About the ICTY

The Tribunal irreversibly changed the landscape of international humanitarian law.

The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990's. Since its establishment in 1993 it has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced.

In its precedent-setting decisions on genocide, war crimes and crimes against humanity, the Tribunal has shown that an individual’s senior position can no longer protect them from prosecution.

It has now shown that those suspected of bearing the greatest responsibility for atrocities committed can be called to account, as well as that guilt should be individualised, protecting entire communities from being labelled as "collectively responsible".

The Tribunal has laid the foundations for what is now the accepted norm for conflict resolution and post-conflict development across the globe, specifically that leaders suspected of mass crimes will face justice. The Tribunal has proved that efficient and transparent international justice is possible.

The Tribunal has contributed to an indisputable historical record, combating denial and helping communities come to terms with their recent history. Crimes across the region can no longer be denied. For example, it has been proven beyond reasonable doubt that the mass murder at Srebrenica was genocide.

Judges have also ruled that rape was used by members of the Bosnian Serb armed forces as an instrument of terror, and the judges in the Kvočka et al. trial established that a "hellish orgy of persecution" occurred in the Omarska, Keraterna and Trnopolje camps of northwestern Bosnia.
While the most significant number of cases heard at the Tribunal have dealt with alleged crimes committed by Serbs and Bosnian Serbs, the Tribunal has investigated and brought charges against persons from every ethnic background. Convictions have been secured against Croats, as well as both Bosnian Muslims and Kosovo Albanians for crimes committed against Serbs and others.

While its judgements demonstrate that all parties in the conflicts committed crimes, the Tribunal regards its fairness and impartiality to be of paramount importance. It takes no side in the conflict and does not attempt to create any artificial balance between different groups. Evidence is the basis upon which the Prosecution presents a case. The Judges ensure a fair and open trial, assessing the evidence to determine the guilt or innocence of the accused.

Established as an ad hoc court, the Security Council endorsed the Tribunal’s completion strategy for a staggered and ordered closure.

Estimates as of December 2012 suggest that of the cases in the trial stage, four will be concluded in 2013. The trial of Radovan Karadžić is expected to finish in 2014. The estimates for the Hadžić and Mladić cases forecast those trials finishing by 31 December 2015 and 31 July 2016, respectively.

It is anticipated that the judgements in the Perišić, Dordević and Šainović et al. appeals cases will be delivered in 2013. The Popović et al. appeals case is anticipated to be completed by July 2014.

Since 2003 the court has worked closely with local judiciaries and courts in the former Yugoslavia, working in partnership as part of a continuing effort to see justice served.

Undoubtedly, the Tribunal’s work has had a major impact on the states of the former Yugoslavia. Simply by removing some of the most senior and notorious criminals and holding them accountable the Tribunal has been able to lift the taint of violence, contribute to ending impunity and help pave the way for reconciliation.

Establishment

In May 1993, the Tribunal was established by the United Nations in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. Reports depicting horrendous crimes, in which thousands of civilians were being killed and wounded, tortured and sexually abused in detention camps and hundreds of thousands expelled from their homes, caused outrage across the world and spurred the UN Security Council to act.

The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. It was established by the Security Council in accordance with Chapter VII of the UN Charter. The key objective of the ICTY is to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes listed in the
Tribunal's Statute. By bringing perpetrators to trial, the ICTY aims to deter future crimes and render justice to thousands of victims and their families, thus contributing to a lasting peace in the former Yugoslavia.

Situated in The Hague, the Netherlands, the ICTY has charged over 160 persons. Those indicted by the ICTY include heads of state, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Croatia, Bosnia and Herzegovina, Serbia, Kosovo and the Former Yugoslav Republic of Macedonia. More than 60 individuals have been convicted and currently more than 30 people are in different stages of proceedings before the Tribunal.

Those interested in the Tribunal's proceedings can visit the ICTY and watch trials first-hand. Trials can also be followed through the internet broadcast on this website.

While operating at full capacity, the Tribunal is working towards the completion of its mandate. The ICTY aims to achieve this by concentrating on the prosecution and trial of the most senior leaders, while referring a certain number of cases involving intermediate and lower-ranking accused to national courts in the former Yugoslavia. This plan, commonly referred to as the Tribunal's 'completion strategy', foresees the Tribunal assisting in strengthening the capacity of national courts in the region to handle war crimes cases.

The ICTY is made up of three main branches: the Chambers, the Registry, and the Office of the Prosecutor.
The mandate of the Tribunal is to bring to justice those responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991 and thus contribute to the restoration and maintenance of peace in the region.

In accordance with its Statute, the ICTY has jurisdiction over the territory of the former Yugoslavia from 1991 onwards. It has jurisdiction over individual persons and not organisations, political parties, army units, administrative entities or other legal subjects.

Although the ICTY and national courts have concurrent jurisdiction over serious violations of international humanitarian law committed in the former Yugoslavia, the ICTY can claim primacy and may take over national investigations and proceedings at any stage if this proves to be in the interest of international justice. It can also refer its cases to competent national authorities in the former Yugoslavia.

The Tribunal has authority to prosecute and try individuals on four categories of offences: grave breaches of the 1949 Geneva conventions, violations of the laws or customs of war, genocide and crimes against humanity. The ICTY has no authority to prosecute states for aggression or crimes against peace; these crimes are within the jurisdiction of The International Court of Justice.

Pursuant to Article 1 of the ICTY Statute, the Tribunal has jurisdiction over persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The ICTY Statute also states that the official position of an accused, whether as Head of State or Government or as a responsible Government official, does not relieve him of criminal responsibility nor mitigate punishment.

Articles 2 to 5 of the Statute identify four different categories of crimes, as described below, for which the Tribunal has jurisdiction. Importantly, Article 7 provides that a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 shall be individually responsible for the crime.

**Grave Breaches of the Geneva Conventions of 1949**

**Violations of the laws or customs of war**

**Crimes against humanity**

**Genocide**
What is the former Yugoslavia?

The Tribunal was given authority to prosecute persons responsible for specific crimes committed since January 1991 in the territory of what is referred to as the former Yugoslavia.

What is meant by the term former Yugoslavia is the territory that was up to 25 June 1991 known as The Socialist Federal Republic of Yugoslavia (SFRY). Specifically, the six republics that made up the federation - Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia (including the regions of Kosovo and Vojvodina) and Slovenia.

SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA
AS OF JANUARY 1991

Slovenia’s declaration of independence on 25 June 1991 effectively ended SFRY’s existence. By April 1992, the further declarations of independence by three other republics, Croatia, Macedonia, as well as Bosnia and Herzegovina, left only Serbia and Montenegro within the Federation.

These two remaining republics declared the Federal Republic of Yugoslavia (FRY) on 27 April 1992. In 2003, the Federal Republic of Yugoslavia was reconstituted and re-named as a State Union of Serbia and Montenegro. This union effectively ended following Montenegro’s formal declaration of independence on 3 June 2006 and Serbia’s on 5 June 2006.
What is the former Yugoslavia?

The Tribunal was given authority to prosecute persons responsible for specific crimes committed since January 1991 in the territory of what is referred to as the former Yugoslavia.

What is meant by the term former Yugoslavia is the territory that was up to 25 June 1991 known as The Socialist Federal Republic of Yugoslavia (SFRY). Specifically, the six republics that made up the federation - Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia (including the regions of Kosovo and Vojvodina) and Slovenia.

SLOVAK FEDERAL REPUBLIC OF YUGOSLAVIA
AS OF JANUARY 1991

Slovenia's declaration of independence on 25 June 1991 effectively ended SFRY's existence. By April 1992, the further declarations of independence by three other republics, Croatia, Macedonia, as well as Bosnia and Herzegovina, left only Serbia and Montenegro within the Federation.

These two remaining republics declared the Federal Republic of Yugoslavia (FRY) on 27 April 1992. In 2003, the Federal Republic of Yugoslavia was reconstituted and re-named as a State Union of Serbia and Montenegro. This union effectively ended following Montenegro's formal declaration of independence on 3 June 2006 and Serbia's on 5 June 2006.
FORMER YUGOSLAVIA
AS OF JANUARY 2008
The Conflicts

At the beginning of the 1990s, the Socialist Federal Republic of Yugoslavia was one of the largest, most developed and diverse countries in the Balkans. It was a non-aligned federation comprised of six republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. In addition to the six republics, the two separate regions of Kosovo and Vojvodina held the status of autonomous provinces within the Republic of Serbia. Yugoslavia was a mix of ethnic groups and religions, with Orthodox Christianity, Catholicism and Islam being the main religions.

Coinciding with the collapse of communism and resurgent nationalism in Eastern Europe during the late 1980s and early 1990s, Yugoslavia experienced a period of intense political and economic crisis. Central government weakened while militant nationalism grew apace. There was a proliferation of political parties who, on one side, advocated the outright independence of republics and, on the other, urged greater powers for certain republics within the federation.

Political leaders used nationalist rhetoric to erode a common Yugoslav identity and fuel fear and mistrust among different ethnic groups. By 1991, the break-up of the country loomed with Slovenia and Croatia blaming Serbia of unjustly dominating Yugoslavia's government, military and finances. Serbia in turn accused the two republics of separatism.

**Slovenia - 1991**

The first of the six republics to formally leave Yugoslavia was Slovenia, declaring independence on 25 June 1991. This triggered an intervention of the Yugoslav People's Army (JNA) which turned into a brief military conflict, generally referred to as the Ten-Day War. It ended in a victory of the Slovenian forces, with the JNA withdrawing its soldiers and equipment.

**Croatia - 1991-1995**

Croatia declared independence on the same day as Slovenia. But while Slovenia’s withdrawal from the Yugoslav Federation was comparatively bloodless, Croatia’s was not to be. The sizeable ethnic Serb minority in Croatia openly rejected the authority of the newly proclaimed Croatian state citing the right to remain within Yugoslavia. With the help of the JNA and Serbia, Croatian Serbs rebelled, declaring nearly a third of Croatia’s territory under their control to be an independent Serb state. Croats and other non-Serbs were expelled from its territory in a violent campaign of ethnic cleansing. Heavy fighting in the second half of 1991 witnessed the shelling of the ancient city of Dubrovnik, and the siege and destruction of Vukovar by Serb forces.

Despite the UN-monitored ceasefire which came into force in early 1992, Croatian authorities were determined to assert authority over their territory, and used its resources to develop and equip its armed forces. In the summer of 1995, the Croatian military undertook two major offensives to regain all but a pocket of its territory known as Eastern Slavonia. In a major exodus, tens of thousands of Serbs fled the Croatian advance to Serb-held areas in Bosnia and Herzegovina and further to Serbia. The war in Croatia effectively ended in the fall of 1995. Croatia eventually re-asserted its authority over the entire territory, with Eastern Slavonia reverting to its rule in January 1998 following a peaceful transition under UN-administration.

**Bosnia and Herzegovina - 1992-1995**

In Bosnia and Herzegovina, the conflict was to be the deadliest of all in the disintegrating Yugoslav Federation. This central Yugoslav republic had a shared government reflecting the mixed ethnic composition with the population made up of about 43 per cent Bosnian Muslims, 33 per cent Bosnian Serbs, 17 per cent Bosnian Croats and some seven percent of other nationalities. The republic's strategic position made it subject to both Serbia and Croatia
attempting to assert dominance over large chunks of its territory. In fact, the leaders of Croatia and Serbia had in 1991 already met in a secret meeting where they agreed to divide up Bosnia and Herzegovina, leaving a small enclave for Muslims.

In March 1992, in a referendum boycotted by Bosnian Serbs, more than 80 percent of Bosnian citizens voted for independence. Almost immediately, in April 1992, Bosnian Serbs rebelled with the support of the Yugoslav People’s Army and Serbia, declaring the territories under their control to be a Serb republic in Bosnia and Herzegovina. Through overwhelming military superiority and a systematic campaign of persecution of non-Serbs, they quickly asserted control over more than 60% of the country. Bosnian Croats soon followed, rejecting the authority of the Bosnian Government and declaring their own republic with the backing of Croatia. The conflict turned into a bloody three-sided fight for territories, with civilians of all ethnicities becoming victims of horrendous crimes.

It is estimated that more than 100,000 people were killed and two million people, more than half the population, were forced to flee their homes as a result of the war that raged from April 1992 through to November 1995 when a peace deal was initialed in Dayton. Thousands of Bosnian women were systematically raped. Notorious detention centres for civilians were set up by all conflicting sides; in Prijedor, Omarska, Konjic, Drzti and other locations. The single worst atrocity of the war occurred in the summer of 1995 when the Bosnian town of Srebrenica, a UN-declared safe area, came under attack by forces lead by the Bosnian Serb commander Ratko Mladic. During a few days in early July, more than 8,000 Bosnian Muslim men and boys were executed by Serb forces in an act of genocide. The rest of the town’s women and children were driven out.

Kosovo - 1998-1999

The next area of conflict was centered on Kosovo, where the ethnic Albanian community there sought independence from Serbia. In 1998 violence flared as the Kosovo Liberation Army (KLA) came out in open rebellion against Serbian rule, and police and army reinforcements were sent in to crush the insurgents.

In their campaign, the Serb forces heavily targeted civilians, shelling villages and forcing Kosovo Albanians to flee. As the attempt at an internationally-brokered deal to end the crisis failed in early 1999 at the Rambouillet peace talks, NATO carried out a 78-day-long campaign of air strikes against targets in Kosovo and Serbia. In response, Serb forces further intensified the persecution of the Kosovo Albanian civilians. Ultimately, Serbian President Slobodan Milosevic agreed to withdraw his troops and police from the province. Some 750,000 Albanian refugees came home and about 100,000 Serbs - roughly half the province’s Serb population - fled in fear of reprisals. In June 1999, Serbia agreed to international administration of Kosovo with the final status of the province still unresolved.

The Former Yugoslav Republic of Macedonia - 2001

The southernmost republic of the Yugoslav Federation, Macedonia, declared independence in the fall of 1991 and enjoyed a peaceful separation. It was later admitted to the UN under the temporary name of the Former Yugoslav Republic of Macedonia (FYROM).

The Former Yugoslav Republic of Macedonia, populated by a majority of ethnic Macedonians and a large Albanian minority, remained at peace through the Yugoslav wars of the early 1990s. However, at the beginning of January 2001 the ethnic Albanian National Liberation Army (NLA) militant group clashed with the republic’s security forces with the aim of obtaining autonomy or independence for the Albanian-populated areas in the country. Sporadic armed conflict lasted for several months in 2001, ending with a peace deal which envisaged a political agreement on power-sharing, the disarmament of the Albanian militia and the deployment of a NATO monitoring force.
Achievements

Some of the Tribunal's Achievements:

HOLDING LEADERS ACCOUNTABLE

By holding individuals accountable regardless of their position, the Tribunal has dismantled the tradition of impunity for war crimes. The Tribunal indicted heads of state, prime ministers, army chiefs-of-staff, government ministers and many other leaders from various parties to the Yugoslav conflicts. Thanks to the Tribunal, the question is no longer whether leaders should be held accountable, but rather how best to ensure they will be called to account.

BRINGING JUSTICE TO VICTIMS

By holding individuals responsible for crimes committed in the former Yugoslavia, the Tribunal is bringing justice to victims. The Tribunal has indicted 161 accused for crimes committed against many thousands of victims during the conflicts in Croatia (1991-1995), Bosnia and Herzegovina (1992-1995), Kosovo (1998-1999) and the Former Yugoslav Republic of Macedonia (2001).

GIVING VICTIMS A VOICE

The Tribunal has provided thousands of victims the opportunity to be heard and to speak about their suffering. Many of them displayed exceptional courage in recalling their harrowing experiences. The Tribunal preserves their testimonies in court transcripts and video recordings.

ESTABLISHING THE FACTS

The Tribunal has established beyond a reasonable doubt crucial facts related to crimes committed in the former Yugoslavia. In doing so, the Tribunal's judges have carefully reviewed testimonies of eyewitnesses, survivors and perpetrators, forensic data and often previously unseen documentary and video evidence. The Tribunal's judgements have contributed to creating a historical record, combating denial and preventing attempts at revisionism and provided the basis for future transitional justice initiatives in the region.

DEVELOPING INTERNATIONAL LAW

Since its establishment more than a decade ago, the Tribunal has consistently and systematically developed International humanitarian law. The Tribunal's work and achievements have inspired the creation of other International criminal courts, including the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the International Criminal Court. The Tribunal has proved that efficient and transparent international justice is viable.

