

**50<sup>th</sup> Annual Meeting Hague Club**  
**The Peace Palace, The Hague, 4 September 2009**

**Speech by John Hocking, ICTY Registrar**  
**ICTY- A contribution to overcoming the conflict?**  
**Response to Wolfgang Petritsch**

*Introduction*

**Excellencies, Ladies and Gentlemen**, it is truly a great honour for me to address you here today, at the 50<sup>th</sup> Annual Meeting of the Hague Club. It is a privilege for me to follow Mr Wolfgang Petritsch, a man of such stature.

I am to speak to you on a topic dear to my heart, the International Criminal Tribunal for the former Yugoslavia, an institution to which I have devoted the last 12½ years of my life.

Back in 1993, when the Security Council set up the ICTY it did so because it was convinced that the establishment of an international tribunal would put an end to the atrocities and “**contribute**” to both the restoration and maintenance of peace in the former Yugoslavia.

Has the Tribunal been able to fulfil these grand expectations?

Of course the answer to this question very much depends on who you ask. But I believe that if you look at the matter globally, the answer must be a wholehearted yes.

Let's recall the title of this morning's event – the ICTY's **contribution** to overcoming the conflict. Because we must remember that the work of the ICTY is only one of a number of initiatives and efforts that are necessary if there is to be both a restoration and a maintenance of peace.

Since its inception, the ICTY has carried a heavy responsibility. At the end of 1993, hundreds of thousands of displaced persons and victims of the most heinous crimes in the former Yugoslavia were looking to the United Nations and the ICTY to end their misery. Although born as a court of law, the ICTY was in fact expected to be much more: an instrument to stop the fighting; to push back the aggressor; to reveal the truth; and, to punish those responsible for the suffering. Rarely has a new-born institution had such high expectations. And rarely has an institution faced such difficulties that at times risked smothering all its attempts to succeed.

It is important not to forget what a great visionary step it was to create the ICTY. Back in 1993, there were no international criminal courts – they were just the dream of a few idealists. The ICTY was the first and as a direct consequence of its success, we have had courts for Rwanda, Cambodia, Sierra Leone, East Timor, Lebanon, and of course the ICC.

The list of achievements of the ICTY in its 16-year history is impressive: we have ensured that impunity does not reign supreme; we have made sure that accountability is a principle not only applied to subordinates but also to leaders; and, we have established facts about some of the most horrendous crimes to have scarred the soil of Europe in the late twentieth century. The Tribunal has indicted 161 persons – well in excess of the number of accused at other international courts. Only two fugitives remain at large (Ratko Mladic/Goran Hadzic). Importantly, we have

worked with national judicial systems in the former Yugoslavia to tackle war crimes cases domestically.

The ICTY has laid the foundation for what is now the accepted norm for conflict resolution and post-conflict development across the globe. The ICTY has shown that efficient and transparent international justice is possible.

### *The Tribunal's mandate*

The ICTY was set up as a court of law - to prosecute persons who committed the most serious crimes recognised by the international community - war crimes, crimes against humanity, genocide – crimes that took place in the former Yugoslavia during the 1990s. The establishment of the Tribunal was a political decision taken by the Security Council acting under Chapter VII of the Charter of the United Nations. But the Prosecutor is free of political influence and control. He decides who to indict, and it is for the Judges to confirm or reject his indictments. The admission of evidence is subject to strict rules, and the proceedings are conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

### *The obstacles on the way to success*

But, even with the force of a Chapter VII Security Council resolution behind it, the Tribunal has had to overcome many obstacles on its way to success. I will highlight just three today.

***The First is State cooperation*** – Back in 1993, when the Tribunal was established, the conflict in the former Yugoslavia was still raging. It would continue to do so for another two years, and then later re-ignite in Kosovo and Macedonia at the end of

the century. The single most horrific event of the wars in the former Yugoslavia, the genocide at Srebrenica, took place in 1995 – whilst the ICTY was preparing its first trial. Despite the goodwill of many members of the international community, the Tribunal faced heavy opposition from the States whose cooperation it needed the most. The seizure of documents, access to crime sites, arresting accused persons, questioning witnesses and their travel to The Hague to testify - all depended on the cooperation of States. In fact, the ICTY is totally dependent on state cooperation and unfortunately this was partially lacking in those early days.

