevo, I will do a presentation to the European Commission in January, we are going to Banja Luka on Friday to present the report to the Council of Ministers there, and we are also trying to organise presentation of the report in Croatia. The idea is not to say: Oh, look at this fantastic report! The question is to see what the next steps are now. How can we now move from all these discussions that we have had – and you have had them much longer than I have – about the issue of reparations to an actual reparations programme for all the victims of international crimes committed during the Yugoslav wars?

One important thing – we have discussed this before – and I can make a commitment here. The IOM is an organisation that is committed to supporting whatever process nationally, regionally is there. If our technical assistance is required, if it is useful, we are happy to support. But we, as an organisation, cannot support the reparations. We do not have a political mandate to work with governments at a political level to move forward on this issue of reparations. So it is a plea to other organisations in the room, whether we can partner up with an organisation like the OSCE, like the European Union, like the European Commission, who can carry this far at the regional level politically, because that is not something that I can do. I can, as a technician, provide input, technical assistance, support when working together here in Bosnia and Herzegovina with the UNDP in the context of transitional justice strategy. But politically, we cannot carry this far alone. So, we are desperately looking for partners to work on this.

Thank you, very much. I hope I have not taken much time here in the room, and I thank once again to all the people that were available to be consulted about the report.

Moderator, Jonathan Sisson

Thank you, Peter, not only for the presentation here, but for all the work that you and your colleagues did in producing this report. Again, we think it is an excellent basis for discussion, and we are very encouraged by the steps you are taking.

With certain issues that you have raised, we would like to deepen in our panel discussion in a couple of minutes. Speaking about next steps, however, I did mention that we had a working session yesterday with some of the panellists here and with some additional experts, to prepare this panel presentation and identify the issues that, from our perspective, are important to see and how do they measure, how they fit with the issues that you are seeing. This is why we begin with your perspective.

Now I would like to ask Iwona Zakowska to come up here and present. She is the rapporteur of our working session, and she can present some of the findings and results of our discussion yesterday.

Iwona Zakowska, Rapporteur from the working session

Thank you, Mr Sisson.

The working meeting yesterday gathered a wider group of resource persons and experts on reparations. And our distinguished panellists present here today were part of this group. This verbal report will be a short outline of their contributions and the discussions at the workshops rather than detailed meeting minutes.

We began the session with a round of introductions of the members and a brief update in regard to their work related to reparations in particular. Then we proceeded with introduction of the genesis of the IOM report on reparations for wartime victims in the former Yugoslavia. Peter van der Auweraert has provided an update of the presentation of the report in terms of what was done after the report was published, with insight where and to whom it was presented, highlighting that the aim of these events was not to publicise the report but rather to discuss the report and suggested steps forward. This process, as informed by Mr Auweraert, will continue in the future as well.

Following the presentation, there was a discussion on the report, which focused on the findings and recommendations of the same, but also went beyond the report to include other issues closely related to reparations. Some of the key issues that the working meeting discussed were: reparations have been identified as one of the most neglected aspects of the transitional justice in the region, leaving many victims that suffered deeply without effective remedy and help. The necessity to adjust language and approaches when discussing reparations with different target audience, such as the international community, national politicians, victims and general public is important, in order to ensure common understanding of the subject matter, which today seems to still be lacking.

We also discussed the dichotomy between the regional and national approaches and the consensus in our group was that both approaches are equally important and they should not be looked at exclusively, but should go hand in hand and mutually reinforce and complement each other. Ongoing regional initiative such as the Sarajevo process, the RECOM initiative and their significance in terms of using lessons learned in the process of establishing comprehensive reparations effort were considered. In the same line, positive national examples can be used to build regional efforts to the extent which is possible.

In terms of political initiative, the group agreed that a clear demonstration of commitment from political actors, both at national and regional level is needed to move forward in the area of reparations with clear acknowledgment, though, that this process can be at times hampered by other conflicting and diverse priorities of different governments.

The group also discussed the need to balance expectations and preferences of victims and others stakeholders in setting up a comprehensive reparations efforts, with the limitations imposed by feasibility, resource and practical considerations of such efforts.

The discussion also included the needs to address the issue of mobility of the victims, as many victims have suffered human rights violations on territory of states where they used to live, but they are no longer there.

In terms of next steps, the following items, which I will shortly present, are not something that the group has agreed upon because it was not a decision-making forum, but rather some specific suggestions that were put for consideration and we would like to put for your consideration, as well. These next steps could include: actions to identify an international and a regional organisation that could take the issue of reparations forward; organisation of regional political meeting at high level that would build on the existing discussion and momentum for reparations, reinforcing discussions on national and regional level through organisation of targeted workshops, involving variety of stakeholders, associations, other civil society representatives, international organisations, government organisations.