STRENGTHENING THE RULE OF LAW

The Tribunal has influenced judiciaries in the former Yugoslavia to reform and to continue its work of trying those responsible for war crimes. The Tribunal works in partnership with domestic courts in the region - transferring its evidence, knowledge and jurisprudence - as part of its continuing efforts to strengthen the rule of law and to bring justice to victims in the former Yugoslavia.
BRINGING JUSTICE TO THOUSANDS OF VICTIMS AND GIVING THEM A VOICE

The Tribunal has provided thousands of victims the opportunity to be heard and to speak about their suffering. Many of them displayed exceptional courage in recalling their harrowing experiences. The Tribunal preserves their testimonies in court transcripts and video recordings.

One of the witnesses who testified at the Tribunal, a healthcare professional who had been involved in treating victims of war crimes, said that "The Hague Tribunal, for all the victims, all the women with whom I have had a chance to work, has a very great significance for them... They do trust that the real causes of what happened will be identified and that the people will muster enough courage, including victims, to tell the story of what happened... People expect that justice will be done and that the right decisions will be reached." (Prosecutor v. Radislav Krstić (IT-98-33), 27 July 2000, witness Teufika Ibrahimefendić)

By holding senior individuals responsible for the crimes committed in the former Yugoslavia, the Tribunal is ensuring that the victims can see that the individuals who are responsible for their suffering are convicted by an international criminal court and sent to prison.

At the same time, many victims play a crucial role in the proceedings at the Tribunal as witnesses. By testifying at the Tribunal, they contribute to the process of establishing the truth. In turn, the Tribunal's proceedings provide these victims and witnesses the opportunity to be heard and to speak about their suffering. As of early 2011, more than 4,000 witnesses had told their stories in court.

ESTABLISHING THE FACTS

The Tribunal has established beyond a reasonable doubt crucial facts related to crimes committed in the former Yugoslavia. In doing so, the Tribunal's judges have carefully reviewed testimonies of eyewitnesses, survivors and perpetrators, forensic data and often previously unseen documentary and video evidence. The Tribunal's judgements have contributed to creating a historical record, combatting denial and preventing attempts at revisionism and provided the basis for future transitional justice initiatives in the region.

As the work of the ICTY progresses, important elements of a historical record of the conflicts in the former Yugoslavia in the 1990s have emerged. The ICTY has established crucial facts about crimes, once subject to dispute, beyond a reasonable doubt.

An example can be found in one of the Tribunal's judgements related to the crimes that occurred in the Prijedor municipality in Bosnia and Herzegovina:

"On the 30th of April 1992, Serb forces took control of Prijedor. The takeover of Prijedor was followed shortly afterwards by the removal of the non-Serbs, Muslims and Bosnian Croats, from positions of responsibility. Many lost their employment, their children were prevented from going to school, and the radio broadcast anti-Muslim and anti-Croat propaganda... To avert any desire for resistance by the Croats, and especially the Muslims, the Serbs decided to interrogate any non-Serbs who might present a threat and arrested, in particular, any persons exercising an authority, moral or otherwise, or representing some kind of power, in particular, economic. At the same time, the men were separated from the women, children, and elderly. Men in particular were interrogated. The Serbs thus found reason to assemble in centres the non-Serbs who had not left the region. That is how the camps of Omarska, Kerateam, and Trnopolje were established... The evidence presented to the Chamber makes it necessary to speak not of investigation centres or assembly points but of camps... Planned initially to function for a fortnight, [Omarska camp] in fact remained in operation until about the 20th of August, 1992. During this period of almost three months, more than 3,334 detainees at least passed through the camp. Thirty or so women must be added to this list, several of whom..."
occupied high positions locally. All those detained were interrogated. Almost all were beaten. Many would not leave the camp alive." (Prosecutor v. Kvočka et al. (IT-98-30/1), Summary of Judgement, 2 November 2001)

In addition to evidence presented at trials, admissions of guilt from a number of accused have also greatly contributed to the establishment of facts. The statements that usually accompany such admissions of guilt corroborate the evidence collected by the Tribunal’s investigators to contribute to an irrefutable account of some of the events that occurred in the wars of the 1990s. In another judgement related to the crimes committed in Prijedor, in addition to the physical evidence and the victims’ testimonies, the judges also relied on the admission of guilt of an accused -- Duško Sikirica -- to complete the picture of conditions in the Keraterm camp near Prijedor:

"Sikirica has admitted to killing one of the detainees in the [Keraterm] camp by shooting him in the head. Moreover, he admits that there is considerable evidence concerning the murder of other individuals at Keraterm during the period of his duties... In addition to the killings, Sikirica has admitted that there is evidence that beatings, rape, and sexual assault were perpetrated in the camp, as well as harassment, humiliation, and psychological abuse of the detainees. He further admits that there is ample evidence that the detainees were subjected to inhumane conditions during their confinement at the Keraterm camp." (Prosecutor v. Sikirica et al. (IT-95-8), Summary of Sentencing Judgement, 13 November 2001)

Many of their important statements have offered information or leads unavailable to the investigators, such as important details about military operations or the planning and execution of some of the most horrendous crimes. In a revealing account, Momir Nikolić, who was the Assistant Commander for Security and Intelligence of the First Light Infantry Brigade in Bratunac, and who admitted to his participation in the Srebrenica massacres, described the general attitude of the Bosnian Serb forces to the laws of war:

"Do you really think that in an operation where 7,000 people were set aside, captured, and killed, that somebody was adhering to the Geneva Conventions? Do you really believe that somebody adhered to the law, rules and regulations in an operation where so many were killed? First of all, they were captured, killed, and then buried, exhumed once again, buried again. Can you conceive of that, that somebody in an operation of that kind adhered to the Geneva Conventions? Nobody... adhered to the Geneva Conventions or the rules and regulations. Because had they, then the consequences of that particular operation would not have been a total of 7,000 people dead." (Prosecutor v. Blagojević and Jokić (IT-02-60), 25 September 2003, witness Momir Nikolić)

In some instances, the perpetrators of crimes are the only ones who could disclose the location of mass graves so that the victims’ families can finally locate and properly bury their dead. At the sentencing hearing of Dragan Nikolić, commander of the Sušica detention camp in Vlasenica, the following exchange took place between a victim and the accused:

Habiba Hadžić: "... My children were innocent and they lost their lives. They were killed... I would just like to ask Dragan to tell me where they are, in which mass grave, so that their mother could give them a dignified funeral. I want to give them a proper burial, and then I can go away myself..."

Dragan Nikolić: "As far as her sons are concerned, as far as I heard - because I wasn't there when it happened - on the 30th of September, I believe, together with a group of about 40 people, they were taken to Debeo Brdo and liquidated. From that group, I remember - and I can say this because I know this lady and her sons and I remember that group of people - I remember that this group included mainly people who had previously said that they wanted to stay in Vlasenica. Most of them were locals from Vlasenica, people whom I knew and some of them were my friends. That's why I remember them. And it was in this group of people that Enis and Bernis, this lady's sons, were. I knew them well. And from what I heard, there were
Admissions of guilt can also be very significant in providing additional evidence which is otherwise unavailable. One of the accused who pleaded guilty to crimes committed in Srebrenica, Dražen Erdemović, later testified in the trial of general Radislav Krstić, also on trial for crimes committed in Srebrenica in 1995. Erdemović testified about his role in the mass execution of Bosnian Muslim men that occurred on 16 July 1995 at Branjovo military farm. Even though the Prosecution submitted evidence from two of the four known survivors of that massacre, it was Erdemović who provided the detailed evidence that identified the people who were responsible, Dražen Erdemović said the following:

"... when they had all left, the Lieutenant Colonel was talking to Brano and I heard him say that buses would be coming. As soon as he said that, it wasn’t long after that, he left with these two policemen in a car. Then Brano came back to us and told us that buses would come with civilians from Srebrenica on them. And I and some others started objecting, saying, “What are we going to do there?” And he said that we have to execute those people. Then I saw two policemen taking men out, man who were in the bus, and these two men were probably the security for the transport of these men, and they reached Brano and Vlastimir Golljan. And the first group of people were brought behind this garage down there, maybe 100 metres away, maybe more, but roughly to such a position. Then Brano told us to form a line. The men in front of us were ordered to turn their backs. When those men turned their backs to us, we shot at them. We were given orders to shoot." (Prosecutor v. Radislav Krstić (IT-98-33), 22 May 2000, witness Dražen Erdemović)

The testimony of survivors is imperative in cases where scarce documentary evidence is available to implicate perpetrators of crimes. In the Čelebići case (Prosecutor v. Mucić et al. (IT-96-21)) testimony from eyewitnesses was crucially important.

During mid-April 1992 tension rose within the ethnically mixed Konjić municipality in Bosnia and Herzegovina (BiH). Bosnian Serbs surrounded the town of Konjić and shells were fired by the Yugoslav People’s Army (JNA). When negotiations between the JNA and those of the combined Bosnian Croat and Bosnian Muslim forces failed, the two allies conducted a successful military campaign that lifted the town’s blockade. Many local Serb men, and some women, were captured and placed in detention at various locations, including in a prison camp in the village of Čelebići.

During the “Čelebići” trial many victims who testified described that they either witnessed or experienced acts of cruelty and violence, that they were living in inhumane conditions with no food, water, medical care or sleeping facilities. The Trial Chamber found, “...that an atmosphere of fear and intimidation prevailed at the prison camp, inspired by the beatings meted out indiscriminately upon the prisoners’ arrest, transfer to the camp and their arrival at the camp.” (Prosecutor v. Mucić et al., Judgement, 16 November 1998)

The Trial Chamber heard testimony from many incidents at the camp. Grozdana Čečez was one of the victims who endured torture and rape. She stated that Hazim Delić, deputy commander at the camp, raped her twice and that “(p)sychologically and physically I was completely worn out. They kill you psychologically.” (Prosecutor v. Mucić et al. (IT-96-21), 18
March 1997, witness Grozdana Ćelezić) Another detainee, Nedeljko Dragančić, testified that after his arrest, a few guards including Esad Landžo used to tie his hands to a beam and beat him on a near daily basis with rifle butts and wooden planks; on some other occasion Esad Landžo poured gasoline all over his trousers and set them alight. Dragančić explained that "...Delić... told us that we were detained because we were Serbs." (Prosecutor v. Mucić et al. (IT-96-21), 2 April 1997, witness Nedeljko Dragančić) Other inhumane acts included electric shocks, which were used to inflict pain, convulsions, burns and scarring on detainees. Detainees, Milenko Kujanin and Novica Đordić, claimed that Hzain Delić derived sadistic pleasure from using electric shocks. Mirko Đordić was another detainee who was subject to cruel treatment and torture. He stated that he would often faint from all the beatings and that on one occasion Esad Landžo forced him to open his mouth into which he placed a pair of heated pincers on his tongue, as well as in his ear. Some of the detainees were killed under orders of camp commander, Zdravko Mucić. Boško Samouković, for example, was brutally attacked with a wooden plank and subsequently died of the injuries.

The "Ćelebići" trial was a milestone in international law. It was the first time that a court found rape to be a form of torture and convicted an accused on this basis. As the Trial Chamber stated in its judgement, "there can be no question that acts of rape may constitute torture under customary law." (Prosecutor v. Mucić et al. Statement of the Trial Chamber at the Judgement Hearing, 16 November 1998) For the victims, the greatest satisfaction was to establish facts and acknowledge the suffering of Serbs in Ćelebići camp.

Dozens of crimes committed in Croatia were investigated and confirmed before the ICTY bench. Among them were two incidents that found particular resonance with public opinion: the shelling of the historic centre of Dubrovnik in December 1991, and the artillery attack of Zagreb in May 1995.

On 6 December 1991 the JNA shelled the historic UNESCO listed site, the Old Town of Dubrovnik. During the trial of Pavle Strugar, commanding officer in this operation, the defence suggested several variants of events. Arguments were presented that there was little or no damage to the Old Town, that the minor damage was deliberately or accidentally inflicted by the Croatian forces themselves or that the JNA did the shelling, but that they targeted alleged Croatian military positions in and around the Old Town. The Tribunal judges analysed those assertions together with those presented by the prosecution.

The Trial Chamber ruled that it was satisfied that the damage was considerable and that it extended over substantial areas of the Old Town. The judges dismissed as unreliable the JNA report made a few days after the shelling that tried to prove that the damage was minimal. "The evidence shows that this Commission failed to inspect areas of the Old Town so that some damage was not considered at all." (Prosecutor v. Strugar (IT-01-42), Trial Chamber Judgement, 31 January 2005). The judges established that during the shelling 52 buildings were damaged and six destroyed.

There was an overwhelming body of evidence that the damage was indeed caused by the JNA shelling, and not by Croatian forces. Ballistic experts and a number of witnesses helped to establish this claim. Croatian Army Captain Ivan Negodić was one of them, and he testified about the intercepted conversation between a JNA soldier and his superior: "(...) the soldier asked his captain: Captain, where am I to target? And I apologise to the Court in advance, because I have to say quite literally and translate quite literally what the captain answered the soldier. He said: You motherfucker. Everything is a target within the Old Town and its walls." (Prosecutor v. Strugar (IT-01-42), 23 April 2004, witness Ivan Negodić)

It was also established that Croatian positions were all too distant from the Old Town to put it in danger of accidental or unintended fire from the JNA. The judges listened to the testimony of numerous witnesses, including international observers and reporters, who disputed claims of Croatian military presence in the town. The Trial Chamber concluded that, "the presence of these various independent observers, who were alert to observe activities in the Old Town..."
especially any military operations, highlights the improbability that the Croatian defenders would establish or utilise defensive positions in the Old Town, or fire artillery or other weapons from the Old Town, and that any such activity could go undetected." (Prosecutor v. Strugar (IT-01-42), Trial Chamber Judgement, 31 January 2005). Likewise, no such Croatian military presence was recorded in the JNA logbooks.

In May 1995, Croatian Serbs forces suffered some military reversals and as a direct response, on 2 and 3 May shelled the centre of Zagreb. Seven civilians were killed and another 214 people injured. The Tribunal conducted an investigation which resulted in the charges against the then President of Croatian Serbs, Milan Martić. When hearing the case, ICTY judges weighed the evidence and concluded that it had been proven beyond reasonable doubt that Martić ordered the shelling which deliberately targeted civilians. (Prosecutor v. Martić (IT-95-11) Appeals Judgement, 8 October 2008)

They concluded that civilian casualties were inescapable considering the choice of weapon for the attack - a non-guided projectile weapon M-87 Orkan. The judges looked at the rocket in great detail and noted "the characteristics of the weapon, it being a non-guided high dispersion weapon (...) incapable of hitting specific targets". (Prosecutor v. Martić (IT-95-11), Trial Chamber Judgement, 12 June 2007) In densely populated areas, like in the centre of Zagreb, this indiscriminate weapon was bound to inflict severe casualties. (Prosecutor v. Martić (IT-95-11) Appeals Judgement, 8 October 2008) The judges rejected the claim that the attack was a lawful reprisal, and stressed that motives behind a criminal act are irrelevant.

In both these cases it needs to be understood that leaders were not convicted for their political views or aims of the Serb leadership but rather, as the Appeals Chamber found in the Martić case, "...in pursuing political aims, Martić and other political and military leaders committed serious crimes." (Prosecutor v. Martić, 6 October 2008)

The 1998-1999 conflict in Kosovo between the independence-seeking majority-Albanian population and Serb forces intent of retaining the territory within Serbia concluded in June 1999 with the United Nations mandated to establish and run an interim administration there. The departure of Serb forces enabled Tribunal investigators to gain access to the region and to conduct in-depth investigations in order to establish what crimes had happened and who was most responsible.

Although Yugoslav President Slobodan Milošević along with several of his most senior staff were the first persons indicted by the Tribunal for crimes committed by Serbian security forces in Kosovo, the first trial to be completed at the Tribunal for crimes in Kosovo was that of the Limaj et al. case, which dealt with three Kosovo Liberation Army (KLA) officials. The trial centred on the crimes against humanity in the KLA-run Llapushnik/Lapušnik prison camp in central Kosovo.

