

## [Attending the ICTY Commemoration at ASP16](#)

Par:

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Langue Français

Le:

8 Décembre 2017

Created in 1993, the International Criminal Tribunal for former-Yugoslavia (ICTY) has just finished its mandate in November 2017. Consequently, on the first day of the 16<sup>th</sup> Assembly of States Parties at the International Criminal Court, an ICTY commemoration was organized by the Kingdom of the Netherlands, the Permanent Mission of Italy to the United Nations and the Permanent Mission of Uruguay to the United Nations. This blog post is a report of this presentation.

### **Welcome remarks**

H.E. Mr. Sebastiano Cardi, the Permanent Representative of Italy to the United Nations (UN), addressed welcome remarks. He reminded [Resolution 808 from the UN Security Council](#) (SC) that has created the ICTY and [Resolution 827](#) that has led to the adoption of the ICTY Statute. He emphasized that the SC has made an important contribution to establish accountability with the creation of the *ad hoc* tribunals in the nineties, even though the primary responsibility remains on States to build justice in accordance with international standards. In the future, States must continue this job with collective engagement to these issues as long as crimes are being committed in order to fight against impunity.

### **Keynote speech**

Afterwards, Mr. Miguel de Serpa Soares, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel addressed a keynote speech. He reminded the [historical circumstances of the former Yugoslavia armed conflict and the creation of the ICTY](#). When the SC created this *ad hoc* tribunal, it also managed to have an impact on the interpretation of UN Charter and its own functions under [Chapter VII](#). Indeed, according to [article 24](#), it has the responsibility to maintain international peace and security. Regarding [article 41](#), the creation of tribunals can be a measure to preserve or restore peace and security. Therefore the creation of the ICTY and the [ICTR](#) is a remarkable moment in history. All over the years, the international community made efforts to render ICTY effective. Precedents emerged from the ICTY and ICTR jurisprudence, precedents that had, still have and will have an influence on the international criminal accountability. The *ad hoc* tribunals marked a starting point for an existent international criminal justice and for universal accountability but also for increasing appetite for gathering and preserving information for international crimes. At the same time, the treatment of victims is an important issue since they are often vulnerable and in need for assistance and appropriate support to get proper access to justice.

The ICTY legacy is the memory, the fight against denial, the major step took about establishing the truth about the war and all the atrocities that were committed, and the shared responsibility of international community that was spotlighted. After the last decision in November 2017, we need to all remember that the fight against impunity should never stop.

The ICTY deals with war crimes that took place during the conflicts in the former Yugoslavia in the 1990's. The Tribunal was the first court to undertake the prosecution and adjudication of the gravest international crimes since the post-World War II Nuremberg and Tokyo trials.



**Moderated Panel Discussion**

Thereafter, Mr. Stephen Mathias, Assistant Secretary-General for Legal Affairs, conducted a moderated panel discussion with Judge Carmel Agius (ICTY President), Mr. Serge Brammertz (ICTY/MICT Prosecutor) and Mr. John Hocking (ICTY Registrar).

Mr. Stephen Mathias highlighted the significant contribution of Antonio Cassese to international criminal justice but also that ICTY's decisions took over time have made the reputation and growing influence of the ICTY.

Judge Carmel Agius mentioned the [Trial Chamber I decision adopted on 22 November 2017 in the case of Ratko Mladić](#) that convicted him for genocide, war crimes and crimes against humanity and sentenced him to life imprisonment. He also reminded the [decision rendered on 29 November 2017 in the Prlić et al. case](#). Mr Slobodan Praljak, one of the six defence appellants in this case, drank a liquid while in court during the public

pronouncement of the appeal judgement in which the Appeals Chamber confirmed his conviction and affirmed his sentence of 20 years of imprisonment. [He passed away a few hours later in HMC Hospital in The Hague.](#) The Judge saw this event as an attempt to undermine the ICTY and its decisions.

He also spotlighted that the ICTY Statute has become a living instrument over the years. For example, if in 1993, the ICTY had the right to apply only the international humanitarian law and not to create “new” international law, the gaps in the [Statute](#) had to be filled, like the definitions of the crimes or the lack of it since it was impossible to reach an agreement at the time of its adoption considering the circumstances and the emergency of the situation.