The fourth point which was brought as a next step suggestion was discussion on identifying different funding modalities. One issue was the seizure of ill-gained wartime assets as one partial source of funding and building up a picture of the cost associated with the reparations effort.

The main conclusion of the working meeting was that there is a clear need to organise and hold further national and regional dialogue sessions on reparations, including both civil society actors with a key role representatives, government, and political parties.

I will stop here and leave the floor to our distinguished panellists.

Thank you.

Moderator, Jonathan Sisson

Thank you very much, Iwona. Thank you for the work in typing up those notes.

So, one of the issues that was raised yesterday was the issue of common understanding. What do we mean when we are talking about reparations?

We have with us a legal expert from REDRESS which is an organisation focusing and specialising on the issue of remedy and reparations for victims, and I would like to ask you, Juergen Schurr, if you could tell us the international norms and standards with regard to reparations. What is the definition of reparations? In this regards also, perhaps a word or two about who is a victim. And who are the potential beneficiaries of reparations programmes?

Juergen Schurr, Legal Advisor, REDRESS, UK

Thank you, Jonathan. I also thank the ICTY for inviting us to participate in this important meeting.

I think the fact that we are having a discussion on reparations is also an indication that reparations are actually part of the legacy of the Tribunal, because without the Tribunal and its work of the past 20 years we probably would not be as far as we already are in regard to the law on reparations. If you look at developments on the right to reparations under international law since the establishment of the Tribunal, there were quite significant developments, including, in particular, the UN Basic Principles that were mentioned before by Jonathan, on the right to reparations. And that very clearly provides an outline on what reparation actually is under international law. It very clearly spells out that reparation has two aspects. Procedural aspect is one: states must provide victims of human rights violations and of violations of international humanitarian law with the possibility to obtain reparations. So, states are obliged to put in place effective remedies, a root to obtain reparations. That can be a legal root, for example, in the form of court procedures, but it could also be, and that is reflected in the IOM's report, by way of reparations programme, which is not judicial but more administrative in nature.

And that brings me to the substantive aspects of reparations. We have heard it throughout today and especially in the session: obviously reparations – and that must be emphasised over and over again because there is a misperception about what reparations actually are, especially among policy makers and decision makers in governments – is not only about compensation. Compensation, as we have heard, is a crucial factor that helps victims to address some of the economic consequences that they face as a result of the violations, but it is not only that.

It is also restitution of damaged property, it is rehabilitation – we have several examples just now – which is particularly important in regards to torture and sexual violence, so as to address the medical and psychological consequences.

Satisfaction as a measure of reparation was also mentioned. It is important to recognise that the investigation and prosecution of perpetrators is a form of reparation, is a form of satisfaction which must form part of the right to reparation. We heard today several times how important this aspect is, especially with regards to enforced disappearances, knowing what happened to family members. Last but not least, of course, guarantees of non-repetition so as to avoid violations in the future, which can include changes in the legislation, law reform, but also, for example, training of army or police authorities. So, this is a very brief overview of the different forms of reparation.

Now to the definition of victims under international law – even more briefly – because it is very well covered in the IOM report which you have all read. It is important to define victims, first of all because, as Peter was saying, in order to give recognition as a victim, which can be a form of reparation in itself, but also because the status of a victim, of course, gives rise to certain rights, including the right to reparations.

The Basic Principles very clearly spell out that victims can be individuals. However – we have not discussed it so much today – they can also be collective victims or communities and groups who have suffered collective harm as a result, for example, of genocide or massacres committed in certain villages or other locations.

Victims can also include family members of course, and there it would be important to identify to what degree relatives are included in any reparation efforts. It is also very important in this context that victims are victims irrespective of whether the perpetrator of the violation is identified. So, a prosecution or accountability and conviction process is not necessary for a victim to enjoy victim status.

I will finish here and leave more time for the rest of the panellists.

Moderator, Jonathan Sisson

Thank you very much about this brief explanation about the legal norms and standards regarding reparations and the definition of victim under international law.

Is there a question right now from the floor?

Comment from the audience:

Munira Subašić, President of the Association Movement of Mothers of Srebrenica and Žepa Enclaves, BiH

I would like to underline one or two things.

The previous ICTY President Robinson always talked in his reports to the Security Council that a fund for victims in Bosnia and Herzegovina is required. I know that the new President who is with us here keeps talking about this and I hope that he is going to continue underlining this in his future reports.