The prosecution asserted that the KLA had directed a widespread or systematic attack against the civilian population, both ethnic Albanians and Serbs. This was dismissed by the judges. However, the Judgement concluded that, "...there is evidence of a level of systematic or coordinated organisation to the abduction and detention of certain individuals."(Prosecutor v. Limaj et al., Judgement, 30 November 2005)

Although initially denied by the defendants, the existence of a camp at Llapushnik/Lapušnik's was confirmed through the evidence presented at trial. The judges assessed the camp to be part of "the co-ordinated and organised nature of the targeting of suspected collaborators". (Prosecutor v. Limaj et al., Judgement, 30 November 2005) The Judgement established that the KLA kidnapped members of the Serb security services as well as Albanians suspected of "collaboration" who were subjected to discrimination, harassment and abuse. "It was those Kosovo Albanians with perceived links with the Serbian military or police regimes who were singled out for especially severe treatment in detention." (Prosecutor v. Limaj et al., Judgement, 30 November 2005)
Those accused by the KLA of collaboration were referred to as "spies" or as "traitors to their people." (Limaj et al. Judgement, 30 November 2005) Key evidence admitted by the judges was KLA communiqué number 43, published on 4 March 1998 that contained the phrase "death to enemies and traitors." (Prosecutor v. Limaj et al., Judgement, 30 November 2005)

The identities of 27 Llapushnik/Lapushnik detainees, civilians of both Serbian and Albanian ethnicity, were established during the trial. A dire picture of camp conditions emerged from the testimonies of former detainees, accounts accepted as fact by the judges. It was proven that almost all of those abducted were detained in either a very small basement storage room, or in another very small room normally used as a cowshed. The conditions in each of these rooms were inhumane. There was, at most times, gross overcrowding. There was no provision for washing or sanitary use, although after an initial period, a bucket was provided for use as a toilet in the storage room. This bucket was not regularly emptied, so it would overflow. The prisoners slept on concrete floors or, if they were fortunate, on some straw. Meals were provided at irregular intervals, days would sometimes pass without food. There was very little light or ventilation and the atmosphere was oppressive with heat and stench. Many of the prisoners were tied by the hands, or feet, or both. Some were tied to other prisoners. In the cowshed, most prisoners were chained to the wall and unable to move from their position in the room. They were forced to soil themselves. Many of the prisoners had been badly injured, with broken limbs, bones, internal injuries or gun-shot wounds. No medical treatment was provided, even though there was a medical clinic in the village for KLA personnel.

According to evidence, KLA members beat and maltreated prisoners. It was a regular occurrence that "prisoners would be woken up with flashlights and mistreated, sometimes several times a day." (Prosecutor v. Limaj et al., Judgement, 30 November 2005) Prisoners were often blindfolded, tied, and taken from the room at night by KLA soldiers, who often wore hoods to hide their faces. The prisoners were then severely beaten or subjected to other extreme violence, and later were returned to the detention rooms, at times unconscious or in severe pain. Detainees lived "with the ever-present fear of being subjected to physical abuse, if not death, and in a constant atmosphere of anxiety enhanced by what seemed to them to be an arbitrary selection of detainees for abuse." (Prosecutor v. Limaj et al., Judgement, 30 November 2005) As a result three people were confirmed to have been murdered. Haradin Bala, a Llapushnik/Lapushnik camp guard, was found guilty of torture and mistreatment of several prisoners.

Bala was also found guilty of murder committed when the KLA had to abandon the camp on 25 or 26 July 1998 because of a Serb offensive. Bala and another KLA guard marched a group of prisoners to the nearby Berishë/Berisha Mountains. The guards then released some people, but executed nine remaining prisoners, all Kosovo Albanians.

This case only determines a small portion of what occurred during this time in Kosovo, more facts about the alleged KLA crimes will be established when the Haradinaj et al. case concludes, and the picture of the crimes committed by the Serb security forces will emerge after the finalisation of Mitulnović et al. and Vlastimir Đorđević cases.

Determining the facts of the crimes committed in the former Yugoslavia is crucial in order to combat denial and prevent attempts at revisionism. The detail in which the ICTY's judgements describe the crimes and the involvement of those convicted make it impossible for anyone to dispute the reality of the horrors that took place in and around Bratunac, Brčko, Čelebija, Dubrovnik, Foca, Prijedor, Sarajevo, Srebrenica and Zvornik, to name but a few. As other trials are completed, further facts will be established regarding crimes committed in these and other areas in the former Yugoslavia.
Since its establishment more than a decade ago, the Tribunal has consistently and systematically developed international humanitarian law. The Tribunal's work and achievements have inspired the creation of other international criminal courts, including the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the International Criminal Court. The Tribunal has proved that efficient and transparent international justice is viable.

The Tribunal is a unique institution and a pioneer in international legal proceedings. The first truly international war crimes tribunal, and the first tribunal established under Chapter VII of the UN Charter as a measure to maintain international peace and security, the ICTY has made a number of lasting contributions to International Justice:

• The Tribunal has created an innovative system of procedural law, combining elements of adversarial and inquisitorial legal traditions;
• The Tribunal has established the most modern court facilities in the world, the layout and technical equipment of which have been taken as a model in other modern courtrooms such as the International Criminal Court and the Special Court for Sierra Leone;
• The Tribunal has established, developed and maintained an effective victims and witnesses programme;
• The Tribunal has established a unique legal aid system and contributed to the creation of a group of defence attorneys highly qualified to represent accused in war crimes proceedings before international judicial bodies;
• The Tribunal has created a Judicial Database of all its jurisprudence providing access to a vast amount of jurisprudence in international procedural and criminal law.

The legal precedents set by the Tribunal have expanded the boundaries of international humanitarian and international criminal law, both in terms of substance and procedure:

• The Tribunal has identified a general prohibition of torture in international law which cannot be derogated from by a treaty, internal law or otherwise;
• The Tribunal has made significant advances in international humanitarian law pertaining to the legal treatment and punishment of sexual violence in wartime;
• The Tribunal has specified crucial elements of the crime of genocide, in particular the definition of the target of this crime;
• The Tribunal has determined that enslavement and persecution constitute crimes against humanity;
• The Tribunal has applied the modern doctrine of criminal responsibility of superiors, so-called command responsibility. It has clarified that a formal superior-subordinate relationship is not necessarily required for criminal responsibility. In the same vein, the Tribunal has removed uncertainty about the level of knowledge to be expected from a superior whose subordinates were about to commit crimes or actually committed them;
• The Tribunal has made numerous contributions to issues of procedural law, some of which are in the areas of protective measures for witnesses, the confidentiality and disclosure of information relevant for the national security of states, guilty pleas of accused and duress as a defence, among others.

STRENGTHENING THE RULE OF LAW

The Tribunal has encouraged judiciaries in the former Yugoslavia to reform and to continue its work of trying those responsible for war crimes committed there during the 1990s. The Tribunal works in partnership with domestic courts in the region - transferring its evidence, knowledge and jurisprudence - as part of its continuing efforts to bring justice to victims in the former Yugoslavia.

In November 1995, on the conclusion of the Dayton peace agreement, the Tribunal's then President, Antonio Cassese, commented as follows:
"Justice is an indispensable ingredient of the process of national reconciliation. It is essential to the restoration of peaceful and normal relations between people who have had to live under a reign of terror. It breaks the cycle of violence, hatred and extra-judicial retribution. Thus Peace and Justice go hand-in-hand." (Antonio Cassese, ICTY Press Release Number 27, 24 November 1995)

In addition to its primary function of trying individuals for war crimes, the Tribunal has also served as an incentive to authorities in the former Yugoslavia to reform their judiciaries, and has been a catalyst for the creation of specialised war crimes courts. These and other courts across the former Yugoslavia have and will continue to benefit from the Tribunal's invaluable experience in dealing with war crimes and the volume of evidence that the ICTY has made, and continues to make, available to the local prosecutors.

Through its central role in the so-called Rules of the Road system, the ICTY Prosecution has reviewed over 800 investigations files from prosecution offices in Bosnia and Herzegovina to verify that the inquiries were justified and whether any were related to ICTY cases. This was done in order to ensure freedom of movement across Bosnia and Herzegovina by preventing arbitrary arrests of individuals on war crimes charges.

To further support the process of strengthening the rule of law, the Tribunal is actively involved in transferring its expertise to legal professionals from the former Yugoslavia so as to assist them in dealing with war crimes cases and enforcing international legal standards in their local systems. In implementing its completion strategy, the Tribunal has transferred several ICTY cases, as well as numerous investigative files, to national authorities and courts in the former Yugoslavia. These transfers, mainly to courts in Bosnia and Herzegovina, have resulted in many convictions being secured and truly provides a new dimension to the principle that its jurisdiction runs concurrent to national courts. The Tribunal is especially committed to assisting the War Crimes Chamber of the State Court of Bosnia and Herzegovina. The ICTY has also provided substantial assistance to the War Crimes Chamber of the Belgrade District Court as well as the Croatian judiciary dealing with war crimes cases, and will continue to do so.

All of these efforts have contributed to promoting respect for the rule of law across the former Yugoslavia which is vital for long-term stability in the region.

The ICTY has made a vital contribution to international justice, well beyond the region of the former Yugoslavia. The Tribunal’s judges and staff have extensively shared their expertise with those involved in the development of other international courts, such as the International Criminal Court, the Special Court for Sierra Leone and others. With its experience to date, the ICTY has played a crucial role in bringing justice not just to people in the former Yugoslavia but across the globe.
THE ORGANISATION OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

CHAMBERS

The President

Applies Chamber
The Appeals Chamber hears appeals from the accused or from the
Prosecutor relating to the judgment and/or the sentence by the
Trial Chambers. The Appeals Chamber comprises five judges.

Note: The Appeals Chamber of the ICTY also serves as the Appeals
Chambers of the International Criminal Tribunal for Rwanda.

Trial Chambers
Each Trial Chamber hears and conducts trial proceedings as
instituted against persons indicted by the prosecutor. Trial
Chambers are responsible for issuing judgments and, if the
accused is found guilty, for imposing sentences.
Three judges sit on each Trial Chamber.

OFFICE OF THE PROSECUTOR

The Prosecutor

The Prosecution Division is responsible for all
aspects of preparation and presentation of prosecution
cases at trial. Each case is handled by a
multidisciplinary team of lawyers, investigators,
analysts and support staff.

The Immediate Office provides overall
management and direction of the Prosecutor's
Office. It is responsible for formulating policies,
dealing with issues relevant to obtaining the
cooperation of states, transferring cases to and
other capacity building efforts with the region
of the former Yugoslavia, preparing the OTP-
budget and various reports for submission to
the United Nations.

The Appeals Division is responsible for all aspects of
appeals proceedings following the
completion of a trial. It also
assists with appeals that may
arise during the course of trial
proceedings.

REGISTRY

The Registrar

The Judicial Support Division is responsible
for providing legal support to the Chambers, managing
courtroom operations and performing other judicial
support functions. This includes protection and support
to victims and witnesses, the provision of legal aid
through the assignment of defense counsel, the
translation and interpretation of court activities, and the
management of the Detention Unit.

The Immediate Office provides advice on legal and policy issues
ranging from staff rules to cooperation
with States, including the host State,
enforcement of sentences, relocation of
witnesses, and external relations. It is
responsible for internal and external
communication matters, including
through its Registry Liaison Officers in
the countries of the former Yugoslavia.
The Office of the Registrar is also
directly involved in the preparation
for transfer of functions to the Residual
Mechanism established by the UN
Security Council by Resolution 1546.

The Division of Administration supports the judicial activities of the
Tribunal through the provision of
administrative services, including
budgetary and finance aspects. It
manages human resources, supports
the information technologies used by
the organisation, and deals with the
procurement activities of the
headquarters and of the field offices.
Security and Safety are also under
the responsibility of the Administration
Division.
Chambers

The Tribunal's judges have the solemn responsibility to determine the guilt or innocence of those accused of perpetrating war crimes in the former Yugoslavia, and to pass sentence on those whom they convict. In the course of a trial, they listen carefully to witnesses who testify in proceedings and examine forensic and other evidence presented in court. The judges apply the highest international legal standards to their work and issue judgements on the basis of the evidence the prosecution and defence put before them.

The ICTY judges come from a variety of legal systems and bring to the Tribunal a wealth of legal expertise and a rich diversity of experiences and perspectives. As required by the Tribunal's Statute, judges are persons of high moral character, impartiality and integrity who possess the qualifications required for appointment to the highest judicial offices, with experience in the fields of criminal law or international law, including international humanitarian law and human rights law.

The judges constitute one of the Tribunal's three main organs - the Chambers. The other two organs are the Office of the Prosecutor and the Registry.

The Chambers are organised into three Trial Chambers and one Appeals Chamber. They are assisted in their work by the Chambers Legal Support teams. They consist of numerous legal staff, employed by the Registry, who assist the judges in conducting research, helping them in preparing and managing cases, as well as in participating in the drafting of legal documents.

Each Trial Chamber is composed of three permanent judges and a maximum of six ad hoc judges. Ad hoc judges are appointed by the UN Secretary-General at the request of the President of the Tribunal to sit on one or more specific trials, allowing for efficient use of resources in accordance with the court's changing caseload. Article 12(1) of the Tribunal's Statute allows the appointment of a maximum of 12 ad hoc judges.

On 29 June 2010, the Security Council adopted resolution 1931, extending the terms of office of five permanent Judges in the Appeals Chamber until 31 December 2012. In a subsequent resolution, adopted on 29 June 2011, the Security Council extended the terms of office of eight permanent judges and nine ad hoc judges serving in the Trial Chambers until 31 December 2012, or until the completion of their assigned cases.

Three judges are assigned to hear each case, and at least one judge per case must be a permanent judge. Trial Chamber may be divided into sections of three judges each, composed of both permanent and ad hoc judges. Individual sections have the same powers and responsibilities as a Trial Chamber.

The Trial Chambers must ensure that each trial is fair, expeditious, and conducted in compliance with the Tribunal's Rules of Procedure and Evidence, with full respect accorded to the rights of the accused and appropriate consideration given to the protection of victims and witnesses.

The Appeals Chamber consists of seven permanent Judges, five of whom are permanent Judges of the ICTY and two of whom are permanent Judges of the International Criminal Tribunal for Rwanda (ICTR). These seven judges also constitute the Appeals Chamber of the ICTR. Each appeal is heard and
decided by a bench of five judges of the Appeals Chamber.

THE PRESIDENT AND THE VICE-PRESIDENT

The Tribunal's President and Vice-President are elected from among the ICTY Judges.

The President of the Tribunal is elected by a majority of the votes of the permanent judges for a two-year term and is eligible for re-election once. The President presides over the proceedings of the Appeals Chamber and is also responsible for the assignment of judges to the Appeals Chamber and Trial Chambers. In addition, the President presides over all plenary meetings of the Tribunal, coordinates the work of the Chambers, supervises the activities of the Registry, and issues Practice Directions addressing detailed aspects of the conduct of proceedings before the Tribunal.

The President performs diplomatic and political functions related to the work of the Tribunal and supervises the Registrar in his or her role as the Tribunal’s channel of communication. The President is required under the Statute to submit an annual report on the activities of the Tribunal to the General Assembly as well as biannual assessments to the Security Council, setting out in detail the progress made towards the implementation of the Tribunal’s Completion Strategy.

The current President is Judge Theodor Meron, who was appointed President of the Tribunal on 17 November 2011. Judge Meron already served as President between 2003 and 2005. His predecessors are: Pelinck L. Robinson (Jamaica; 2008-2011); Fausto Pocar (Italy; 2005-2008); Claude Jorda (France; 1999-2002); Gabrielle Kirk McDonald (USA; 1997-1999); and Antonio Cassese (Italy; 1993-1997).

The Vice-President is also elected from among the permanent judges by a majority of their votes. The Vice-President’s term coincides with the term of the President, and like the President, the Vice-President is eligible for re-election once. The Vice-President exercises the functions of the President in the event that the President is absent or unable to act and may sit as a member of the Trial or Appeals Chamber.

Judge Agius was appointed Vice-President of the Tribunal on 17 November 2011 and has been a judge of the Tribunal since 2001. Judge Agius is from Malta.
The ICTY's Office of the Prosecutor (OTP) has investigated many of the worst atrocities to have taken place in Europe since the Second World War, such as the 1995 Srebrenica genocide and has successfully prosecuted civilians, military and paramilitary leaders for their responsibility over such crimes.

The OTP is, along with the Chambers and Registry, one of the Tribunal's three organs. It is mandated to investigate and prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. The OTP is headed by a Prosecutor, who is appointed by the Security Council for a renewable four-year term.

The Prosecutor is independent and does not seek or receive instructions from external agencies such as any government or international organisation, or from either of the Tribunal's other two organs. Pursuant to UN Security Council resolutions and the Tribunal's Statute, UN member-states are under an obligation to cooperate with the OTP's investigations and prosecutions.

