

**Regional Workshop on Developed Practices and Lessons Learned in  
Knowledge-Transfer Methodology on Processing War Crimes**

14 May 2009, Sarajevo, Bosnia and Herzegovina

**Address of Mr. John Hocking, ICTY Acting Registrar**

**“ICTY’s contribution to capacity building of national judiciaries”**

Your Excellencies,

Ladies and Gentlemen,

**Introduction**

It is a real pleasure and an honour to be given this opportunity to speak with you today, and I would like to extend my appreciation to the OSCE Mission in Bosnia and Herzegovina, as well as the OSCE’s Office for Democratic Institutions and Human Rights for their kind invitation.

**Tribunal committed to support capacity building**

I have over the past year or so been fortunate enough to both follow and take part in the joint project, of which the Tribunal is one of the partners, which aims to re-focus efforts and devise systems to “support the transition process”. Permit me to firmly state at the outset that the Tribunal is committed to doing everything it can to assist national judiciaries in the region in handling war crimes cases.

The Research Team’s ‘Interim Report’ is clearly timely and it identifies many areas where assistance is both requested and required. Over the coming years, as the ICTY concludes the main part of its mission, we are determined to ensure that the Tribunal will accelerate and strengthen its capacity building endeavours. I am therefore delighted that the Tribunal is strongly represented at this multi-agency, trans-

regional, initiative with representation from all three organs of the ICTY – the Chambers, Prosecution and Registry. The aim of the proceedings over next two days is to further identify capacity building priorities and the role the ICTY can play in meeting these needs.

### **Context of the Tribunal's Capacity Building**

But before focusing on future goals, I would like to say a few words about previous and current capacity building efforts and the Tribunal's role in that work.

When the United Nations Security Council established the Tribunal in 1993 it did so, in part, due to a belief that the national judiciaries in the former Yugoslavia at the time were not capable to conduct fair trials. We have, of course, come a long way since then. But, an issue I want to highlight here about the 1990s is that no agency expected nor requested the Tribunal to play any part whatsoever in strengthening the capacity of national judiciaries. There was no blueprint for what International Tribunal's in the modern age should or should not do and capacity building wasn't on anybody's agenda! Indeed, contact between national bodies and the Tribunal operated at what can be described as a functional minimum. National judiciaries and the International Tribunal pretty much kept themselves to themselves. It was accepted, that is how things were.

In the first half of this decade, important developments within the Tribunal coupled with significant political change in many of the states of the former Yugoslavia, as well as on the global stage, triggered welcome fresh thinking.

Undoubtedly, the Tribunal had taken the practice of international humanitarian law to new heights. Today we are in the final stages of our work. 161 persons have been indicted, and only two fugitives remain at large. 5,500 witnesses have walked through the Tribunal's doors and told their story. But in the early days, the Tribunal was deeply concerned that its work and findings were being both misrepresented and marginalised in many states that emerged from the former Yugoslavia. As a consequence, its ability to meet its mandate, of contributing to the restoration and

maintenance of a lasting peace, was being eroded. One of the Tribunal's main responses was to set up an Outreach Programme - aimed at bringing the Tribunal and the communities it served closer together, to forge dialogue and working partnerships. It may not appear so today, but at the time this was a bold step. It was questioned by some in the legal professional. However, its successes were to lead every future international or hybrid court to make outreach an essential component of their institutions.

Soon after the Outreach Programme's establishment, the Tribunal began to devise strategies aimed at the staggered and ordered closure of the organisation. The ICTY had always been set up to be *ad hoc*, a temporary institution. We at the Tribunal recognised the importance of concluding our work and so we devised our Completion Strategy which was endorsed by the Security Council in 2003.

The Completion Strategy is of enormous significance to the Tribunal. The strategy authorised the organisation to engage in strengthening the capacity of national judiciaries, and made this an essential element of the Tribunal's mission.

For the first time in history, an International Tribunal was explicitly instructed to assist, rather than replace, national judiciaries. The Tribunal welcomed the endorsement and has, I believe, done more than any other comparable international court in the world when it comes to know-how transfer and support to colleagues working in a national setting.

### **The Tribunal's Record**

So what leads me to make such a forthright claim? Allow me spotlight a few key issues.