The Law on Missing Persons in Bosnia and Herzegovina has already been adopted but our Government – since Europe imposed on us three presidents and several governments – cannot find a mutual agreement. They could not agree whether the seat of the fund would be in the Federation or in Republika Srpska. This law underwent all procedures: it was published and adopted by the Parliament and the House of Peoples. And it is now kept in a drawer. But this law includes everything: fund for the victims, marking the memorials, burials, families entitled to attend the funeral and all sorts of things because families took part and contributed to this law. It is the best law in the world and I think the only law that was drafted in Bosnia and Herzegovina.

I would like to say something to you. There is no definition of victim in BiH law. In my view, the victim was not a member of a paramilitary unit or any military, Bosnia and Herzegovina military, Croatian Defence Council or the Army of Republika Srpska. If he is a soldier of an army, he should claim damages from the army that sent him. In my view, a victim is a person who did not take to arms, who was taken without any weapons from their houses and basements. [...]

Question from the audience:

Ramiz Ahmetović, President of the Association of Families of Missing Persons, Forcefully Taken and Killed Bosniaks of the Brčko District, BiH

I take the floor for the first time. I come from Brčko. I am the representative of the Association of Families of Missing Persons, Forcefully Taken and Killed Bosniaks in the Brčko District. I will not take up a lot of your time. All the things have already been said. I just have one question.

This is a question for Mr Alexandros Zervos because he mentioned benefits for the raped women and camp inmates. Mr Peter van der Auweraert mentioned reparations for violence and damage incurred to people, and the last speaker mentioned compensation, restoration of property for those who were tortured and

sexually abused. I support everything but my question is: What about the families of the killed ones? I did not recognise them anywhere in your speeches. Since I represent the families of the killed, I believe that they are entitled to reparations. I did not notice this category mentioned. Please, answer.

Since I took the floor, I would like to inform you that in Brčko district, if we initiate civil proceedings, 20 per cent of margin or profit is taken by the law office for their services. The reparations are currently 15,000 KM for a killed child. We had to pay 3,000 KM to the lawyer. Can you help us in any way with respect to this so the lawyer fee is paid from reparations or from some other fund? This would be helpful. It is a lot of money if somebody takes 3,000 out of 15,000 and they also charge their services for Republika Srpska. So, they take up to 40 per cent. I believe that it is too much. That is all.

Moderator, Jonathan Sisson

Thank you very much.

I would like to go back to the panel now. I have several panellists here who have not had a chance to speak.

These are very specific cases. They are in need of being addressed. What we are talking about are the rights of victims on the one hand, and communities and the obligations of the state on the other hand. And we know that the state has been remiss in its obligation to enact laws and to pay compensation. This is not only in this country, in Bosnia, but all across the region. There are laws for missing persons which have been partially implemented, but there are other victim groups, as we have heard this afternoon, which have no legal basis whatsoever for their claims. So, there has been deference to certain groups of victims over other groups of victims.

On the panel we have several members who are engaged in this issue. We have members here from civil society who have been the most active on this issue, and we have other members of the international community representing international community here.

I would like now to ask Sandra Orlović to give us a reflection on her perspective. You have been very much engaged in Serbia, in your organisation, in filing claims for victims, or litigation, but you have also been engaged in the civil society initiative RECOM which is a fact-finding initiative to establish a fact-finding commission. And here I would like to hear a little bit more from you, the linkage between fact-finding and reparation: do you think RECOM could be a catalyst for a comprehensive reparations programme in the region?

Sandra Orlović, Executive Director, HLC, Serbia

Thank you. Good evening to everyone.

Let me first say something about court proceedings and the claims that the Humanitarian Law Center has initiated on behalf of the victims against the Republic of Serbia. Let me try to explain, let us all try to analyse why we have such claims, not only in the case of Serbia, but also in the case of certain claims coming from associations of victims from Bosnia and Herzegovina.

We all know that in each country there are measures that some call reparations. I am among those who believe that such measures in the countries of the former Yugoslavia cannot even be called reparations because, in their essence, in their nature – in my opinion – those measures are social measures, measures provided to the victims and their families for the sole purpose of the country or the employers seeing them as persons who cannot make their own living any more. So, in all those laws, in every single country in the former Yugoslavia, victims of rape or torture, for example, have to prove that they live with the injuries inflicted to them, injuries within the range of 50 to 60 per cent, I believe. I think that it is humiliating. I think that every victim has to receive certain compensation or state support, for the fact that this person was a victim of a human rights violation, and not because the person is not able to work or make a living for their family any longer.

Aside from that, from all the state measures of support, no law defining those measures has a single sentence of a symbolic recognition of suffering, symbolic recognition of responsibility for what happened to the victims. In the Federation of Bosnia and Herzegovina, for example, you have a situation where the rights of the civilian victims of war or disabled war veterans, are defined in the Law on Social Protection of Families with Children. That is how it is regulated in the Federation of Bosnia and Herzegovina. In my opinion, that has nothing to do with the symbolic aspect that reparations have to bring. That is why numerous victims from Bosnia and Herzegovina, Croatia, Montenegro and Kosovo decided to sue the countries or the entities they find responsible for what happened to them. Despite the fact that those families or those victims have a certain type of support from their state, they still want a formal recognition by those who perpetrated the crimes.