The job of the Prosecutor is twofold: to investigate crimes and to present cases at trial and later, if necessary, on appeal. Over the years, the focus of the OTP's work has shifted from investigations to prosecutions.

In accordance with the Tribunal's completion strategy, the final indictments were issued at the end of 2004. In 2011, after many years on the run, the last remaining fugitives, Ratko Mladic and Goran Hadzic, were arrested and transferred to The Hague, thereby ensuring that none of the 181 individuals indicted by the Tribunal remain at large.

Mandate and Mission

Investigations

Prosecution

Setting the Precedents

Organisational Structure
Investigations

- The Crimes
- Types of Criminal Responsibility
- Sources of Evidence
- Categories of Witnesses
- The Investigations Division
- The Investigation Strategy
- The Indictment
- Surrender, Arrest and Transfer of the Accused

Investigations play a crucial role at the ICTY, as they form the basis for all prosecutions and trials. There is no investigative judge at the Tribunal - the legal process is initiated by the Prosecutor on the basis of information received or obtained from any source, such as individuals, governments, international, inter-governmental or non-governmental organisations, or UN organs. Once the Prosecutor is satisfied that there are reasonable grounds to believe that crimes within the jurisdiction of the Tribunal have been committed, an investigation begins.

The investigations division within the Office of the Prosecutor (OTP) was responsible for collecting the evidence and information which was then used for issuing indictments against suspected perpetrators. The Prosecutor issued the last indictments at the end of 2004, and since then, investigations have been conducted only to support ongoing pre-trial or trial proceedings or to search for fugitives.

The Prosecutor has the power to summon and question suspects, victims and witnesses, collect evidence and conduct on-site investigations, which include the exhumation of mass graves. In doing so, the Prosecutor may seek the assistance of the state authorities concerned. Pursuant to UN Security Council resolutions and the Tribunal's Statute, States are under an obligation to cooperate with investigations and prosecutions. In practice, however, cooperation has not always been forthcoming.

If the Prosecutor believes there is sufficient evidence to prosecute, an indictment containing a concise statement of the alleged facts and the crime or crimes with which the accused is charged is drafted and submitted to a judge for confirmation, along with supporting evidentiary material. The judge can confirm or reject an indictment, accept certain charges and dismiss others, or request more supporting evidence from the prosecution. The last indictments of the ICTY were confirmed in the spring of 2005.

When an indictment is confirmed, the judge may, at the request of the Prosecutor, issue an arrest warrant or an order for the indictee's detention, surrender or transfer, and any orders required for the conduct of the trial. As the Tribunal does not have its own police force, it cannot apprehend suspects and is entirely dependent on the assistance of state authorities and international bodies in the arrest and transfer of the accused.

The Crimes

The OTP investigates four categories of crimes: Grave breaches of the Geneva Conventions of 1949, Violations of the Laws or Customs of War, Genocide and Crimes against Humanity.

>> Statute of the Tribunal

The crimes investigated by the OTP differ from ordinary crimes. They were often large-scale events that took place across wide areas. Some lasted many months and were highly organised. They involved some of the worst atrocities seen in Europe since the Second World War - mass killings, torture, deportation, persecutions, enslavement, plunder, wanton destruction of towns or villages and wilful damage to religious institutions.
Some of the worst crimes in the former Yugoslavia occurred in the areas of Srebrenica, Prijedor, Foča, Sarajevo and Mostar in Bosnia and Herzegovina, Vukovar in Croatia, and Kosovo.

Types of Criminal Responsibility

The OTP can charge defendants with two types of individual criminal responsibility. The first is for personally planning, instigating, ordering, committing or aiding and abetting in a crime. Such responsibility encompasses the doctrine of joint criminal enterprise, which has often been used to describe situations where several persons having a common purpose embark on criminal activity. Whoever contributes to the commission of crimes by the group of persons or some members of the group, in execution of a common criminal purpose, may be held criminally liable.

The second is for being in a position of authority and knowing or having reason to know that a subordinate or subordinates were about to commit or had committed such crimes but failed to prevent or punish them. This is known as superior responsibility.

The Prosecutor can not charge states, organisations or ethnic groups.

Sources of Evidence

The first stage in any investigation is discovering that a crime within the jurisdiction of the ICTY has taken place and how serious it appears to have been. To do this, the OTP examines initial evidence from various sources.

In the very first phase of OTP's investigations, a primary source of information was the final report of the Commission of Experts, a fact-finding body that was established by the UN Security Council in October 1992 to examine whether grave breaches of international humanitarian law were being committed in the former Yugoslavia.

Witnesses were crucial in building the first cases. While the war was still going on, reaching crime scenes and witnesses in the region was difficult, even impossible. So investigations began in refugee centres scattered throughout the world, where hundreds of thousands of people had sought refuge from the conflicts. Their testimonies provided invaluable crime base evidence and links to the persons who had physically committed the crimes, such as soldiers, camp guards and wardens.

By working with victims, refugees and displaced persons, several humanitarian organisations and other institutions they were also able to gather first-hand accounts of events and other information, which was passed on to the OTP to examine.

As cooperation with the region improved, areas where crimes had been committed, including mass graves, and certain documentary evidence held in national archives became more accessible and contributed to the prosecution of more senior political and military leaders from all sides in the conflict.

Categories of Witnesses

The OTP deals with many different categories of witnesses during the investigation, including victims and survivors, experts, internationals and insiders.

Victim or survivor witnesses are a crucial source of evidence as they are in a position to describe what took place and identify those involved. This is critical in the preparation of the indictment and can often lead to new sources of evidence. Actually finding the first witness can sometimes be difficult. Investigations often started years after the events took place, and
witnesses might have moved away or died. For example, in the investigation of the events around Celebic, investigators tracked down the initial witness in Chicago.

The passage of time and the removal to a location far from where the events unfolded can dull the memory of some witnesses. Often, while the evidence given will show who was directly involved, those identified tend to be lower level suspects, and eyewitness evidence cannot identify where the orders came from or who the commanding officers were. Finally, a witness may decide not to testify because they wish to forget the events that took place, or they are psychologically unable to give evidence. They may also fear intimidation or reprisals.

Expert witnesses are connected to the investigation in some manner but were not directly involved in the events. It can include, for example, military and political analysts called to provide a background to what was taking place across the country or to interpret document collections, or scientific researchers who may have helped uncover evidence such as mass graves or examined crucial aspects of the evidence such as DNA samples.

International witnesses include diplomats or foreign military officers who were active in the conflict area at the time and can often provide valuable information to the OTP, especially if they held meetings with the suspects or other high-ranking civilian or military officials. They may, for instance, be able to provide proof that the suspect was informed about certain atrocities or military operations.

Insider witnesses can provide valuable evidence in linking the accused to the crime base through direct or circumstantial evidence. Insider witnesses tend to be either witnesses with "blood on their hands", or those who have been privy to the orders given.

>> Read some victims' stories and testimonies

The Investigations Division

Until 2008, the OTP had its own investigations division tasked with collecting and examining evidence, identifying and questioning witnesses and conducting on-site investigations. While investigations now form part of the prosecutorial division it still employs around 50 investigators from across the world. Their training and experience in criminal investigation techniques in national systems have been merged into a unique international criminal prosecution system.

Given the specialist nature of the crimes, the OTP also has a Military Analyst Team, most of whose members have a military background, and a Leadership Research Team, with staff from varied academic and linguistic backgrounds and specialising in the former Yugoslavia. Their job is to analyse documentary, intercept and open source materials linking the persons most responsible for the crimes to the actual crimes themselves.

All trial related investigation matters are supervised by the Chief of Prosecutions.

When evidence pointed towards serious crimes within the ICTY mandate, the OTP would form a team to investigate these allegations further. While in most national systems, this investigative role falls on the police, at the ICTY a multi-disciplined investigation team is set up with members from within the OTP. It generally comprises investigators, lawyers and analysts or research officers. Interpreters also play a vital role, not only for written translations, but also because they will frequently have to interpret in delicate situations involving politically or militarily sensitive information or emotionally stressful testimony, such as that of victims of rape or torture.

This team undertakes further, more detailed investigation, which includes a review of the evidence thus far collated, the location and interviewing of witnesses, crime scene analysis, and forensic investigation and examination. The ICTY does not have its own police unit and therefore relies extensively on different state bodies to analyse forensic areas and report back.
For example, in the investigation of the events following the genocide in Srebrenica, the Netherlands Forensic Institute conducted textile analysis from blindfolds and DNA analysis, the United States Bureau of Alcohol, Tobacco and Firearms examined ballistic evidence, while a soil specialist from the United Kingdom compared soil samples. It was discovered that the mass graves had been disturbed and bodies had been removed in an effort to cover up the extent of the crime. Forensic analysis of secondary graves through the ballistics, DNA, textile and soil led to them being paired with primary graves and to the identification of some of the bodies.

The Investigation Strategy

When an investigation is assigned to a team, the team leader and legal advisors formulate an investigation strategy and each team member is assigned set responsibilities. Evidence is collected during the entire process. A timeline for the investigation is set and missions to the area where the alleged crimes took place are planned.

In the early years, investigations had to be conducted with limited resources and under dangerous conditions, as the war was still ongoing. The Tribunal's legitimacy was not recognised by certain authorities in the region, who denied investigators access to crime scenes and witnesses, in some cases even to investigate alleged crimes committed against people from their own state whom they were meant to represent.

As a result, the OTP decided to follow what has been called a pyramidal investigation strategy, starting from the bottom; in other words, with crime base evidence and lower-ranking persons who actually committed or ordered the crimes. Investigations began in refugee centres throughout the world, where victims and witnesses were able to provide evidence implicating the persons who had physically committed the crimes, such as, for example, the persons in the camps where they were detained or the camp commanders.

As the evidence grew, investigators began working up the pyramid to the persons who could be regarded as most responsible for the crimes.

During the "top down" investigation phase, the challenge was to link the crime base incidents with persons who did not physically commit the crime but who may have ordered, planned, implemented or facilitated key parts of any common scheme, strategy or plan. As in any organised crime or human rights abuse investigations, legally linking the persons higher up to the actual crimes committed is not easy and takes time. While the crime base evidence was being identified, many others within the OTP were engaged on compiling profiles of potential suspects and identifying and gathering documentary, intercept and insider evidence. This could not be achieved overnight and it took several years of work by many dedicated present and former members of the OTP.

Most of the investigative work is done in The Hague, where documents and other evidence is collected and analysed. Cases are selected on the basis of criteria set by the Prosecutor and prioritised in line with available resources.

Part of the investigation takes place in the field and usually starts with the interview of witnesses. After statements are obtained with the help of interpreters, investigators and scenes of crime officers go to the alleged crime scene, test the information received and look for corroboration. The scene of the crime is photographed, sketched and videotaped and combed for physical evidence, such as cartridge casings, bullet fragments and projectiles.

If there are indications that mass killings were involved, investigators seek the assistance of forensic teams. Once sufficient evidence is obtained to point to the existence of mass graves, the exhumation process commences.

During some investigations, the OTP was able to interview the suspects themselves. In such
situations, the investigators would have to warn the person in question that he has the right to remain silent, that any statement he makes may be used in evidence, and that he has a right to an attorney. If a suspect is not properly cautioned it could lead to the invalidity of evidence taken in interviews. Some accused persons agreed to provide information to the OTP after they were transferred to the custody of the Tribunal.

The Indictment

Once the Prosecutor is satisfied there is sufficient evidence to substantiate an indictment being issued, an indictment is drafted identifying the suspect and listing the charges against him or her. A single indictment can identify multiple accused in what is called a joinder of accused and almost all indictments contain more than one charge and deal with two or more crimes.

The OTP conducts an internal assessment as to whether the evidence collected will support the charges within the indictment and exactly how the actions of the accused fit in to the structure of the crimes within the jurisdiction of the ICTY.

It was general practice to tie as many accused to the indictment as possible in order to minimise the reiteration of facts and avoid multiplying the work of the Tribunal. The disadvantage to this approach was getting all the accused in the same place at the same time to try them all, and that was where state cooperation was critical, but often lacking.

When an indictment is prepared, the Prosecutor forwards it, together with the supporting material, to the Registrar. The Registrar consults with the President, who then refers the matter to the Bureau (composed of the President, Vice-President and the Presiding Judges of the Trial Chambers). When the Bureau determines that the indictment meets the required standard, the President refers the case to a designated Trial Chamber Judge for review.

An indictment must be confirmed by a judge before any suspect can be accused or any arrest made. There are rules governing the confirmation procedure. The designated judge examines the evidence presented by the Prosecutor, which only has to support a prima facie case and does not have to reach the level of beyond a reasonable doubt, which is applied later in the trial.

The confirming judge has more options than simply confirming or rejecting an indictment. He or she can accept certain charges and dismiss others. More supporting material and evidence from the Prosecutor for a certain charge can be requested, or clarification on a point of law can be asked. The confirming judge cannot suggest additions, but can recommend a dropping of charges if he or she thinks there is no reasonable chance of conviction.

Upon confirmation of an indictment, the judge can, at the request of the Prosecutor, issue a warrant or order for the arrest, detention, surrender or transfer of the indictee.

An indictment is not set in stone. Due to the complexity of the cases before the ICTY, in many cases the investigations were still ongoing when the accused was brought to the Tribunal’s custody. Some indictments changed profoundly as new evidence came to light and events unfolded, particularly those concerning accused indicted a long time ago. Ratko Mladic, for example, was first indicted on 24 July 1995, and indicted a second time in November 1995, the second indictment detailing the charges against him for his participation in the events surrounding the capture of Srebrenica and the fate of thousands of Bosnian Muslim men arrested there by the Bosnian Serb forces. These separate indictments were merged into one in 2002.

Indictments may be sealed or made public. Indictments were sealed when the Tribunal determined that this was in the interest of justice. This decreased the risk of the accused fleeing or hiding before arrest. An example of a sealed indictment was the arrest by Austrian
police and transfer to The Hague of the late general, Momir Talic, who travelled to Vienna to take part in a conference organised by the Organisation for Security and Cooperation in Europe (OSCE) in August 1999.

Although criticised for interrupting high-level members of government in their duties, sealed indictments can be necessary in the face of continuing non-cooperation. Louise Arbour, the Prosecutor between 1996 and 1999, defended the use of the sealed indictment by referring to 20 other outstanding arrest warrants that the Bosnian Serbs were making no effort to execute.

In the case of a sealed indictment, once the accused is arrested or has surrendered voluntarily, a judge will order the indictment be made public. By 2006 all indictments were made public and none remained under seal.

Surrender, Arrest and Transfer of the Accused

The last stage of the investigation is the actual apprehension of the accused and his transfer to The Hague. Since the ICTY was created by the Security Council under Chapter VII of the UN Charter, all states are obliged to act on all Tribunal orders, including those for the arrest and transfer of accused persons. Unfortunately, this cooperation has often been lacking.

While it is the obligation of states to locate and arrest indicted individuals, the OTP has also formed a "tracking team" which gathers information about the movements and whereabouts of fugitives. Such information is then provided to the local authorities or international forces who can act upon it, as the OTP does not have the jurisdiction or the equipment to arrest the fugitives on its own. The tracking team, which consists of information agents from various countries, has contributed to the arrest of several indictees. Providing national authorities with exact data on the fugitives' location can circumvent the passiveness of many states in searching for them.

The apprehension itself can range from the accused surrendering voluntarily, to being seized by the police. In 2005, Ramush Haradinaj, the then Prime Minister of Kosovo, surrendered voluntarily upon an indictment against him being made public. He was transferred to The Hague without delay. By contrast the Croatian general, Ante Gotovina, had sworn never to turn himself in and managed to flee from justice for more than four years. He was arrested by Spanish police in the Canary Islands before being transferred to The Hague.

The accused has the right to be informed promptly and in a language he understands of the nature and the cause of the charge(s) against him. After transfer to the UN Detention Unit in The Hague, the accused is brought before a judge for the initial appearance to ensure that all the rights of the accused are being respected.

Not all suspects are ultimately tried in The Hague. Under rule 11bis, the ICTY can transfer an accused to be tried before a national court. The strategy of the OTP has been to build the crime base and then indict the top-ranking leaders; once this crime base was built, the ICTY began transferring lower-level accused back to the states of the region to face trial before the national courts.

