

Launch of the ICTY Manual on Developed Practices

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New York

Remarks of Mr. John Hocking, ICTY Registrar

Excellencies, distinguished guests,

I am very honoured to speak to you today at the launch of the ICTY Manual on Developed Practices and I wish to thank the Liechtenstein Institute on Self-Determination for hosting this event.

I directly worked on the drafting of the manual and I am really enthusiastic about the final result. The manual is a first of its kind. It builds on 15 years of experience in investigation, trial and appeal proceedings. The ICTY has made an enormous contribution to the development of substantive international criminal law. Our case law speaks for itself. The manual however, is proof of the incredible contribution of the ICTY to international criminal procedure and practice – both in and out of the courtroom. Whether it be drafting a judgement or running a detention facility or a witness protection programme, the manual covers it all.

But the full significance of the manual's contribution is best measured by taking a step back and remembering the rules and practices available when the ICTY first set started its work.

The Statute of the ICTY contains 34 articles and provides only the most basic guidance on the conduct of proceedings and the rights of the Accused. Back in 1993, the Security Council left it to the Judges of the ICTY to adopt the rules of procedure and evidence. And there was little in terms of precedence to guide the Judges. The International Military Tribunal at Nuremberg operated on the basis of only 11 rules of procedure, the International Military Tribunal for the Far East on 9. Today, the Rules of Procedure and Evidence of the ICTY contain 127 provisions! They have been amended 42 times since their adoption, with each amendment building on the lessons learned and experience gained during our 15 years of proceedings.

And if you take a look at the CD-Rom that accompanies the manual, you will see that the ICTY did not stop there. On the CD you will find the Code of Professional Conduct for Defence Counsel, the Directive on the Assignment of Counsel, the Rules of Detention, the Code of Ethics for Interpreters and Translators, and Agreements on the Enforcement of Sentences. There are also Practice Directions issued by the President on topics ranging from the procedure for investigating and prosecuting contempt, to such practical issues as the procedure for submitting filings, or the review of written submissions which contain obscene or otherwise offensive language. This is to name just a few.

These instruments have proved vital to the efficient functioning of the ICTY and they provide the procedural framework necessary to ensure that our trials are both fair and expeditious.

Proceedings before the ICTY, or any other international criminal court or tribunal, are unique. The manual contains an entire chapter on the special features of cases that involve war crimes, crimes against humanity and genocide. I will highlight three.

First, is the scope of the cases. Crimes prosecuted within the theatre of armed conflict, often cover immense geographical areas. They may span a number of years, and involve a variety of actors, often including paramilitary groups whose links with State organs are difficult to determine. Investigating and trying such cases takes time.

Secondly, the ICTY tries only the most senior accused. This often presents the additional challenge of having to establish a link between the direct perpetrators of the alleged crimes and the accused. As a consequence, the Prosecution may need to call hundreds of witnesses and submit thousands of documents to establish individual criminal responsibility. Judges are confronted with a gigantic volume of evidence, often involving hundreds of thousands of pages, all of which must be evaluated and weighed for the final judgement.

Thirdly, the ICTY is entirely dependant on State cooperation. Whether it be to secure the presence of those indicted, to obtain evidence, or to protect victims and witnesses and enforce sentences, the ICTY could not have succeeded without the support of states.

To conclude, I wish to give special thanks to UNICRI, and in particular its Director, Mr. Calvani, and his staff's invaluable collaboration. I also want to thank Judge Pocar and the staff of the ICTY who worked tirelessly on bringing this manual to a reality.

It has been worth all the hard work. The manual will be a useful tool for both domestic and international courts and tribunals which face similar challenges. It will allow them to trace the path of our achievements and failures, and to build on our experience.

Like a diary, the Manual grants the reader an insight into the most intimate reflections of the ICTY. Faults are admitted and tears shed. I wish you all a gripping read!

Thank you.