I believe that is the answer to your question, Mr Zijah, if I remember your name well. You were saying that those who perpetrated the crimes should pay for the reparations. And those claims are an expression of a need to recognise the suffering; for the suffering to be recognised by those who caused the suffering in the first place.

In my opinion, a regional fund, directing the funds for compensation and reparations, would consist of money paid by all the participating countries proportionally to the war crimes they committed. This could create an impression that there is someone responsible for what happened, and that those who are responsible are paying for the sufferings that were caused to the victims. I am not excluding the participation of the international community in such a fund.

On the other hand, this regional approach, which was one of the conclusions in this excellent report of the IOM, provides yet another positive aspect regarding the reparations. Before we start talking about the reparations, we have to establish who the victims are. Today, in the region of the former Yugoslavia, we have several registries of human losses, put together and still being put together by certain NGOs. However, that is not enough. There has to be a register of the victims of torture, register of the victims of sexual violence, former camp inmates, individual registers for the simple reason that we have to avoid the situation that we have now, and which is that in different countries the victims of the same crime are treated differently. In Serbia, for example, two or three months ago, the Government of Serbia adopted a decision to discontinue the status of the civilian victims of war to women who were former camp inmates in Bosnia and Herzegovina, because they were not citizens of Republic of Serbia at that time. So, we have a different approach to those crimes, based on the place of residence. Victims have different treatment, and they are not recognised in the same way in different countries.

I believe that is enough from me for now.

Moderator, Jonathan Sisson

We know you have much more to say because your organisation is very active.

We will slowly have to come to a conclusion. I wanted to ask our other panellists very specific questions and ask them to be focused and brief in their responses.

We have a representative of the UNHCR among us, Mr Andrew Mayne, and I would like to ask you: to what extent it is mentioned in the IOM report the Sarajevo Process and the regional housing programme – could this be a model for a reparations programme? It is in effect a reparations programme. The right to return as an element of the right to reparation? You are engaged in developing this and implementing this regional housing programme. To what extent do you think it could be a model to a reparations programme as described in the IOM report, and to what extent is there a linkage? Could there be some kind of collaboration, cooperation between these two programmes?

Andrew Mayne, Representative, UNHCR, BiH

Thank you very much.

Let me say very briefly that the Sarajevo Process is a result of many years of work and it represents a lot of engagement, a lot of patience by many actors. And here in the case of reparations process, participants in a meeting have described how other processes have taken place, have perhaps also taken many years and may have stalled, not come through.

What is very important there is that the ICTY has again raised the profile of the issue it has commissioned a good report with the IOM which is taking a very tactical approach to the issue of how this process can actually be brought forward. I think that a key question, in the concluding session of this conference is: how can this process actually be brought forward?

The lessons learned, if you like, from the Sarajevo Process, would be that, as was mentioned earlier, an organisation needs to be identified that can drive the process forward and can commit to the process and have the necessary patience and the facilitation over several years to see the process through. This is not an easy process. So, I think it is extremely positive that the ICTY, which represents in the region all of the efforts to provide even handed administration of justice, is already behind this process. I would ask the ICTY to continue carrying the process until any better organisation is found.

The other element, which I think was important in the regional housing programme, the Sarajevo Process and so on, is that the governments already had some – well, it took a lot to achieve this – interest in talking to each other on the issue. So, if that exists in the region, if there are clear signs that it exists, then that should be built upon. But if that is the difficult part, then a different tactic would need to be found with regard to the reparations process, and the role of civil society could be extremely important in that case.

So, a combination of a lead facilitating organisation, even just carrying the issue such as the ICTY, and the engagement of the civil society organisation who do manage to talk to each other in the region, to define the groups of victims, to identify the extent of the needs, the kinds of reparations that would be required, the kinds of measures that would be appropriate to negotiate that within the region, and to establish a proposal could be helpful way forward in this process carried by a supportive organisation. Then the results of that could be taken further, taken up, discussed with governments and so on. The organisation that would carry the process forward through subsequent stages could have been identified during that period.

Sarajevo Process, which is a very imperfect process, did succeed in bringing

forward governments of the region together to sign up the common objectives. And those governments are now able to sit down and resolve the problems, possibly even wider problems, the remaining problems of displacement. There is a great potential there, not only for the housing element, which is currently the main focus of the project, but the ability to discuss the issue having set out the terms, the ability to take that forward in a way to be satisfactory to all of the parties, which is very important.