>> Read more on transfer of cases

The ICTY operates with the greatest of respect for the Rule of Law and safeguards the rights of the accused in accordance with international human rights standards. The ICTY believes in the principle of the equality of arms, that is, that both defence and prosecution should have the same resources with which to "fight the battle" in the courtroom. The accused has the right to a defence counsel, paid for by the Tribunal if the accused cannot afford counsel. There are also options for an accused to obtain his own counsel at his own expense, or share the costs with the ICTY. This legal aid programme costs the Tribunal about 8% of its budget. The accused also has the right to self-representation.
Prosecutions

• The Prosecution Team
• Pre-Trial Phase
• The Trial
• Categories of Witnesses
• Appeal Process

A dedicated prosecution division within the Office of the Prosecutor (OTP) is responsible for presenting cases in court, which is OTP's other main responsibility besides investigations. The courtroom is, of course, the place where the guilt or innocence of each accused is ultimately established. Here the Prosecution strives to use the results of investigations to obtain convictions against the accused who are sitting in the dock.

The OTP prosecution division, which consists of trial and appellate sections, employs experienced trial attorneys from a range of countries, most of them with a long track-record in the prosecution of complex cases in their national jurisdictions.

Trials at the ICTY are heard before three independent judges. There are no juries in trials before the ICTY. The parties are principally responsible for the presentation of evidence before the court. The prosecution bears the burden of proof, and the defence may not even have to present any evidence if the judges rule that the prosecutors do not have a case against the accused.

At the end of the presentation of evidence, the Trial Chamber will deliver a judgement. If the accused person is convicted, the judges will also pass a sentence. Both parties have the right to appeal the judgement. The prosecution will often appeal a judgement not only if an accused is acquitted on some or all of the charges, but also if the sentence appears to them to be inadequate. The appeal process is held before the Tribunal's Appeals Chamber.

Sometimes a trial is not required for a conviction. That is the case if the accused pleads guilty to the charges in the indictment. Usually guilty pleas only come about as a result of negotiated plea agreements between the prosecution and the defence.

The Prosecution Team

For each court case the OTP assigns a prosecution team which is responsible for representing the prosecution through the pre-trial and trial phases. The trial team consists of the team leader - a senior trial attorney, assisted by other trial attorneys, lawyers, a case manager and other support staff. Within the prosecution team the strategic and other legal decisions are made by the senior trial attorney in consultation with other members of the team. This will include the sequence in which the prosecution witnesses are called.

As team leader, the senior trial attorney will allocate work amongst the team members. The lawyers in the team are responsible for the taking of evidence in court, from both prosecution and defence witnesses, and the preparation and filing of written submissions such as motions and briefs. The case manager and other support staff also play a crucial part in the case during the pre-trial and trial phases in assisting the trial team in running the case in the most effective and efficient way.

In some large trials involving several accused, more than one senior trial attorney can be appointed to the prosecution team, while in some cases trials have also been lead by a prosecution team headed up by a trial attorney.

Pre-Trial Phase
The pre-trial phase is the period between the initial appearance of an accused before the court and the beginning of the trial. It is an important phase during which preparations are made for a fair and expeditious trial under the supervision of a designated pre-trial judge.

During this period, the prosecution team will prepare a pre-trial brief, a document which outlines the evidence which the prosecution plans to use during the trial to prove the commission of the crimes and the responsibility of the accused. A number of important legal filings will often be submitted during the pre-trial period, such as motions for judicial notice of facts of common knowledge or facts that were proven in other proceedings. This will help avoid repetition of evidence that has already been presented and accepted at previous trials.

The prosecution is also required to file a list of witnesses it intends to call at trial. Therefore important decisions have to be made by the prosecution team as to what is the most relevant evidence available, particularly as the judges will usually restrict the number of witnesses and time to be used at trial. The prosecution team will also have to consider whether the testimony of some witnesses could be submitted to the court in written form in accordance with Rule 92bis.

In the pre-trial phase the parties are required to communicate with each other on a number of issues. For instance, the prosecution has to fulfill its obligation to disclose any exculpatory evidence (evidence favourable to the defendant) in its possession to the defence. The prosecution will often engage in discussion with the defence with a view to seeking agreement on certain facts that are not contested. This allows the parties to focus on those issues at trial which are genuinely under dispute.

**The Trial**

Trial proceedings at the ICTY are held before a Trial Chamber which consists of three judges without a jury. The Trial Chambers form the first level of a two-tier court system, the Appeals Chamber being the second.

The task before the prosecution team is not an easy one. The fundamental principle of the presumption of innocence places a positive burden of proof on the prosecution and explains why a prosecution case will often feature many more witnesses and exhibits than the defence case. The question before the judges is not whether the prosecution is more convincing in its arguments than the defence. The question is, whether the prosecution manages to prove the guilt of the accused with so compelling evidence that the judges will have no reasonable doubt in the guilt of the accused.

Every trial starts with an opening statement by the prosecution, in which the OTP’s senior trial attorney outlines the case against the accused. This usually lasts several hours. In most cases the defence chooses to give its opening statement later, after the presentation of the prosecution evidence.

During the main trial, OTP’s trial attorneys call witnesses and examine them in the courtroom with the goal of demonstrating the defendant’s guilt beyond reasonable doubt to the judges. The success of any trial depends greatly on the willingness of witnesses to come to the Tribunal to testify. There are several categories of witnesses:

- **Victim or Survivor witnesses**: The majority of witnesses called by the prosecution are people who survived crimes, who witnessed them, or whose family members were victims of crimes. For these people, the act of testifying is an extremely courageous one as many of them still suffer physical and psychological trauma from the horror that they lived through. For this reason it is also important that the trial attorney who questions them in the courtroom gains their trust and treats them in a manner that will help them testify with confidence and clarity.

>>Read some victims’ stories and testimonies
• **Insider witnesses:** Many of the Tribunal's accused are high-level political, military or police leaders who are accused of planning crimes and ordering others to commit them. Persons who were close to the accused, called "insider witnesses," can provide the court with evidence about their actions and state of mind. The evidence gained from their testimony is often crucial for establishing the degree of responsibility of the accused.

• **Expert Witnesses:** These witnesses are professionals who provide their expert opinion under oath, on topics such as military doctrine, political structures, national laws in the former Yugoslavia, demographics, financial transactions, and forensic evidence. They help the judges to determine the circumstances in which crimes were committed, the accused's authority over their subordinates, the identity and number of victims found in mass graves, the number of victims killed in an area, among others.

• **International witnesses:** Diplomats or foreign military officers who were active in the conflict area at the time are sometimes called to testify for the Prosecution, especially if they held meetings with the suspects or other high-ranking civilian or military officials. They may, for instance, be able to provide proof that the suspect was informed about certain atrocities or military operations.

• **Perpetrator witnesses:** A number of those accused by the Tribunal pleaded guilty to all or some of the crimes with which they were charged, and agreed to testify for the prosecution and help the court to establish the truth. Such testimonies may be crucial particularly in case of crimes such as mass murders where there were no survivors.

Most witnesses testify in open court without any protective measures, but the ICTY Rules of Procedure and Evidence also contain provisions for the protection of witnesses because of the sensitive and possibly dangerous situations they find themselves in due to their testimony.

The evidence will normally be given live in court by the witnesses, but the Rules also make provision for testimony by video-link and for the admission of written statements. In recent years, the prosecution has made growing use of that possibility, in response to demands to shorten trial proceedings. The witnesses may, however, be cross-examined in the courtroom by the defence.

Documentary evidence plays an important part in most trials before the ICTY, particular in cases involving high-ranking accused. Exhibits such as military orders, police reports, photographs and videotapes are often entered into evidence during the trial and discussed with the relevant witnesses.

With trial sessions scheduled often on four or five days a week, the trial attorneys' work tempo is extremely demanding, as it is essential that they prepare thoroughly for the examination of each witness. Usually the trial attorneys meet with each witness before his or her court appearance in order to go through the contents of the testimony so that both the witness and the prosecutor know more or less what to expect in the courtroom. This practice of so-called "witness proofing", which is allowed in some national jurisdictions and prohibited in others, has always been accepted at the ICTY, and it can enhance the fairness and the expeditiousness of the trial. It is particularly justified for the reason that witnesses usually testify about events which took place many years ago and reviewing the contents of their testimony beforehand can clarify their memory.

After the close of the prosecution case, if the judges assess there is no evidence capable of supporting a conviction, they can hand down a judgment of acquittal without need for further evidence or to hear the defence case. If the judges rule that the defendant does have a case to answer, the trial will proceed with the defence case. The defendant is not required to present any evidence, but the defence teams invariably do call witnesses to testify. The
accused can also testify under oath in his own case.

The prosecution team does not rest during the defence case -- the trial attorneys will engage in cross-examination of the defence witnesses in an attempt to discredit them or to cast doubt on their statements. Sometimes the cross-examination of defence witnesses may even present an opportunity to extract information that goes to prove the guilt of the accused. During the defence case the prosecution team may also prepare so-called rebuttal evidence, which is additional evidence that will be presented in response to issues arising from the defence evidence.

At the end of the presentation of the evidence, the judgment is delivered, and, in case of a conviction, an appropriate sentence is imposed.

**Appeal Process**

Both parties are allowed to appeal judgements as well as other decisions to the Appeals Chamber, the second level of the Tribunal's two-tier court system. The Prosecutor will often appeal a judgement not only if an accused is acquitted on some or all of the charges, but also if the sentence appears to be clearly inadequate.

In the appellate proceedings the OTP is represented by specialised lawyers from the appeals section of the prosecution division. In other words, the arguments on appeal are not presented by the same attorneys who were on the trial team. There are good reasons for this, as the appeal proceedings are quite different in nature compared to the main trial. The appeal process is mainly conducted through written submissions, and the focus is heavy on whether the Trial Chamber applied the correct legal standards and whether it made any unreasonable findings of fact.

The OTP's appeals team will also prepare responses to any appeals filed by the defence.

The appeal process is not a new trial. The Chamber will not re-examine witnesses that testified at trial. In some instances, however, where new evidence has come to light after the trial, the Appeals Chamber may allow additional witnesses to be called or new documents to be submitted.

At the end of the appeal proceedings, the Appeals Chamber will issue a written judgement, which is final. The appeals judgement will rectify any legal or factual errors that were found in the Trial Chamber judgment. The Appeals Chamber may also dismiss all grounds of appeal and confirm the first-instance judgement.

> Key Procedural Stages at the ICTY
Key Procedural Stages at the International Criminal Tribunal for the former Yugoslavia (ICTY)

**Investigation and Indictment Phase**
- Commencement of Investigation by the Prosecutor
  - No grounds to engage in proceedings
  - Review of Indictment by Bureau
    - Rule 17
  - Indictment submitted to a Judge for Confirmation
    - Rule 47
  - Dismissal of Indictment
  - Confirmation of the Indictment; basis of arrest warrant
    - Rule 47/Article 19

**Pre-Trial, Trial and Appeal Phase**
- Arrest/Surrender/ Voluntary Surrender
  - Initial Appearance before a Trial Chamber
    - Rule 64
  - Not Guilty Plea
    - Rules 65 and 66
  - Pre-Trial
    - Rule 65/cr
  - Trial before Trial Chamber
    - Rules 65a and 65b
  - Guilty Plea
    - Rules 65a and 65b/c
  - Sentencing by Trial Chamber
    - Rules 105 and 106

**Enforcement of Sentences**
- Enforcement of Sentence in a UN Member State
  - Rule 107
  - Pardon or Commutation of Sentence
    - Decided by the ICTY upon notification by the State of enforcement
  - Early Release
  - End of Proceedings

**End of Proceedings**
- (If new fact discovered)
  - Application for Revision of Judgment
    - By Trial or Appeals Chamber
    - Rules 116 and 117
  - Denial
    - End of proceedings
  - Grant of
    - Judgment
    - End of Proceedings (Of Review by Appeals Chamber)
    - Appeal (Of Review by Trial Chamber)
The right of the accused to a fair trial is not only a fundamental human right but also one of the basic principles of criminal justice. As in any other court of law, the defence plays a crucial role at the ICTY. A competent defence upholds equality of arms between the Prosecution and the Defence, thereby ensuring the fairness of the proceedings. Furthermore, a competent and vigorous defence contributes to the Tribunal’s credibility and legitimacy in the eyes of the international community. The confidence the public has in the court depends on the fairness of its trials.

The Right to Defence Counsel

Defence counsel are responsible for conducting the defence throughout all stages of the case. All persons indicted by and appearing before the Tribunal have the right to be represented by defence counsel.

This and other rights of the accused are enshrined in the Tribunal’s Statute and further regulated by the Rules of Procedure and Evidence. If the accused wish to have defence counsel, they can either choose their own or be assigned one by the Registrar.

Qualification Requirements

To become defence counsel before the ICTY, a lawyer must fulfill the following qualification requirements:

• He or she must be admitted to practice law in a state or be a university law professor;
• He or she must have written and oral proficiency in one of the two working languages of the Tribunal – English or French. In certain circumstances, counsel privately retained by an accused may obtain a waiver of this requirement from the Registrar. In addition, the Registrar may exceptionally waive this requirement for an assigned co-counsel who does not speak either working language but speaks the native language of the accused;
• He or she must be a member of an association of counsel practising at the Tribunal recognised by the Registrar;
• He or she must not have been found guilty or otherwise disciplined in relevant disciplinary proceedings against him or her in a national or international forum, including proceedings pursuant to the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;
• He or she must not have been found guilty in relevant criminal proceedings;
• He or she must not have engaged in conduct which is dishonest or otherwise discreditable to a counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the Tribunal or the administration of justice, or otherwise bring the Tribunal into disrepute;
• He or she must not have provided false or misleading information in relation to his or her qualifications and fitness to practice or failed to provide relevant information.
Legal Aid

Accused persons who cannot afford to pay for counsel are entitled to the assignment of counsel, paid for by the Tribunal. If the accused has means to remunerate counsel partially, the Tribunal will only cover that portion of the costs of the defence which the accused cannot bear. The Office for Legal Aid and Detention Matters within the Registry deals with all matters related to the issues of defence and detention at the Tribunal.

> Read more on legal aid

Self-representation

In accordance with Article 21 of the Statute, an accused person may elect to represent himself in person. While this right is not unlimited, in several ICTY cases, Chambers have recognised the right to self-representation and allowed the accused to conduct their own defence. In those cases, the Tribunal, through the Registrar, ensures the provision of adequate facilities to the self-represented accused, including the assignment of legal advisers and other support staff to assist the self-represented accused in the preparation of his case, privileged communication with certain categories of defence team members, photocopying and storage facilities. Furthermore, in line with an Appeals Chamber decision in one of the cases involving a self-represented accused, the Registrar adopted a special Remuneration Scheme for persons assisting indigent self-represented accused. A provision was also made for the assignment of an investigator, a case manager and a language assistant where necessary, to assist with translation.

Association of Defence Counsel Practicing Before the ICTY

Since September 2002, defence counsel have been collectively represented through the Association of Defence Counsel practising before the ICTY (ADC-ICTY), an organisation that is independent of the Tribunal. The aim of such an association is to ensure a higher quality of defence for the accused and to make collective representations to the organs of the Tribunal on behalf of all defence counsel involved in ICTY cases. In addition, it became necessary to have such an association in the context of the Code of Professional Conduct for Counsel Appearing before the International Tribunal and its disciplinary mechanism.

> Visit the ADC-ICTY website

Status of the Defence

Although the ADC-ICTY is not institutionally an organ of the Tribunal, in recent years the Registrar of the Tribunal has involved the ADC-ICTY in Tribunal-wide committees and projects. Moreover, the Registrar consults with the ADC-ICTY prior to adopting major policies affecting the work of defence teams. Notably, the ADC-ICTY was consulted prior to adopting the pre-trial and trial legal aid policies. In addition, the ADC-ICTY was involved in the complete review of the Directive on the Assignment of Defence Counsel in 2008.
# KEY FIGURES OF ICTY CASES

**THE TRIBUNAL HAS INDICTED 161 PERSONS**

For serious violations of international humanitarian law committed in the territory of the former Yugoslavia.

<table>
<thead>
<tr>
<th><strong>In custody at the UN ICTY Detention Unit (UNDU)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>23</strong></td>
</tr>
</tbody>
</table>

*Appeals Chamber judgement rendered 23 January 2014, awaiting transfer to serve sentence.
**Appeals Chamber judgement rendered 27 January 2014, awaiting transfer to serve sentence.

