Chapter 54

Hope for the Future of Justice

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It is important to discuss the issue of the legacy of the International Criminal Tribunal for the former Yugoslavia (ICTY)—a legacy that leaves a foundation to build upon in the future and imposes upon us an obligation to keep its spirit alive, not only by bringing the perpetrators of international crimes to justice, but also by acknowledging the interests of the victims of these crimes.

The ICTY was created at the beginning of the 1990s in an era of renewed hope and opportunities for the development of international justice. The Berlin Wall fell in 1989 and a few months later, in February of 1990, Nelson Mandela was released from prison. On one occasion Mandela said: “We must use time wisely and forever realize that the time is always ripe to do right.”

Despite the atrocities in the decennia that followed in the Balkans, Rwanda, and Sierra Leone, the international community seized the opportunity to do right. It created the ad hoc tribunals and the International Criminal Court (ICC). Since then, the ICTY has performed a tremendous task.

When reflecting on the ICTY legacy it is not easy to choose one achievement over another given the work that has been done by the ICTY, and by the other international tribunals in the past 17 years, including work for the victims, work for the development of international criminal law, and ultimately work for justice.

An important achievement of the ICTY is that it has brought the investigation and prosecution of war crimes, crimes against humanity, and genocide into the modern era. Before the creation of the ICTY, the efforts in this field dated back mostly to the Nuremberg trials.

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1 See International Criminal Tribunal for the former Yugoslavia (ICTY), History of the ICTY, http://www.icty.org/sid/95 (last visited June 19, 2010).


Through the work of the ICTY, we have seen that the investigation and prosecution of such crimes demand a considerable amount of time, effort, resources, and commitment. However, the ICTY demonstrated to the world community that these are, in essence, criminal cases that can, and must, be adjudicated.

In reflecting on the legacy of the ICTY, the lasting legacy in the Balkan region comes to mind. Justice in this sense is the key to long-lasting peace and reconciliation. The ICTY went beyond its original mandate by contributing to the creation of regional judicial mechanisms to deal with the past. This contribution to the national prosecution and adjudication process is a major contribution to lasting peace in the region.

When one thinks of the legacy of the ICTY, one thinks also of the formidable corpus juris built by the eminent legal experts working at all the different levels and organs of the Tribunal. The rules and case law contained in the archives of the tribunal are achievements that will assist and guide national and international practitioners for years to come. It is essential that these archives remain available to future practitioners.

Reflecting on the ICTY legacy may, however, almost lead you to think the work is done, that the ICTY has completed its work. This thought is misleading. The moment will come when the ICTY will close its doors; of this we are certain. Before that time, however, a lot of issues must be dealt with, especially related to the remaining judicial activities. These issues must be addressed and decided upon shortly, with due consideration for the remaining judicial tasks of the Tribunal.

The ad hoc tribunals themselves have identified eight essential functions that should be carried out by a residual mechanism:

· the trial of fugitives,
· contempt trials,
· protection of witnesses,
· judgment reviews,
· referral of cases to national jurisdictions,
· supervision of sentence enforcement,
· assistance to national authorities, and
· the management of the archives.

No one knows exactly how long these functions will have to be carried out. Bearing in mind that more than 60 years after the end of WWII there are still Nazi war criminals being tried (albeit rarely) we can only extrapolate as to how long we will be dealing with Balkan war suspects. This is to underscore how important it is to make the right choices for the years to come.

In conclusion, one last thought on the subject of the legacy of the ICTY: The decision to establish the ICTY led the way to the creation of the International Criminal Court, with its closed system of law enforcement for war crimes, crimes against

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