So, we have to try to bring this process to the same stage by one means or another.

Thank you.

Moderator, Jonathan Sisson

Thank you for those remarks.

We have a representative of the European Union with us, the legal counsel, and I would like to stay at a political level for a moment.

As you know, one of the important issues in regard to the European accession was the issue of conditionality, cooperation with the Tribunal. In our approach, as we heard regarding the issue of the right to reparations, the right to justice is one pillar of transitional justice. The other pillar is the right to truth, the right to know, the right to reparation and guarantees of non-recurrence.

My question to our European Union colleague would be then: to what extent would this issue of conditionality be relevant to the right to reparations? Is the European Union looking at the performance of the governments in this region in fulfilling their obligations with regard to the right to reparations, just as they were looking and are looking with regard to the issue of the right to justice?

Please.

Henrik Villadsen, General Legal Counsel and Head of Legal Affairs, EU, BiH

Thank you. Let me say a few words about that.

The criteria that we apply for accession to the European Union are by and large the same as they are expressed in the so-called Copenhagen criteria. Of course, I

am from Denmark, but that is where the criteria were set. The criteria are the same for each country that wants to access the European Union. That said, we do assess countries that want to approach the Union, as Bosnia and Herzegovina does. We treat each country as an individual case and one cannot necessarily take one country and say: It was done like this in Croatia, it will be done like that in Serbia, and therefore it will have to be done in such and such a way in Bosnia and Herzegovina. So, same criteria – yes, but countries are treated on their individual merits, so to speak.

Historically, of course, the Union has taken an interest in this part of the world and this country for a long time, stemming all the way back from the war and leading up till now. We have had a close cooperation in the field of rule of law and the administration of justice. At the moment we are a main vehicle in this country to look deeper into the justice issues. It is the so-called structured dialogue on the judiciary where we have basically done what we define as an early opening of these chapters in the accession process that any country would have to go through, even though this country is not yet a formal candidate country for the Union.

Moderator, Jonathan Sisson

Thank you. You mentioned Bosnia and Herzegovina. Let me come now to my colleague Thomas Osorio working at the UNDP. The UNDP has been assisting the government in developing a strategy or particular approach to transitional justice, again from a holistic perspective, the right to truth and the right to reparations and guarantees of non-recurrence. Can you give us a little bit of update of where you are in that strategy?

Thomas Osorio, Advisor, Rule of Law and Human Rights, UNDP BiH

Thank you, Jonathan. Thank you, ICTY.

Let me just start by saying that this is one more twentieth anniversary. It was 20 years ago that the UN provided irrefutable evidence that rape of women, girls and men was widespread and systematic throughout the countries of the former Yugoslavia. The commission of experts known as the Bassiouni Commission established these facts, and many of the groups that we spoke with then in 1993 I still speak with today.

So, we are looking to redress those wrongs. Reparations are about the redressing of wrongs. But where does it fit? I think that it is easy to say: Well, we will be approaching the government. It is not only the government, it is civil society, but it

is all of you. We are looking at recognition of wrongs, the acceptance that wrongs were done, and that is our starting point.

The other issues are at this point technical. We have a number of excellent platforms. We have worked with the government for four years on a transitional justice strategy that has been controversial, but it has legs. It has the elements that are required to address the wrongs and to provide the tools for the government that, if accepted, could provide redress: truth telling, memorialisation, recognition.

I think that Jonathan started with the rights. We are looking at the rights, we are not talking about gifts from the government, and we are not talking about gifts from the UN civil society and supportive elements. We are talking about your rights: the right to know what happened to your loved ones, where they are, what their fate was, the right to reparations which is now being addressed in this panel today and which is extremely important.

Because the report issued by the IOM demystifies reparations. It makes reparations understandable. It talks about the issues that you have heard in the panel. But most importantly, it is about the issues that you have all been talking about right now for a number of years. It is not about money. Money is part of this. It is about redress, trying to right wrongs, trying to repair, because reparations are about repairing. It does not translate well. We were looking for a word in Bosnian, Serbian, Croatian, and “popraviti” somehow does not work. In English it sounds a lot better. But it is about repairing lives so that you can move on or dealing with the past.

So, let me just say that we have a strategy. We are working with your government, the UNDP, other UN agencies, we are looking to combat sexual violence from your violent past, but it will take your engagement, your understanding, your recognition of these efforts, and to address these issues as not only something that needs to be given to you, but your rights. You need to ask for those rights.