An essential element of the Completion Strategy is the referral of cases from the Tribunal's docket back to states here in the region of the former Yugoslavia. This tool was intended to both reduce the Tribunal's caseload and place responsibility on national judiciaries to ensure high standards were applied in conducting cases. The

ability of the Tribunal to transfer cases acted as a catalyst to judiciaries to ensure they could demonstrate a willingness and ability to conduct cases in accordance with international standards. Some analysts have commented that Bosnia and Herzegovina, Croatia and Serbia at the time all witnessed a mini-revolution in the judicial realm in order to show they were up-to-standard. Ultimately, the Tribunal transferred 13 persons (who had already been indicted by the Tribunal's Prosecution) to national jurisdictions. Equally as important, it is public record that the Tribunal's Prosecution, of whom I do not represent, have additionally transferred important investigation files and materials that have enabled national jurisdictions to bring numerous indictments, conduct trials and secure convictions against many persons responsible for crimes that otherwise may have, literally, got away with murder.

Whatever the motivation, national authorities have in the last six or seven years turned to the ICTY for advice and support. Without it, I doubt the progress made to date would have been so profound.

The Tribunal was, arguably, the main backer of the establishment of a War Crimes Chamber within the State Court of Bosnia and Herzegovina. It used all its authority to get the Chamber established and to support its excellent work. Elsewhere, the unveiling of the Completion Strategy was a major spur for the establishment of specialized bodies and courts in Croatia and Serbia.

Meantime, the Tribunal has reviewed and provided its analysis on a gamut of matters for authorities in Belgrade, Pristina, Sarajevo, Skopje and Zagreb ranging from fundamentals such as the review of Penal Code reforms through to more specific highly specialized skills such as the training of security officials in their handling of sensitive witnesses.

The Tribunal has a distinguished record of transparency and an open-door policy regarding the provision of assistance to sister courts in the former Yugoslavia. Several hundred legal professional, including dozens of judges, have taken part in roundtables, workshops, familiarization and study visits held in The Hague. The

opportunity these visits have provided for fellow professionals to discuss seminal concerns, be it the applicability of the doctrine of command responsibility or plea agreements, has proved to be invaluable. And on the other hand, hundreds of Tribunal officials have had the honour to participate in training and know-how transferral events in places as far flung as Rijeka to Tetova.

In some instances, such as the six-month long know-how sharing programme the Tribunal undertook with identified experts in Croatia during 2004, the Tribunal dedicated entire teams of its specialists to assist Croatia in its preparations to receive cases and case materials. Such in-depth programmes remain without parallel anywhere else in the world.

In addition to providing training, another vital concern is the provision of materials or access to databases. The Tribunal's website contains a range of court materials unmatched by any other international court. In addition to indictments, judgements, decisions, transcripts and suchlike, the Tribunal has recently launched its Court Records Database. This prodigious repository of information, numbering more than 150,000 documents with around two million pages, contains every public documents filed in the Tribunal's court proceedings, from the very first in 1994, through to today. I am delighted to recommend this service to you.

To complement this body of information the Tribunal, before its closure, intends to place on its website a complete audio-visual archive of every public court session to have taken place at the Tribunal. When completed, this ambitious project will be another first of its kind and will provide a remarkable facility for future audiences to study the Tribunal's work.

Additionally, the Tribunal has adopted procedures by which parties to proceedings in the region can request confidential information from ICTY cases. The Tribunal has already provided information under this system – referred to in-house as Rule 75 (H) - and is looking at ways to ensure that agencies are familiar with and know how best to utilise this important facility. Raising awareness of the Tribunal's databases and

how to use them, as well as what they can and cannot deliver, is an important task ahead of us.

Another area of capacity building work in which the Tribunal is especially pleased to have been able to contribute has been the engagement of interns from the former Yugoslavia. Through imaginative partnerships with NGOs like the Belgrade-based *Youth Initiative* the Tribunal has been blessed in hosting numerous post-graduate students from Serbia and beyond. I am delighted that many of these students have been able to apply the skills they have developed at the ICTY back in their national constituencies. Also, it gives us all great pleasure when we see students from the region initially involved in Outreach Programme events of 2000 now working as professionals in the war crimes field.

In concluding, it is heartening to assess how far we have come. Earlier, in the 1990s, cooperation with the Tribunal was far from forthcoming from certain parts of the former Yugoslavia and the prospect of impartial trials in such areas was remote. Today, we are faced with a radically different situation.

Many aspects of the Tribunal's capacity building work has been unchartered and pioneering and, I believe, the Tribunal has established itself as a global leader in know-how transfer.

My hope is that we can in the decisive years ahead all build upon this solid foundation, promote global respect for international humanitarian law and ensure that national judiciaries are able to uphold the rule of law.