***The Second obstacle is the sheer size and complexity of our trials*** – They are much more akin to a massive white collar crime such as the Enron collapse than your typical domestic criminal case. Many of the crimes prosecuted by the ICTY cover large geographical areas, crossing countries, committed over a number of years. They involve a variety of actors in the military and civilian hierarchy, and finding the link to the leadership can be difficult. The volume of evidence is massive, often involving hundreds of thousands of pages, all of which must be evaluated and carefully weighed by the judges during their deliberations. Witnesses can be reluctant to testify for fear of their lives and those of their families, or because the experience of testifying is simply too traumatic for them. The trials themselves can last for a number of years. To investigate and try such crimes is a truly Herculean task.

***Thirdly we faced Significant challenges on the ground*** - At first, the communities in the former Yugoslavia welcomed the establishment of the Tribunal. They expected the perpetrators of atrocities to be punished. Soon, however it became clear that for some, “perpetrators” meant anyone but representatives of their own ethnic

group. Local leaders, bent on retaining their power structures by keeping ethnic conflicts simmering, engineered denial and charged the ICTY as ethnically biased.

Moreover, the physical distance between the Tribunal and the crime sites, the fact that proceedings are held in English and French, and a lack of understanding of the rules and procedures applied in the courtroom, added to the mistrust of the Tribunal's mandate and its work. Victim witnesses often felt let down when they realized that they had not flown to the Hague to tell their story, but to answer specific questions from the parties and the judges in a very legal environment. They were disappointed to find themselves in a court of law with all its rigidity and not a more flexible forum such as a truth commission.

#### *How the Tribunal succeeded*

However, despite the challenges, the Tribunal persevered and found creative ways to overcome the obstacles put in its way. When I started with the ICTY back in 1997, I could not have imagined that we would indict 161 persons and that in 2009 only two fugitives would still be at large; that in 2009, the Tribunal would have concluded proceedings against 120 accused; that our disciplined, meticulous court proceedings would result in some sentences of 40 years or more, and acquittals. Today, three courtrooms operate morning and afternoon to run seven trials against 21 Accused. 17 States have agreed to enforce the Tribunal's sentences. I'm sure that not even those early visionaries could have seen that in 2001, less than 10 years after they established the ICTY, a former Head of State, Slobodan Milošević, would be arrested and put on trial.

I don't think I exaggerate when I speak of success.

The sheer volume and strength of evidence presented in the Tribunal's courtrooms is slowly narrowing the gap for denial. Some voices, very loud only a few years ago denying the very crimes such as those committed in Srebrenica, are increasingly being consigned to the margins. Every day brave victims give evidence in our courtrooms. They contribute not only to the judicial process of punishing those responsible, but they also add a powerful chapter to the human narrative of the conflict. To date, over 5,000 witnesses have come to the Hague to tell their stories.

However very early on, we realised that it wasn't good enough to just pride ourselves on our courtroom proceedings and judgements. The big threat to the ICTY was that our work was not being understood by those that matter the most – the people of the former Yugoslavia. Somehow we had to reach out to the communities affected by the crimes and explain our role and our work. So in 1999, the ICTY created its Outreach programme, a first for an international court.

Outreach staff work alongside local and international bodies to develop projects to bridge the gap between The Hague and the former Yugoslavia. It organises public debates presenting the facts established by the Tribunal and providing a platform for local communities to discuss local efforts to deal with the past. We work with civil society, victim groups, legal professionals, journalists, scholars and others.