Where are we now? We have a draft strategy; the draft strategy has now been recognised by the Council of Ministers which has deposited this strategy into parliamentary process. The Parliament will do its work in terms of identifying gaps, legislation. We hope that that will be a supportive element to the draft legislation which is before Parliament now on dealing with torture. However, there are many other gaps in legislation that will allow the various levels of administration to work with you, with those service providers. I see many of our friends and colleagues here that provide services. These are important elements. The reparations are part of that, together with a holistic package of transitional justice, if you will. I think that it would be almost more appropriate to talk about when dealing with the past. Transitional justice is somehow automatically linked with justice. As you have heard and as many of you know, it is not only those judicial elements.

So, I am actually asking for your help. This is a crucial time, this is the twentieth anniversary. I have known many of you for almost that long. So, there is no better time than today to move forward with a package, and reparations is just one part of that.

Thank you, Jonathan.

Moderator, Jonathan Sisson

Well, thank you, Thomas, and thank you for the work that you are doing in collaboration with, as you say, many other people in this room.

I think it is important, certainly according to our working session yesterday and the point that Peter has raised. It is a collaborative effort. The IOM has said that they need partners, on a political level, on an international level. They also need partners in the countries to bind together, and to speak as one voice on the issue of reparations. We are not talking of specific categories, as our colleague mentions. It is not only about one category, it is about human losses, people who died during the war, people who were killed. These are all issues that have to be addressed. It is not to favour one category of victims over another but to join efforts in recognising and acknowledging the human losses and the suffering that took place during this conflict.

I have to conclude the panel now. I hope also in the way we designed it, we talked about it that there was some way of a collaborative effort as well. As our colleague Peter van der Auweraert said, this is a beginning of a discussion which will hopefully take place on many different levels. So, I think you will be seeing hopefully our IOM colleagues coming back to the region, meeting again with you, to explain where they are in their negotiations around these efforts.

There are several people in this room who are representing civil society organisations. Your support will be key to this, as we have heard from our colleague from the Humanitarian Law Centre and, of course, the victims' associations, but also the international organisations, our colleagues from the UNHCR and also the European Union. I think it is an issue that has to do with the future of Europe, how the victims of war are treated and how they are respected in their post-conflict period.

So, thank you very much for attending this session and for your contributions to our deliberations, and we hope to see you again soon, in a slightly different configuration.

CLOSING REMARKS

Kate Mackintosh, Deputy Registrar, ICTY

Good afternoon, everybody. I am Kate Mackintosh, the Deputy Registrar of the ICTY, and I am very happy to be here today.

I found all the discussions extremely illuminating, and I would like to thank everybody for that, on a personal note. Then I would also like to express my gratitude to the donors who have helped make the whole thing possible, in particular the European Union, the Governments of Switzerland, Luxembourg, the Netherlands, the Republic of Korea, and the Open Society Justice Initiative. I would like to applaud the efforts of all of our staff in the ICTY who worked to make this happen, and our staff here in Bosnia, as well as our staff in Belgrade, and back in The Hague. Most of all, I would like to sincerely thank all of you who have joined us here, both today and yesterday, and I must say – despite the weather conditions.

For the ICTY, this conference has not been about talking but really about listening to what you, the people of the former Yugoslavia have to say. On this twentieth anniversary of the ICTY, and in particular, how you want to move forward from the work that the ICTY has done to date, and how you want to build on that work. I think 20 years is a serious anniversary. It merits a small pause for reflection and for taking stock. What does 20 years' work of a court look like? Perhaps here I speak somewhat from the Registry perspective. We have had some discussion of the jurisprudence, and some of the judgements that had been handed down. But 20 years of a work of a court, from my perspective, looks like over 7,500 days of trial, captured in 1.6 million pages of transcripts. It looks like 4,500 witnesses who have travelled to The Hague from, really, all over the world, all have painstakingly given their statements to the Court. It looks like, as we have heard earlier today already, 161 individuals indicted for some of the most serious crimes and dealt with according to the word of law. So, yes, I think 20 years is a moment to pause and to look back at these achievements.

I think it is also a point from which we can actually see the end of the ICTY. This conference was intended to create a space in which we, or perhaps, more appropriately, you could think about how to start building on these achievements towards, what Ms Nataša Kandić referred to as, mechanisms to overcome the limitations of criminal justice. Because criminal justice, as we have heard several times today, can only ever be one element, one small piece of the larger puzzle in moving towards recovery from conflict and mass crimes towards reconciliation and healing.

I hope and believe that the ideas that have been shared here, worked on and developed, both today and yesterday, around the issue of witness protection, of open access to the judicial archives – which we did not talk about today, but on which there was a very productive working group yesterday – and on a critical issue of reparations to victims, will be taken forward here in the region, and will form the basis of the work that is to be done over the next 20 years.

I thank you for your attention.

Prof. Dr Ivo Komšić, Mayor of Sarajevo

Thank you. I would like to cordially greet you all and express my regret for not being able to actively participate in the work of this conference due to my other engagements. However, it was with great pleasure that I arrived just near the end of this conference and I would like to say something.