<table>
<thead>
<tr>
<th><strong>ONGOING PROCEEDINGS FOR 20 ACCUSED</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>16</strong> Before the Appeals Chamber</td>
</tr>
<tr>
<td>5 CASES: Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Mladen Petković, Valentin Čorić and Berislav Pučišć</td>
</tr>
<tr>
<td><strong>4</strong> Currently at trial</td>
</tr>
<tr>
<td>4 CASES: Goran Hadžić</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CONCLUDED PROCEEDINGS FOR 141 ACCUSED</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>18</strong> Acquitted</td>
</tr>
<tr>
<td><strong>5</strong> Awaiting transfer</td>
</tr>
<tr>
<td>Vladimir Đorđević, Vladimir Lazarević, Sreten Lukić, Nebojša Pavković, Nikola Šainović.</td>
</tr>
<tr>
<td><strong>18</strong> Transferred to serve sentence</td>
</tr>
<tr>
<td>Ljubomir Borovčanin, Miroslav Bralo, Radoslav Brdarinić, Ranko Čelić, Radoslav Ćirić, Goran Đokić, Darío Kordić, Radislav Krestić, Dragoljub Kružić, Milan Lukić, Sredoje Lukić, Milan Martić, Dragomir Milošević, Mite Škić, Momčilo Nikolić, Mihailo Pavić, Dragomir Ševec.</td>
</tr>
<tr>
<td><strong>74</strong> Sentenced</td>
</tr>
<tr>
<td><strong>48</strong> Have served their sentence</td>
</tr>
<tr>
<td><strong>3</strong> Died while serving their sentence</td>
</tr>
<tr>
<td>Milorad Dukić, Zasim Đelić, Miroslav Đorđević.</td>
</tr>
<tr>
<td><strong>13</strong> Referred to a national jurisdiction pursuant to Rule 71(b)</td>
</tr>
<tr>
<td>Rahim Ademi, Đuško Hadžić, Momčilo Gruban, Gajko Janjić, Vladimir Kovačević, Đuško Knežević, Paško Ljubičić, Željko Mešački, Mirko Norac, Mićo Raščić, Radovan Stanković, Sava Todić, Milorad Živković.</td>
</tr>
<tr>
<td><strong>20</strong> Indictment withdrawn</td>
</tr>
<tr>
<td><strong>36</strong> Had their indictments withdrawn or are deceased</td>
</tr>
<tr>
<td><strong>6</strong> Died after transfer to the Tribunal</td>
</tr>
</tbody>
</table>

---

47
International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991

The Hague
The Netherlands
22 May 2013

RULES OF PROCEDURE AND EVIDENCE

IT/32/Rev. 49
22 May 2013

Original:
English & French
PART FOUR
INVESTIGATIONS AND RIGHTS OF SUSPECTS

Section 1: Investigations

Rule 39
Conduct of Investigations
(Adopted 11 Feb 1994)

In the conduct of an investigation, the Prosecutor may:

(i) summon and question suspects, victims and witnesses and record their statements, collect evidence and conduct on-site investigations;

(ii) undertake such other matters as may appear necessary for completing the investigation and the preparation and conduct of the prosecution at the trial, including the taking of special measures to provide for the safety of potential witnesses and informants;
   (Amended 30 Jan 1995)

(iii) seek, to that end, the assistance of any State authority concerned, as well as of any relevant international body including the International Criminal Police Organization (INTERPOL); and

(iv) request such orders as may be necessary from a Trial Chamber or a Judge.

Rule 40
Provisional Measures
(Adopted 11 Feb 1994)

In case of urgency, the Prosecutor may request any State:

(i) to arrest a suspect or an accused provisionally;
   (Amended 4 Dec 1998)

(ii) to seize physical evidence;
(iii) to take all necessary measures to prevent the escape of a suspect or an accused, injury to or intimidation of a victim or witness, or the destruction of evidence.

The State concerned shall comply forthwith, in accordance with Article 29 of the Statute. (Amended 30 Jan 1995)

Rule 40 bis

Transfer and Provisional Detention of Suspects

(Adopted 23 Apr 1996)

(A) In the conduct of an investigation, the Prosecutor may transmit to the Registrar, for an order by a Judge assigned pursuant to Rule 28, a request for the transfer to and provisional detention of a suspect in the premises of the detention unit of the Tribunal. This request shall indicate the grounds upon which the request is made and, unless the Prosecutor wishes only to question the suspect, shall include a provisional charge and a summary of the material upon which the Prosecutor relies.

(B) The Judge shall order the transfer and provisional detention of the suspect if the following conditions are met:

(i) the Prosecutor has requested a State to arrest the suspect provisionally, in accordance with Rule 40, or the suspect is otherwise detained by State authorities;

(ii) after hearing the Prosecutor, the Judge considers that there is a reliable and consistent body of material which tends to show that the suspect may have committed a crime over which the Tribunal has jurisdiction; and

(iii) the Judge considers provisional detention to be a necessary measure to prevent the escape of the suspect, injury to or intimidation of a victim or witness or the destruction of evidence, or to be otherwise necessary for the conduct of the investigation.

(C) The order for the transfer and provisional detention of the suspect shall be signed by the Judge and bear the seal of the Tribunal. The order shall set forth the basis of the application made by the Prosecutor under paragraph (A), including the provisional charge, and shall state the Judge’s grounds for
making the order, having regard to paragraph (B). The order shall also specify
the initial time-limit for the provisional detention of the suspect, and be
accompanied by a statement of the rights of a suspect, as specified in this Rule
and in Rules 42 and 43. (Amended 12 Apr 2001)

(D) The provisional detention of a suspect shall be ordered for a period not
exceeding thirty days from the date of the transfer of the suspect to the seat of
the Tribunal. At the end of that period, at the Prosecutor’s request, the Judge
who made the order, or another permanent Judge of the same Trial Chamber,
may decide, subsequent to an inter partes hearing of the Prosecutor and the
suspect assisted by counsel, to extend the detention for a period not exceeding
thirty days, if warranted by the needs of the investigation. At the end of that
extension, at the Prosecutor’s request, the Judge who made the order, or
another permanent Judge of the same Trial Chamber, may decide, subsequent
to an inter partes hearing of the Prosecutor and the suspect assisted by
counsel, to extend the detention for a further period not exceeding thirty days,
if warranted by special circumstances. The total period of detention shall in
no case exceed ninety days, at the end of which, in the event the indictment
has not been confirmed and an arrest warrant signed, the suspect shall be
released or, if appropriate, be delivered to the authorities of the requested
Apr 2001)

(E) The provisions in Rules 55 (B) to 59 bis shall apply mutatis mutandis to the
execution of the transfer order and the provisional detention order relative to a
suspect.

(F) After being transferred to the seat of the Tribunal, the suspect, assisted by
counsel, shall be brought, without delay, before the Judge who made the order,
or another permanent Judge of the same Trial Chamber, who shall ensure that
the rights of the suspect are respected. (Amended 12 Nov 1997, amended 12 Apr 2001)

(G) During detention, the Prosecutor and the suspect or the suspect’s counsel may
submit to the Trial Chamber of which the Judge who made the order is a
member, all applications relative to the propriety of provisional detention or to
the suspect’s release. (Amended 12 Nov 1997)

(H) Without prejudice to paragraph (D), the Rules relating to the detention on
remand of accused persons shall apply mutatis mutandis to the provisional
detention of persons under this Rule. (Amended 1 Dec 2000, amended 13 Dec 2000)
Rule 41
Retention of Information

Subject to Rule 81, the Prosecutor shall be responsible for the retention, storage and security of information and physical material obtained in the course of the Prosecutor's investigations until formally tendered into evidence.

Rule 42
Rights of Suspects during Investigation
(Adopted 11 Feb 1994)

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which the Prosecutor shall inform the suspect prior to questioning, in a language the suspect understands:

(i) the right to be assisted by counsel of the suspect's choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it; (Amended 30 Jan 1995)

(ii) the right to have the free assistance of an interpreter if the suspect cannot understand or speak the language to be used for questioning; and (Amended 30 Jan 1995)

(iii) the right to remain silent, and to be cautioned that any statement the suspect makes shall be recorded and may be used in evidence. (Amended 30 Jan 1995)


(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived the right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel. (Amended 12 Nov 1997)
Rule 43
Recording Questioning of Suspects
(Adopted 11 Feb 1994)

Whenever the Prosecutor questions a suspect, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) the suspect shall be informed in a language the suspect understands that the questioning is being audio-recorded or video-recorded;

(ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;
    (Amended 6 Oct 1995)

(iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything the suspect has said, and to add anything the suspect may wish, and the time of conclusion shall be recorded;
    (Amended 12 Nov 1997)

(iv) a copy of the recorded tape will be supplied to the suspect or, if multiple recording apparatus was used, one of the original recorded tapes;
    (Amended 30 Jan 1995, amended 12 Dec 2002)

(v) after a copy has been made, if necessary, of the recorded tape, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect; and
    (Amended 12 Dec 2002)

(vi) the tape shall be transcribed if the suspect becomes an accused.
    (Amended 12 Dec 2002)
Section 2: Of Counsel

Rule 44
Appointment, Qualifications and Duties of Counsel

(A) Counsel engaged by a suspect or an accused shall file a power of attorney with the Registrar at the earliest opportunity. Subject to any determination by a Chamber pursuant to Rule 46 or 77, a counsel shall be considered qualified to represent a suspect or accused if the counsel satisfies the Registrar that he or she:

(i) is admitted to the practice of law in a State, or is a university professor of law;

(ii) has written and oral proficiency in one of the two working languages of the Tribunal, unless the Registrar deems it in the interests of justice to waive this requirement, as provided for in paragraph (B);

(iii) is a member in good standing of an association of counsel practicing at the Tribunal recognised by the Registrar;

(iv) has not been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel;

(v) has not been found guilty in relevant criminal proceedings;

(vi) has not engaged in conduct whether in pursuit of his or her profession or otherwise which is dishonest or otherwise discredit able to a counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the International Tribunal or the administration of justice, or otherwise bring the International Tribunal into disrepute; and

(vii) has not provided false or misleading information in relation to his or her qualifications and fitness to practice or failed to provide relevant information.

(B) At the request of the suspect or accused and where the interests of justice so demand, the Registrar may admit a counsel who does not speak either of the two working languages of the Tribunal but who speaks the native language of the suspect or accused. The Registrar may impose such conditions as deemed appropriate, including the requirement that the counsel or accused undertake to meet all translations and interpretation costs not usually met by the Tribunal, and counsel undertakes not to request any extensions of time as a result of the fact that he does not speak one of the working languages. A suspect or accused may seek the President’s review of the Registrar’s decision. (Amended 14 July 2000, amended 28 July 2004)

(C) In the performance of their duties counsel shall be subject to the relevant provisions of the Statute, the Rules, the Rules of Detention and any other rules or regulations adopted by the Tribunal, the Host Country Agreement, the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal and the codes of practice and ethics governing their profession and, if applicable, the Directive on the Assignment of Defence Counsel adopted by the Registrar and approved by the permanent Judges. (Amended 25 July 1997, amended 1 Dec 2000, amended 13 Dec 2000, amended 13 Dec 2001, amended 28 July 2004)

(D) An Advisory Panel shall be established to assist the President and the Registrar in all matters relating to defence counsel. The Panel members shall be selected from representatives of professional associations and from counsel who have appeared before the Tribunal. They shall have recognised professional legal experience. The composition of the Advisory Panel shall be representative of the different legal systems. A Directive of the Registrar shall set out the structure and areas of responsibility of the Advisory Panel. (Amended 14 July 2000)

Rule 45
Assignment of Counsel
(A) Whenever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel. Such assignments shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the permanent Judges. (Amended 14 July 2000, amended 12 Apr 2001)
(B) For this purpose, the Registrar shall maintain a list of counsel who:

(i) fulfil all the requirements of Rule 44, although the language requirement of Rule 44 (A)(ii) may be waived by the Registrar as provided for in the Directive;

(ii) possess established competence in criminal law and/or international criminal law/international humanitarian law/international human rights law;

(iii) possess at least seven years of relevant experience, whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings; and

(iv) have indicated their availability and willingness to be assigned by the Tribunal to any person detained under the authority of the Tribunal lacking the means to remunerate counsel, under the terms set out in the Directive.


(C) The Registrar shall maintain a separate list of counsel who, in addition to fulfilling the qualification requirements set out in paragraph (B), are readily available as “duty counsel” for assignment to an accused for the purposes of the initial appearance, in accordance with Rule 62. (Amended 10 July 1998, amended 14 July 2000, amended 28 July 2004)

(D) The Registrar shall, in consultation with the permanent Judges, establish the criteria for the payment of fees to assigned counsel. (Amended 12 Apr 2001, amended 12 Dec 2002)

(E) Where a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing counsel. (Amended 30 Jan 1995, amended 14 July 2000, amended 28 July 2004)

(F) A suspect or an accused electing to conduct his or her own defence shall so notify the Registrar in writing at the first opportunity. (Amended 30 Jan 1995, amended 12 Nov 1997)
PART FIVE
PRE-TRIAL PROCEEDINGS

Section 1: Indictments

Rule 47
Submission of Indictment by the Prosecutor

(A) An indictment, submitted in accordance with the following procedure, shall be reviewed by a Judge designated in accordance with Rule 28 for this purpose. (Amended 25 July 1997)

(B) The Prosecutor, if satisfied in the course of an investigation that there is sufficient evidence to provide reasonable grounds for believing that a suspect has committed a crime within the jurisdiction of the Tribunal, shall prepare and forward to the Registrar an indictment for confirmation by a Judge, together with supporting material. (Amended 12 Nov 1997)

(C) The indictment shall set forth the name and particulars of the suspect, and a concise statement of the facts of the case and of the crime with which the suspect is charged.

(D) The Registrar shall forward the indictment and accompanying material to the designated Judge, who will inform the Prosecutor of the date fixed for review of the indictment. (Amended 30 Jan 1995; amended 25 July 1997)

(E) The reviewing Judge shall examine each of the counts in the indictment, and any supporting materials the Prosecutor may provide, to determine, applying the standard set forth in Article 19, paragraph 1, of the Statute, whether a case exists against the suspect. (Amended 25 July 1997)

(F) The reviewing Judge may:

(i) request the Prosecutor to present additional material in support of any or all counts; (Amended 10 July 1998; amended 2 July 1999)

(ii) confirm each count;
(iii) dismiss each count; or

(iv) adjourn the review so as to give the Prosecutor the opportunity to modify the indictment.

(Amended 25 July 1997)

(G) The indictment as confirmed by the Judge shall be retained by the Registrar, who shall prepare certified copies bearing the seal of the Tribunal. If the accused does not understand either of the official languages of the Tribunal and if the language understood is known to the Registrar, a translation of the indictment in that language shall also be prepared, and shall be included as part of each certified copy of the indictment. (Amended 12 Nov 1997)

(H) Upon confirmation of any or all counts in the indictment,

(i) the Judge may issue an arrest warrant, in accordance with Rule 55 (A), and any orders as provided in Article 19 of the Statute, and

(Amended 1 Dec 2000, amended 13 Dec 2000)

(ii) the suspect shall have the status of an accused.

(Amended 25 July 1997)

(I) The dismissal of a count in an indictment shall not preclude the Prosecutor from subsequently bringing an amended indictment based on the acts underlying that count if supported by additional evidence. (Amended 25 July 1997)

Rule 48
Joinder of Accused
(Amended 11 Feb 1994)

Persons accused of the same or different crimes committed in the course of the same transaction may be jointly charged and tried.
Rule 57
Procedure after Arrest

Upon arrest, the accused shall be detained by the State concerned which shall promptly notify the Registrar. The transfer of the accused to the seat of the Tribunal shall be arranged between the State authorities concerned, the authorities of the host country and the Registrar.

Rule 58
National Extradition Provisions

The obligations laid down in Article 29 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused or of a witness to the Tribunal which may exist under the national law or extradition treaties of the State concerned.

Rule 59
Failure to Execute a Warrant or Transfer Order

(A) Where the State to which a warrant of arrest or transfer order has been transmitted has been unable to execute the warrant, it shall report forthwith its inability to the Registrar, and the reasons therefor.

(B) If, within a reasonable time after the warrant of arrest or transfer order has been transmitted to the State, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Tribunal, through the President, may notify the Security Council accordingly.

Rule 59 bis
Transmission of Arrest Warrants
(Adopted 18 Jan 1996)

(A) Notwithstanding Rules 55 to 59, on the order of a permanent Judge, the Registrar shall transmit to an appropriate authority or international body or the Prosecutor a copy of a warrant for the arrest of an accused, on such terms as the Judge may determine, together with an order for the prompt transfer of the accused to the Tribunal in the event that the accused be taken into custody.