The ICTY provides a matter of reflexion for those who will have the task to establish other courts and tribunals in the future. So, it was a journey into the unknown in a quarter century since its creation but the tribunal has managed to successfully navigate throughout all the challenges thanks to the work done by the outstanding judges and staff who over the years brought life, aims and meaning to the institution.

Following Judge Carmel Agius’ presentation, Mr. Serge Brammertz emphasized that the acceptance of the crimes and their denial is a reality regarding the reactions to the ICTY activities. Decisions were all about individual criminal responsibility and the acceptance of the crimes is a major problem, even though the Tribunal is not prosecuting States or an entire population.

The information collected by the Tribunal over the years constitutes a lot of documentation on the conflict in former Yugoslavia that could be used as databases for education and consciousness, like the events of the siege of Sarajevo and the Srebrenica genocide. Additionally, some aspects of the ICTY jurisprudence will be useful for other institutions like for instance the theory of command responsibility since the most effective way to prevent crimes is to have an impact on commanders and having them accountable. Also, regarding to the jurisprudence on genocide, this international crime is not a matter of the number of persons killed but the intent to totally destroy a certain group.

He showcased that with cooperation, there is no success, no trial, and no condemnations. In his opinion, ICTY’s legacy is mainly the positive complementarity meaning that even if initially it had primacy on the national jurisdictions, interaction with national authorities became the rule over the time: the “small cases” were judged by national tribunals and the greater responsibility for accused commanders was devolved to the ICTY. Finally, he finished his presentation reminding that if there is a massive crisis, there is definitely a need for integrated and international approach in order to get an effective response.

Mr. John Hocking continued the presentation and referred to the nearly 5,000 victims that “spoke about the unspeakable sufferance” and whose “voices made justice possible”. He stated that the ICTY treated every person with humanity and dignity since “when we respect human rights, when we respect human dignity, it is there that we advance the protection of human rights for all”. He underlined that the ICTY defined sexual-violence in conflict as war crimes in the [Furundzija judgment](#), but also rape as an act of torture. He also added that no arrests, no fair trials and no imprisonment would have been possible without the cooperation and political support of States.

He sees the ICTY as an inspiration for civil society around the world, a hope for justice and noticed that some

dare to take risks to document international crimes due to one shared commitment, which is the pursuit of justice. The ICTY success was to prosecute with due process those considered most responsible for the crimes committed in former Yugoslavia. Thanks to its contribution, “criminal justice is not anymore a question of ‘if’ but a question of ‘when and how’”. In his regard, “the fight for justice is hard but justice cannot be ignored”, as “reconciliation is not an event, but a process: you cannot expect too much, too soon. Every effort has value. Every step is progress”. Even though sometimes it feels that peace and justice seem impossible, history of humanity deals with the impossible made possible”. He concluded saying that “with [Tadic decision](#), the ICTY took the first step in the fight against inhumanity, against impunity”.

### **Remarks and closing remarks**

H.E. Mr. Elbio Rosselli, from the Security Council Chair of the Informal Working Group on International Tribunals addressed some remarks to the audience. In his opinion, the decision to create this Tribunal was very successful and demonstrated the commitment to not leave unpunished the most egregious violations of international law. The ICTY embodied for over a quarter of a century an ideal of justice but he also reminded that “there cannot be justice without truth, no peace without justice”.

H.E. Mr. Karel van Oosterom, the Permanent representative of the Netherlands to the United States concluded the ICTY Commemoration by highlighting that the best way to prevent war crimes is that they are never committed, that perpetrators know that they can be prosecuted and that impunity will not prevail. He finally said that ICTY managed to give a voice to the victims and to their loved ones by establishing historical truth, so he hopes that in the future, we will be able to say the same for the war crimes that are currently committed in Syria and Yemen.



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*This blogpost and Silviana’s attendance to the 16<sup>th</sup> Assembly of States Parties in the framework of the Canadian Partnership for International Justice was supported by the Social Sciences and Humanities Research Council of Canada.*



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