With gratitude that all of us have extended to the ICTY for their work that has been done in the last 20 years, I will not be repetitive and use all the phrases used on similar occasions. I am glad that this conference is held in Sarajevo that was shelled and under siege for more than 1,400 days, but I do not want to repeat its history. This city was a victim, a symbol of suffering, and a symbol of restoration of Bosnia and Herzegovina. Sarajevo shows its potential, shows that we exist and have internal capacities and people who, if used, can overcome everything that has happened.

I will not speak about this – I can see that you have already discussed it yesterday – but will simply resume where Ms Mackintosh ended, on the important issue: legacy of the ICTY, 20 years after its establishment. The legacy of the ICTY are judgements imposed on criminals for war crimes, judgements concerning individuals, because it is a legal institution which establishes individual responsibility of those who committed crimes, based on evidence.

I am going to speak about a topic discussed yesterday and mentioned a few times today. The legacy of ICTY includes the archive, a huge amount of materials consisting of 1.6 million pages, which also include statements of numerous witnesses etc. This is the archive collected both by prosecutors and defence lawyers. Why is it important for us today? The ICTY will finish the legal part of its work and complete the proceedings against persons currently on trials, and this archive remains valuable for us. These materials are valuable and it is important to talk about having them at our disposal through information centres that were also discussed.

It is very important to have one such centre in Sarajevo. I am not telling you this as a Mayor of Sarajevo, but as a university professor. All of us in the field of humanities and social sciences know that culpability is not only a legal matter. The ICTY has been establishing and will establish individual criminal responsibility. However, in our case, and in any case of crimes that were committed in any war, we know that apart from individual culpability established through legal proceedings before the court there are other responsibilities as well.

I would like to mention what old Karl Jaspers said after the Second World War: There is political, moral and metaphysical responsibility. So, these archives should be accessible to us in the field of humanities and social sciences, and to all these who will – after the legal proceedings have been completed and individual responsibilities established – deal through these documents with these responsibilities.

Political guilt is not individual guilt. Politics is a collective act. No person can deal in politics individually. There are different groups in Bosnia and Herzegovina, and in the region, who bear political responsibility for the crimes committed, and they will never stand trial because theirs is not individual responsibility that can be established by a court. But for those who study theory of actions and theory of politics – politicians, social psychologists, and even psychologists – it is very important to establish political culpability. Without establishing political guilt we cannot explain the events that took place, the background of crimes, the atmosphere and the state of mind in which people were brought in order to commit crimes. This is a significant dimension and therefore, it is important for the archive to be accessible for this type of research to sociologists and political scientists.

Additionally, moral guilt is considered to be insignificant. It is not at all insignificant, and this can be seen in consequences of the war: There are people who are ill now, diagnosed with a certain conditions, who are morally and psychologically completely destroyed, because they did something which put heavy burden on their conscience. And after everything passed, they now face themselves. It is at this sharp edge, where we meet our true selves, that our moral fate lies.

Those who deal with this must find the answer to this question: How could this have happened that all morals failed, that people – some of their own accord, and some regardless of moral obligation towards themselves – were able to commit such atrocities, regardless of the orders issued to them. There are many cases where those who committed the crimes disobeyed the military orders and went much further than the orders issued to them by their superiors. Scholars have to answer these questions. Of course, this calls for a huge engagement of psychology and social psychology, and the archives would be invaluable for these sciences.

Finally, I will also mention metaphysical responsibility. In order to establish it, we also need to have these archives open. I believe that one can find in them who

bears responsibility for the things that were not done, and the things that could have been done. This is a metaphysical responsibility which old Jaspers mentions with respect to the crimes committed during the Second World War. What is this all about? We are not speaking about the responsibility of local people for failing to do something. Those who could have saved people did not do so. It is a huge problem. How come that people were standing and looking at brutal crimes being committed before their eyes without reacting at all? How come a crime became a habit?

This is where responsibility lies and metaphysical responsibility needs to be established. We cannot even establish legal or political responsibility but we can speak about metaphysical responsibility of the international community, particularly of the EU countries that stood and watched in cold blood. They had European monitors from the beginning, they received very extensive reports about the events, they had electronic, video and satellite surveillance of all events that had taken place, and they allowed the commission of the crimes. They wire-tapped commanders – I know that because I listened to some such recordings – and were aware of the orders about heinous crimes, but did nothing to prevent them.

That too is responsibility. Not for the ICTY or any court, because there is no individual responsibility involved. This is a type or responsibility that scholars should establish and write about. So that everyone knows what happened here at the end of the 20th century, after the crimes of the Second World War, as if they had never happened. That is how some representatives of the international community acted about everything that was happening in our country.