(B) At the time of being taken into custody an accused shall be informed immediately, in a language the accused understands, of the charges against him or her and of the fact that he or she is being transferred to the Tribunal. Upon such transfer, the indictment and a statement of the rights of the accused shall be read to the accused and the accused shall be cautioned in such a language. (Amended 12 Nov 1997)

(C) Notwithstanding paragraph (B), the indictment and statement of rights of the accused need not be read to the accused if the accused is served with these, or with a translation of these, in a language the accused understands and is able to read. (Amended 12 Nov 1997, amended 12 Apr 2001)

Rule 60
Advertisement of Indictment

At the request of the Prosecutor, a form of advertisement shall be transmitted by the Registrar to the national authorities of any State or States, for publication in newspapers or for broadcast via radio and television, notifying publicly the existence of an indictment and calling upon the accused to surrender to the Tribunal and inviting any person with information as to the whereabouts of the accused to communicate that information to the Tribunal.

Rule 61
Procedure in Case of Failure to Execute a Warrant
(Adopted 11 Feb 1994)

(A) If, within a reasonable time, a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, the Judge who confirmed the indictment shall invite the Prosecutor to report on the measures taken. When the Judge is satisfied that:

(i) the Registrar and the Prosecutor have taken all reasonable steps to secure the arrest of the accused, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to them to be; and

(Amended 18 Jan 1996, amended 12 Nov 1997)
Section 4: Production of Evidence

Rule 66
Disclosure by the Prosecutor
(Adopted 11 Feb 1994)

(A) Subject to the provisions of Rules 53 and 69, the Prosecutor shall make available to the defence in a language which the accused understands

(i) within thirty days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused; and
(Amended 2 Nov 1997)

(ii) within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 ter, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial, and copies of all transcripts and written statements taken in accordance with Rule 92 bis, Rule 92 ter, and Rule 92 quater; copies of the statements of additional prosecution witnesses shall be made available to the defence when a decision is made to call those witnesses.


(B) The Prosecutor shall, on request, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor’s custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused. (Amended 30 Jan 1995, amended 12 Nov 1997, amended 17 Nov 1999)

(C) Where information is in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to the Trial Chamber sitting in camera to be relieved from an obligation under the Rules to disclose that information. When making such application the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential. (Amended 30 Jan 1995, amended 10 July 1998, amended 17 Nov 1999)
Rule 67
Additional Disclosure

(A) Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 bis, but not less than one week prior to the commencement of the Defence case, the Defence shall:

(i) permit the Prosecutor to inspect and copy any books, documents, photographs, and tangible objects in the Defence’s custody or control, which are intended for use by the Defence as evidence at trial; and

(ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 bis, Rule 92 ter, or Rule 92 quater, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses.

(Adopted 28 Feb 2008)

(B) Within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge appointed pursuant to Rule 65 ter:

(i) the defence shall notify the Prosecutor of its intent to offer:

(a) the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;

(b) any special defence, including that of diminished or lack of mental responsibility; in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence; and

(ii) the Prosecutor shall notify the defence of the names of the witnesses that the Prosecutor intends to call in rebuttal of any defence plea of
which the Prosecutor has received notice in accordance with paragraph (i) above.


(C) Failure of the Defence to provide notice under this Rule shall not limit the right of the accused to testify on the above defences.

(D) If either party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that party shall immediately disclose that evidence or material to the other party and the Trial Chamber.

(Amended 13 Dec 2001)

Rule 68

Disclosure of Exculpatory and Other Relevant Material


Subject to the provisions of Rule 70,

(i) the Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;

(ii) without prejudice to paragraph (i), the Prosecutor shall make available to the defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the defence can search such collections electronically;

(iii) the Prosecutor shall take reasonable steps, if confidential information is provided to the Prosecutor by a person or entity under Rule 70 (B) and contains material referred to in paragraph (i) above, to obtain the consent of the provider to disclosure of that material, or the fact of its existence, to the accused;

(iv) the Prosecutor shall apply to the Chamber sitting in camera to be relieved from an obligation under paragraph (i) to disclose information in the possession of the Prosecutor, if its disclosure may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the security interests of any State, and when making such application, the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential;
notwithstanding the completion of the trial and any subsequent appeal, the Prosecutor shall disclose to the other party any material referred to in paragraph (i) above.

**Rule 68 bis**

*Failure to Comply with Disclosure Obligations*

*(Adopted 13 Dec 2001)*

The pre-trial Judge or the Trial Chamber may decide *proprio motu*, or at the request of either party, on sanctions to be imposed on a party which fails to perform its disclosure obligations pursuant to the Rules.

**Rule 69**

*Protection of Victims and Witnesses*

*(Adopted 11 Feb 1994)*

(A) In exceptional circumstances, either party may apply to a Judge or Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk until such person is brought under the protection of the Tribunal. *(Amended 13 Dec 2001, amended 28 Aug 2012)*

(B) In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Victims and Witnesses Section. *(Amended 15 June 1995, amended 2 July 1999, amended 13 Dec 2001)*

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed within such time as determined by the Trial Chamber to allow adequate time for preparation of the Prosecution or Defence. *(Amended 28 Aug 2012)*

**Rule 70**

*Matters not Subject to Disclosure*

*(Adopted 11 Feb 1994)*

(A) Notwithstanding the provisions of Rules 66 and 67, reports, memoranda, or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under those Rules.

(B) If the Prosecutor is in possession of information which has been provided to the Prosecutor on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin
shall not be disclosed by the Prosecutor without the consent of the person or
entity providing the initial information and shall in any event not be given in
evidence without prior disclosure to the accused. (Amended 4 Oct 1994, amended 30 Jan

(C) If, after obtaining the consent of the person or entity providing information
under this Rule, the Prosecutor elects to present as evidence any testimony,
document or other material so provided, the Trial Chamber, notwithstanding
Rule 98, may not order either party to produce additional evidence received
from the person or entity providing the initial information, nor may the Trial
Chamber for the purpose of obtaining such additional evidence itself summon
that person or a representative of that entity as a witness or order their
attendance. A Trial Chamber may not use its power to order the attendance
of witnesses or to require production of documents in order to compel the

(D) If the Prosecutor calls a witness to introduce in evidence any information
provided under this Rule, the Trial Chamber may not compel that witness to
answer any question relating to the information or its origin, if the witness
declines to answer on grounds of confidentiality. (Amended 6 Oct 1995, amended 25 July
1997)

(E) The right of the accused to challenge the evidence presented by the
Prosecution shall remain unaffected subject only to the limitations contained
in paragraphs (C) and (D). (Amended 6 Oct 1995, amended 12 Apr 2001)

(F) The Trial Chamber may order upon an application by the accused or defence
counsel that, in the interests of justice, the provisions of this Rule shall apply
mutatis mutandis to specific information in the possession of the accused.
(Amended 25 July 1997)

(G) Nothing in paragraph (C) or (D) above shall affect a Trial Chamber’s power
under Rule 89 (D) to exclude evidence if its probative value is substantially
outweighed by the need to ensure a fair trial. (Amended 6 Oct 1995, amended 12 Apr 2001)
PART SIX
PROCEEDINGS BEFORE TRIAL CHAMBERS

Section 1: General Provisions

Rule 74
Amicus Curiae
(Adopted 11 Feb 1994)

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

Rule 74 bis
Medical Examination of the Accused
(Adopted 10 July 1998, amended 12 Apr 2001)

A Trial Chamber may, proprio motu or at the request of a party, order a medical, psychiatric or psychological examination of the accused. In such a case, unless the Trial Chamber otherwise orders, the Registrar shall entrust this task to one or several experts whose names appear on a list previously drawn up by the Registry and approved by the Bureau.

Rule 75
Measures for the Protection of Victims and Witnesses

(A) A Judge or a Chamber may, proprio motu or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Section, order appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused. (Amended 15 June 1995, amended 2 July 1999)
(B) A Chamber may hold an in camera proceeding to determine whether to order:

(i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as: (Amended 12 Nov 1997)

(a) expunging names and identifying information from the Tribunal’s public records; (Amended 1 Dec 2000, amended 13 Dec 2000)
(b) non-disclosure to the public of any records identifying the victim or witness; (Amended 28 Feb 2008)
(c) giving of testimony through image- or voice-altering devices or closed circuit television; and
(d) assignment of a pseudonym;

(ii) closed sessions, in accordance with Rule 79;

(iii) appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television. (Amended 30 Jan 1995)

(C) The Victims and Witnesses Section shall ensure that the witness has been informed before giving evidence that his or her testimony and his or her identity may be disclosed at a later date in another case, pursuant to Rule 75 (F). (Amended 12 Dec 2002)

(D) A Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation.

(E) When making an order under paragraph (A) above, a Judge or Chamber shall wherever appropriate state in the order whether the transcript of those proceedings relating to the evidence of the witness to whom the measures relate shall be made available for use in other proceedings before the Tribunal or another jurisdiction. (Amended 12 July 2007)

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures:

(i) shall continue to have effect mutatis mutandis in any other proceedings before the Tribunal (“second proceedings”) or another jurisdiction
Section 2: Case Presentation

Rule 82
Joint and Separate Trials
(Adopted 11 Feb 1994)

(A) In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately. (Amended 12 Nov 1997)

(B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

Rule 83
Instruments of Restraint

Instruments of restraint, such as handcuffs, shall be used only on the order of the Registrar as a precaution against escape during transfer or in order to prevent an accused from self-injury, injury to others or to prevent serious damage to property. Instruments of restraint shall be removed when the accused appears before a Chamber or a Judge.

Rule 84
Opening Statements

Before presentation of evidence by the Prosecutor, each party may make an opening statement. The defence may, however, elect to make its statement after the conclusion of the Prosecutor’s presentation of evidence and before the presentation of evidence for the defence.
Rule 84 bis
Statement of the Accused
(Adopted 2 July 1999)

(A) After the opening statements of the parties or, if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

Rule 85
Presentation of Evidence
(Adopted 11 Feb 1994)

(A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:

(i) evidence for the prosecution;

(ii) evidence for the defence;

(iii) prosecution evidence in rebuttal;

(iv) defence evidence in rejoinder;

(v) evidence ordered by the Trial Chamber pursuant to Rule 98; and

(Amended 10 July 1998)

(vi) any relevant information that may assist the Trial Chamber in determining an appropriate sentence if the accused is found guilty on one or more of the charges in the indictment.

(Amended 10 July 1998)

(B) Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine such witness in chief, but a Judge may at any stage put any question to the witness.
(C) If the accused so desires, the accused may appear as a witness in his or her own defence.

Rule 86
Closing Arguments

(A) After the presentation of all the evidence, the Prosecutor may present a closing argument; whether or not the Prosecutor does so, the defence may make a closing argument. The Prosecutor may present a rebuttal argument to which the defence may present a rejoinder. (Amended 10 July 1998)

(B) Not later than five days prior to presenting a closing argument, a party shall file a final trial brief. (Amended 10 July 1998, amended 1 Dec 2000, amended 13 Dec 2000)

(C) The parties shall also address matters of sentencing in closing arguments. (Amended 10 July 1998)

Rule 87
Deliberations
(Adopted 11 Feb 1994)

(A) When both parties have completed their presentation of the case, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.

(B) The Trial Chamber shall vote separately on each charge contained in the indictment. If two or more accused are tried together under Rule 48, separate findings shall be made as to each accused.

(C) If the Trial Chamber finds the accused guilty on one or more of the charges contained in the indictment, it shall impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be served consecutively or concurrently, unless it decides to exercise its power to impose a single sentence reflecting the totality of the criminal conduct of the accused. (Amended 10 July 1998, amended 1 Dec 2000, amended 13 Dec 2000)
Section 3: Rules of Evidence

Rule 89
General Provisions
(Adopted 11 Feb 1994)

(A) A Chamber shall apply the rules of evidence set forth in this Section, and shall not be bound by national rules of evidence. (Amended 1 Dec 2000, amended 13 Dec 2000)

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.

(E) A Chamber may request verification of the authenticity of evidence obtained out of court.

(F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form. (Amended 1 Dec 2000, amended 13 Dec 2000)

Rule 90
Testimony of Witnesses

(A) Every witness shall, before giving evidence, make the following solemn declaration: "I solemnly declare that I will speak the truth, the whole truth and nothing but the truth".

(B) A child who, in the opinion of the Chamber, does not understand the nature of a solemn declaration, may be permitted to testify without that formality, if the Chamber is of the opinion that the child is sufficiently mature to be able to report the facts of which the child had knowledge and understands the duty
to tell the truth. A judgement, however, cannot be based on such testimony alone. (Amended 30 Jun 1995)

(C) A witness, other than an expert, who has not yet testified shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying.

(D) Notwithstanding paragraph (C), upon order of the Chamber, an investigator in charge of a party’s investigation shall not be precluded from being called as a witness on the ground that he or she has been present in the courtroom during the proceedings. (Amended 25 July 1997, amended 1 Dec 2000, amended 13 Dec 2000)

(E) A witness may object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony. (Amended 30 Jun 1995, amended 1 Dec 2000, amended 13 Dec 2000)

(F) The Trial Chamber shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to

(i) make the interrogation and presentation effective for the ascertainment of the truth; and

(ii) avoid needless consumption of time.

(Amended 10 July 1998)

(G) The Trial Chamber may refuse to hear a witness whose name does not appear on the list of witnesses compiled pursuant to Rules 73 bis (C) and 73 ter (C). (Amended 12 Apr 2001)

(H) (i) Cross-examination shall be limited to the subject-matter of the evidence-in-chief and matters affecting the credibility of the witness and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of that case.

(ii) In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel
Section 5: Sentencing and Penalties

Rule 100

Sentencing Procedure on a Guilty Plea

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence. (Amended 25 June 1996, amended 5 July 1996)

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Rule 102 (B).

Rule 101

Penalties

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person’s life. (Amended 12 Nov 1997)

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute, as well as such factors as:

(i) any aggravating circumstances;

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.

(C) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal. (Amended 30 Jan 1995)

Rule 102
Status of the Convicted Person
(Adopted 11 Feb 1994)

(A) The sentence shall begin to run from the day it is pronounced. However, as soon as notice of appeal is given, the enforcement of the judgement shall thereupon be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention, as provided in Rule 64. (Amended 10 July 1998)

(B) If, by a previous decision of the Trial Chamber, the convicted person has been released, or is for any other reason at liberty, and is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for the convicted person’s arrest. On arrest, the convicted person shall be notified of the conviction and sentence, and the procedure provided in Rule 103 shall be followed. (Amended 12 Nov 1997)

Rule 103
Place of Imprisonment
(Adopted 11 Feb 1994)

(A) Imprisonment shall be served in a State designated by the President of the Tribunal from a list of States which have indicated their willingness to accept convicted persons. (Amended 10 July 1998)

(B) Transfer of the convicted person to that State shall be effected as soon as possible after the time-limit for appeal has elapsed.

(C) Pending the finalisation of arrangements for his or her transfer to the State where his or her sentence will be served, the convicted person shall remain in the custody of the Tribunal. (Amended 4 Dec 1998)
Judge O-Gon Kwon
Member of the Tribunal since November 2001
Vice-President between 17 November 2008 and 17 November 2011
Born: 1953, Cheong-ju, Korea

Judge Kwon has been working as one of the permanent judges of the International Criminal Tribunal for the former Yugoslavia since November 2001. He served as the Vice-President of the International Tribunal from 2008 to 2011. Before joining the Tribunal in 2001, he served in the Judiciary of the Republic of Korea for 22 years as a judge in various courts, including the Seoul District Court and Taegu High Court. He also served as the Assistant Legal Advisor to the President of the Republic of Korea (1981-1984), the Planning Director at the Office of the Court Administration of the Supreme Court of Korea (1990-1992), and the Director of Research at the Constitutional Court of Korea (1997-1999).

Judge Kwon currently presides over the trial of former Bosnian Serb leader, Radovan Karadžić. He is also a member of the Tribunal’s Rules Committee, which is charged with proposing additions and modifications to the Rules of Procedure and Evidence. Previously, Judge Kwon sat on the trial of Slobodan Milošević, former President of the Republic of Serbia and the Federal Republic of Yugoslavia and on the trial of Popović and others, in which seven Bosnian Serbs were accused of involvement in crimes following the July 1995 fall of the Srebrenica enclave. Judge Kwon was also involved in a number of pre-trial proceedings, contempt trials and sentencing judgments. Further, he was a member of the Referral Bench, which determined whether certain cases pending before the Tribunal are suitable to be referred for trial in the national courts of a State, instead being tried at the Tribunal.