One of the most remarkable projects is our, "Bridging the Gap" series. Senior members of the Tribunal travelled to five towns in Bosnia - where some of the most heinous crimes investigated by the Tribunal took place - to explain in layman terms the factual findings. ICTY staff take their audiences on a journey, from the first investigations, exhumations, the search to identify the perpetrators, the process of putting together an indictment and the judges' scrupulous weighing of testimony and

evidence before making a decision on the guilt or innocence of the accused. Actual footage of the proceedings is shown. For many witnesses this is the first time they see this. As unlike domestic courts, the vast majority of our witnesses do not have the means to return to the courtroom to watch the ongoing proceedings. I personally participated in one such event.

The ICTY has worked hard to make its work transparent. The Tribunal's website contains an impressive range of multimedia and interactive products such as maps of crime-sites, and selected stories of survivors of brutal crimes. You'll also find on our website every document filed in the Tribunal's court proceedings, from the very first document in 1994, through to today – held in our on-line Court Records database.

After 16 years of hard work, the Tribunal has changed the way accountability is perceived in the region. It has pushed local judiciaries to undergo reform and deal with war crimes cases, with the full understanding that these prosecutions must be a joint effort, with the ICTY and national courts acting as a team.

And finally, through its proceedings, the Tribunal has significantly contributed to the rule of law on a more global level. It has led the development of international criminal law through its judgements and thousands of decisions. It has identified the elements of crimes and modes of individual liability; it has shaped the development of criminal procedure. In so doing, it has led the way for new international courts and tribunals to flourish and fight impunity.

*The road ahead - some insights on the challenges that the Tribunal faces*

I go back to what I said at the beginning. None of this existed just over 15 years ago. If you remember that, you can see that we truly have come a long way. The ICTY

plans to complete its work by 2013. Whilst our primary focus is on the completion of trials and appeals, the Tribunal was also tasked by the Security Council to assist local judiciaries with local war crimes prosecutions. As I have said, over the years the Tribunal has cooperated closely with courts in Sarajevo, Belgrade and Zagreb exchanging expertise and ideas on the handling of war crimes cases. The baton is being passed to domestic courts. Their work will need to continue long after the ICTY has closed its doors.

The Tribunal is also keenly aware of the need to cement its legacy and shape the way in which it will be remembered. Outreach staff are currently working on several important projects to achieve this aim including targeting schools throughout the former Yugoslavia. And after the success of Bridging the Gap, we are now engaged in efforts to secure funding to launch another series of conferences to take place throughout the former Yugoslavia, in close partnership with local NGOs.

Ladies and Gentlemen, the ICTY has and will continue to contribute to the restoration and maintenance of peace in the region. Thanks to the dedication of its staff and local and international partners, it has made a difference. It may be premature to measure the extent of our contribution at this stage. A lot depends on the final years: on the completion of trials, the arrest of the remaining two fugitives, and the acceptance of the Tribunal's work in the former Yugoslavia. The size of the Tribunal's contribution will partly depend on the support it will secure for its outreach projects, and on the willingness of the international community to see it through to the end. It also depends on people like you, philanthropists who have not given up on humanity and the hope that one day we will live together in peace.

Before closing, I wish to recount a very personal experience. A few years ago, I addressed a large gathering in Belgrade, the topic being the ICTY Appeals Chamber's Judgement against General Krstic. The Appeals Chamber had upheld that genocide had been committed in Srebrenica. I gave a rather dry analysis of the legal findings, how the murder of over 7,000 men and boys in Srebrenica in the summer of 1995 was indeed genocide. After my speech, a group called the Mothers of Srebrenica took the floor, recounting their harrowing experiences of losing their sons, their brothers, their fathers and their grandfathers. Many of them were still searching for their bodies. As you can imagine, it was extremely heart wrenching. At the end of the event, one of the mothers came up to me, she could not speak English, nor me her language. But she took my hand, she stared me in the eyes and she said: "thank-you". No doubt more should have been done. But the ICTY has helped them to find some answers and to hold some of the guilty accountable. Almost certainly, without the ICTY, the Mothers of Srebrenica would not even have had this.

Thank you for listening to me today.