So, that is why it is very important that this legacy is preserved in this huge archive and accessible through information centres. I would be very happy not only as a Mayor, but as a university professor dealing with these issues that these archives be accessible to us through information centres. Not only to me, but I believe to many people who would deal with these issues. As a professor, I am contacted by students, PhD students from all over the world, asking me about this documentation because I had a significant role during the war and know a lot about it.

Thank you for your attention. I would like to emphasise the tremendous importance of the archive and the decision that it should be available to us.

Thank you very much.

André Schaller, Swiss Ambassador to Bosnia and Herzegovina

Dobro večer (Good evening), dear participants. I know I am here to conclude the conference, so let me just make three points.

First, thank you very much to all of you who made this conference marking the twentieth anniversary of ICTY here in Sarajevo possible. My thanks go to you, speakers and participants who came here to Sarajevo from different countries. With your diverse expertise and experience – be it as judges and prosecutors, as representatives of victims and civil society, as scholars and journalists – you contributed to the important work during the last two days. I am sorry I could not attend your work as I had other obligations – we had our own conference – but my team was here, and they briefed me about your work.

Such discussions are difficult and still painful for the victims and their families. However, it is important to maintain the dialogue. Respect and dialogue are essential on their own road to reconciliation. My thanks also go to the organisers, to the ICTY and its staff for providing this forum. My thanks go to the European Union, Luxembourg, the Netherlands, the Republic of Korea, and the Open Society Justice Initiative for their valuable support.

Second point: We are all aware that the work of tribunals and courts, national and international, is a necessary precondition that men and women, countries, and regions can effectively deal with the past after a gruesome and atrocious conflict. That is where the work of courts is crucial. They have a right to justice so that justice is rendered and the perpetrators are held responsible, according to the laws. In Bosnia and Herzegovina, Switzerland, together with other international partners, assisted this dealing with the past process, for instance, by supporting the search for missing persons, by supporting witness protection, and by supporting the prosecution of war criminals.

Third point: Ladies and Gentlemen, the past is important, and at the same time we have to look to the future. It is our obligation to take all the necessary steps to make sure that the atrocious crimes and human rights violations which the victims had to suffer will never happen again. *Da se više nikada ne ponovi!*

This is not only about addressing the dark sides of human behaviour. No. It is equally important to show the examples of men and women who stand up against inhumanity. This also happened here. For example: Srđan Aleksić lost his life saving the life of his friend Alen Glavović in Trebinje. Or think just of those who preserved the Sarajevo Haggadah through many conflicts. They give hope to all of us, and above all to the young generation. They give proof that we are not trapped in any historical cycles. Life is about choices. It is courageous men and women who make the difference and build the future based upon human values.

The future does not just happen. We need to build it.

Ladies and Gentlemen, to conclude, let me assure you that Switzerland, together with the other international partners here present, will continue to support the citizens of Bosnia and Herzegovina and the region to deal with the past and to build the future.

Thank you very much. Hvala vam puno.

Chief Moderator, Almir Alić

Thank you, Ambassador, for your closing words. This officially closes our conference. Thank you for your attendance.

20 Years of the ICTY

ANNIVERSARY EVENTS AND LEGACY CONFERENCE PROCEEDINGS

This publication contains edited transcripts of the proceedings of a two-day conference to mark the twentieth anniversary of the Tribunal and highlights of related events. The conference took place on 26 and 27 November 2013 in Sarajevo, Bosnia and Herzegovina, under the aegis of the ICTY President and with support from the ICTY Outreach Programme.

The conference brought together over 200 participants, including officials from national judiciaries, experts on transitional justice, victims, lawyers, journalists, politicians, representatives of NGOs, academics, and other local and international stakeholders who explored aspects of the Tribunal's legacy in the former Yugoslavia.

In particular, the topics discussed include the impact of the ICTY in the region, lessons learned in victim and witness support and protection and the possibilities of reparations for victims of the 1990s conflicts in the former Yugoslavia.

Before the conference in Sarajevo a series of related events took place both in The Hague and in the region, to mark the Tribunal's twentieth anniversary. From formal celebrations to special exhibitions and conferences, this publication also includes highlights of these events.



Co-sponsored by the European Union and the Governments of Switzerland, Luxembourg, the Netherlands, the Republic of Korea and Open Society Justice Initiative.



Ministry of Foreign Affairs of the Netherlands



GRAND-DUCHÉ DE LUXEMBOURG
Ministère des Affaires étrangères



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA
Directorate of Political Affairs DP
Political Affairs Division IV – Human Security:
Peace, Human Rights, Humanitarian Policy, Migration



 **OPEN SOCIETY
JUSTICE INITIATIVE**