In addition to his work at the Tribunal, Judge Kwon has been serving as a member of the Board of Editors of the Journal of International Criminal Justice (Oxford) since 2007, and a member of the independent Panel on the International Criminal Court Judicial Election of the Coalition for the International Criminal Court since 2010.

The Challenge of an International Criminal Trial as Seen from the Bench

O-Gon Kwon*

Abstract

The untimely death of Slobodan Milošević has brought into sharp focus the central challenge facing the judges of the International Criminal Tribunal for the former Yugoslavia: the length and complexity of trials, especially those involving high-level accused. The judges of the Tribunal have found themselves faced with the daunting task of how to change the existing procedures to be able to dispose of increasingly complex cases in a shorter period of time, while still respecting the right of the accused to a fair trial. The author focuses on three provisions of the Rules of Procedure and Evidence allowing 'hybrid' mechanisms between common-law and civil-law systems to speed up proceedings: (i) procedures for the admission of written statements and transcripts in lieu of oral testimony; (ii) judicial notice of facts adjudicated in previous cases before the Tribunal; and (iii) measures to reduce the size of cases, including allowing for the dropping of charges from an indictment to focus on more important or exemplary charges. All these mechanisms bear evidence of the ongoing process of 'internationalization' of criminal procedure. The author concludes that the task of speeding up trials requires a considerable amount of vision and mutual understanding on the part of the judges.

1. Introduction

It is no secret that the International Criminal Tribunal for the former Yugoslavia (hereinafter 'ICTY' or 'Tribunal'), some 12 years after the start of

---

* Judge of the International Criminal Tribunal for the former Yugoslavia. An earlier version of this article was presented at the ECHR Regional Workshop for Asia, Beijing, 7 September 2006. The views expressed here do not necessarily reflect those of the ICTY or the United Nations in general, unless otherwise specified, all references to rules in this article are to Revision 38 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, UN Doc. T.P/32/Rev. 38 (2006). The author wishes to thank James Bischoff and Neil Horner for their invaluable assistance in the preparation of this article.

---
The Challenge of an International Criminal Trial as Seen from the Bench

proceedings in its first case, still has a great deal of work to do. In the words of former President Cassese, 'the early prosecution strategy of starting with the prosecution of numerous low-level defendants flooded the Tribunal with minor cases and created a backlog of (relatively) petty defendants awaiting trial.' As time has progressed and peace has been restored to the former Yugoslavia, the Tribunal has come into custody of almost all of its senior-level indictees, and the Security Council has directed the Tribunal to focus its attention on these individuals. The length and complexity of trials involving such high-level accused was recently brought into focus by the unfortunate and untimely death of Slobodan Milošević, whose trial had already been ongoing for 4 years. At present, there are 67 accused whose cases remain on the agenda of the Tribunal—including Karadžić, Mladić, and another four who remain at large—most of whom were of relatively high prominence in the political, military or police hierarchy at the time of the events in question.

In response to dire predictions that the ICTY may not fulfill its mandate until 2016, the Security Council has called on the Tribunal to 'take all possible measures to complete all trial work by 2008 and all appeal work by 2010, and has urged it to plan and act accordingly.' As a result of this directive and with mounting pressure from the Security Council, from member states and from the international community in the wake of Milošević’s death, the judges of the Tribunal have found themselves faced with the daunting task of determining how to change the existing procedures to be able to dispose of increasingly complex cases in a shorter period of time, while still respecting the highest degree the rights of the accused to a fair trial. One measure recently undertaken was the establishment, in February 2005, of a Working Group under the leadership of Judge Iain Bonomy—one of my former colleagues on the Milošević bench—to explore and suggest mechanisms for accomplishing the goal of expediting both pre-trial and trial proceedings. The Group released its report earlier this year with a number of helpful and innovative suggestions on how judges can make more robust use of the Rules of Procedure and Evidence (hereinafter ‘the Rules’) currently at their disposal.

My remarks today will focus on three provisions of the Rules—among the issues raised in the Bonomy Report—that have assisted, and with proper use, will continue to assist, in speeding up pre-trial and trial proceedings. All three are examples of what I call the 'Internationalization' of criminal procedure, in that they combine different features of the common-law and civil-law systems in a unique hybrid fashion unknown to any domestic

3 See ‘Key Figures of ICTY Cases’ on http://www.un.org/icty/cases-e/index-e.htm (visited 1 August 2006).
5 SC Res. 1534 (2004), § 3.
jurisdiction in the world. This new hybrid system cannot be explained solely from the perspective of one of the two systems, but must be seen in the light of both. Today, I will discuss a few examples of how hybrid mechanisms can be and have been used to speed up proceedings, including: (i) procedures for the admission of written statements and transcripts in lieu of oral testimony; (ii) judicial notice of facts adjudicated in previous cases before the Tribunal and (iii) measures to reduce the size of cases, including allowing for the dropping of charges from an indictment to focus on more important or exemplary charges.

2. Unique Challenges Presented by International Criminal Trials

I have already mentioned the central challenge facing the judges of the ICTY: the factual and legal complexity of the cases before the Tribunal, combined with rules, jurisprudence and practice that accord the full range of procedural rights to the accused, have resulted in pre-trial, trial and appellate proceedings that are notoriously lengthy. This holds true even with regard to cases involving accused charged with relatively few crimes committed in a relatively confined geographical area. Illustrative are two trials concluded in March and June of this year, each of which lasted longer than 2 years despite fairly limited crime bases and the absence of charges of participation in a joint criminal enterprise, arguably the most complicated of the forms of responsibility.

The increasing focus on the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the...Tribunal threatens to exacerbate the problem of lengthy trials and appeals, as the cases that remain involve high-level accused charged through many different forms of responsibility with larger and more sprawling crime bases. The case against Mlakošević was a prime example: he was charged with war crimes, crimes against humanity and genocide in 66 separate counts for events occurring in three different wars over a time period spanning nearly a decade. The three indictments charged him with these crimes through all the forms of responsibility, including superior responsibility and three different joint criminal enterprises (one for each war). As a result, it took a great deal of time for the prosecution to produce not only the crime-base evidence, but also the enormous amount of linkage evidence required, and it took a roughly equal amount of time for the accused to attempt to rebut this evidence. While the remaining cases before the Tribunal are admittedly not as large as that of Mlakošević, most future trials where several accused

6 Judgment, Haličkoglu Novaković and Kubura (IT-01-47-T), Trial Chamber, 15 March 2006; and Judgment, Orlić (IT-03-68-T), Trial Chamber, 30 June 2006.

7 SC Res. 1534 (2004), § 5.
have been joined together in the same trial can still be expected to last well over a year and probably much longer.

A related challenge facing us is the repetition of the same crime-base evidence from trial to trial. As the factual bases for many cases at the Tribunal overlap, the same witness may be brought to The Hague on multiple occasions to give essentially the same evidence. An example of this is a witness-survivor of the events at Srebrenica in July 1995, who recently testified in my current trial, Popović and others. He has testified regarding these same events three times previously: in Kstič, in Blagojević and Jokić and in Milošević. Yet another challenge of international criminal trials is figuring out how to make the hybrid common-law/civil-law system function and function well, in order to make the procedures more efficient while still guaranteeing the accused's right to a fair trial. As I hope will be illustrated in my discussion of written statements and adjudicated facts, this task requires a considerable amount of vision and mutual understanding on the part of judges from very different domestic backgrounds.

3. Written Statements (Rules 89(F) and 92bis)

The Tribunal began its life in 1994 with a system of criminal procedure intended to combine aspects of both the common-law and civil-law traditions. For example, although the Rules enshrine an adversarial method of presenting evidence, through live examination and cross-examination of witnesses, they also dispense with the need for a jury as the finder of fact, assigning this task instead to the trial judges themselves. Moreover, there is no rule barring the admission into evidence of hearsay statements, not even to prove the truth of the matters asserted in them; the jurisprudence from a very early stage has affirmed the admissibility of hearsay statements as long as they are probative and reliable. It is true that, in practice, the common-law adversarial model has predominated most aspects of the Tribunal's procedure; the production of witnesses and evidence is predominantly party-driven and, despite the deletion of an old rule stating that 'witnesses shall, in principle, be heard directly by the Chambers', most witnesses are still heard live. Nevertheless, as time has progressed the Tribunal has also adopted a number of

8 Rule 85(a) of the Rules.
9 See Decision on Prosecution's Appeal on Admissibility of Evidence, Alkousa (IT-95-14/1-A-R 73).
10 The Bosnian Trial Chamber observed in its judgment that 'it is well settled in the practice and jurisprudence of this Tribunal that hearsay evidence is admissible to prove the truth of its contents, but that the weight or probative value of hearsay evidence will usually be less' than live testimony in which the witness is subject to cross-examination. Judgment, Bosnian (IT-99-36-T) Trial Chamber, 1 September 2004, ¶ 28.
11 Former Rule 90(A) (deleted in December 2000) (emphasis added).
essentially civil-law mechanisms for tendering and admitting evidence. This infusion of civil-law evidentiary principles into an essentially common-law framework is, in my view, a testament to the judges' willingness to cooperate, to learn from one another and to recognize the utility and effectiveness of approaches taken in national legal systems other than their own.

While in my years at the Tribunal I have come to appreciate that the common-law adversarial model has many strengths, perhaps its greatest weakness is its tendency to produce lengthy and often irrelevant exchanges between the examining party and the witness. This problem has been compounded at the Tribunal by a number of factors—some of which I have already alluded to—that are generally absent in domestic jurisdictions, and that only became apparent when trials began at the Tribunal some 30 years ago. First, the crime base in international criminal proceedings is exceedingly complex, necessarily relating to a large-scale war with a number of political and historical factors behind it that the parties often regard as requiring detailed exploration. Second, the elements of the crimes and modes of responsibility are far more complex than their analogues in domestic criminal law, and require a great deal of evidence to link the accused to the crimes with which he or she is charged, especially in more recent cases involving higher-level accused. Third, the witnesses are often unfamiliar with the adversarial method of examination and cross-examination. As a consequence, it is often difficult for the judges and the prosecutor to restrict the testimony of a given witness to what is relevant to the charges in the indictment, where that witness wants to be left free to tell his or her story. Fourth, in many cases it appears that defence counsel from the region misunderstand the adversarial system, and endeavour to point out to the Chamber every inconsistency and error in the evidence of the witness—even on irrelevant and trivial points—which tends to make cross-examination unnecessarily lengthy. This has resulted in trial proceedings that, absent a plea agreement between the parties, habitually last two or more years—much longer than even the most complicated trials in domestic jurisdictions.

Having become aware of the serious problems caused by lengthy trial proceedings, in December 2000, the judges deleted the rule favouring live testimony in order to make way for two others—Rules 89(F) and 92bis—that allow the admission of written statements prepared for purposes of legal proceedings in lieu of oral testimony, but only if certain conditions are met. Rule 89(F) is contained in the introductory provision on rules of evidence, and states that '[a] Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.' Rule 92bis is a much more extensive provision, allowing written witness statements to be admitted in lieu of oral testimony as long as they do not go to the 'acts and conduct of the accused.' Unless the witness in question has died or cannot be found with reasonable diligence, any statement admitted under Rule 92bis must be accompanied by a declaration, sworn by the
witness before an officer of the Tribunal's Registry, that its contents are true and correct. Under Rule 92bis(R), the Trial Chamber retains the discretion to call the witness for cross-examination despite this declaration if it deems it necessary and appropriate.

So, discounting the Rule on expert reports, we have two separate rules governing the admission of written evidence. The relationship between Rules 89(f) and 92bis has been the subject of considerable attention in the jurisprudence. Most of the litigation on this relationship took place in the course of the prosecution case in Milosevic, beginning with a March 2002 decision on the prosecution's motion to admit certain statements under Rule 92bis, in which we admitted those statements but required the witness to appear and be subjected to cross-examination. I appended a declaration to this decision expressing the view that the flexible approach to evidence in the Tribunal's Rules fully supported the Trial Chamber's course of action. I noted the practice in my home country, Korea, which adopts a hybrid of civil-law and common-law systems and allows written statements to be admitted as long as the maker of the statement attends court to attest to the genuineness of the statement. I believed then, as I do now, that the admission of written statements in lieu of oral evidence has enhanced and will continue to enhance the ability of chambers to manage trials of a vast scale, and is fully consistent with principles of justice and fair-trial rights, subject to the proviso that the maker of the statement may be subject to cross-examination.

A year later, the prosecution again sought to admit into evidence a number of witness statements under Rule 89 instead of 92bis, proposing that the witnesses would thereafter attend court to attest to the truthfulness of their statements and undergo cross-examination. By admitting the statements in this way, the prosecution apparently hoped that it could avoid the stringency of Rule 92bis, especially the formal requirement of an attestation taken by a court officer—which is time-consuming and expensive—as well as the substantive requirement that the contents of the statement should not go to the acts and conduct of the accused. Basing itself on language from a decision of the Appeals Chamber, the Trial Chamber denied the motion, holding that Rule 92bis was the lex specialis on written witness statements and that if such statements were to come into evidence, it must be under Rule 92bis.

I issued a dissent, stating my view that Rule 89(f) would allow such witness statements to come into evidence, provided the witness appeared

11 See Decision on Prosecution's Request to Have Written Statements Admitted under Rule 92bis, Milosevic (IT-93-54-T), Trial Chamber, 21 March 2002, § 30.
12 ibid., Declaration of Judge O-Una Kim, § 2.
13 See Decision on Interlocutory Appeal Concerning Rule 92bis(C), Galli (IT-98-29-AR713-1), Appeals Chamber, 7 June 2002, § 31.
14 Decision on Prosecution Motion for the Admission of Evidence-In-Chief of its Witnesses in Writing, Milosevic (IT-93-54-T), Trial Chamber, 16 April 2003, at 2.
in court to attest to the statement and was available for cross-examination. The witness's in-court adoption of the statement and cross-examination would serve as a substitute for the safeguards of Rule 92bis, which was designed for situations where the witness does not appear in court and cross-examination does not occur.\footnote{\textit{Ibid}, Dissenting Opinion of Judge O-Gon Kwon, § 4.}

The Trial Chamber granted certification to appeal this decision. The Appeals Chamber essentially adopted my interpretation of Rule 89(F), and reversed the Trial Chamber’s decision. It held that where the witness is present and can orally attest to the accuracy of the statement, the evidence constitutes a mixture of oral and written evidence that is beyond the scope of Rule 92bis. The statement can accordingly be admitted under Rule 89(F) where the ‘interests of justice’ allow, provided that the witness: (i) is present in court; (ii) is available for cross-examination and (iii) attests that the statement accurately reflects what he or she would say if examined orally.\footnote{Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements, 	extit{Mladost} (IT-02-34-AR.714), Appeals Chamber, 30 September 2003, § 21.} While it did not discuss the matter expressly, the Appeals Chamber did not prohibit the admission of statements under Rule 89(F) that go to the acts and conduct of the accused. Later decisions of Trial Chambers have held that a statement that goes to the acts and conduct of the accused is not automatically barred from admission under Rule 89(F), but that this is instead a factor to be taken into consideration when determining whether admitting the statement is in the interests of justice.\footnote{See e.g., Decision on the Prosecution’s Motions to Admit Prior Statements as Substantive Evidence, 	extit{Limet}, 	extit{Rus.}, and 	extit{Matsile} (IT-03-66-T), Trial Chamber, 25 April 2005, § 18. See also Decision on Prosecution’s Motions for Admission of Statement of Witness Milan Babich, 	extit{Mratić} (IT-95-11-T), Trial Chamber, 19 February 2006.}

In the final analysis, the jurisprudence appears to have created a dichotomy between Rules 89(F) and 92bis: all statements — even those which relate to the acts and conduct of the accused — may be admitted under Rule 89(F) where the interests of justice allow, provided the witness appears in court and is available for cross-examination. Statements that do not relate to the acts and conduct of the accused may be admitted under Rule 92bis, provided they are accompanied by an attestation sworn before an officer of the Tribunal. The Trial Chamber retains the prerogative to call the witness for cross-examination even where the statement is accompanied by this attestation. In my view, however, calling the witness in spite of the attestation would appear to defeat the purpose of Rule 92bis.

Therefore, I am of the opinion that, in relation to a motion for the admission of a witness statement pursuant to Rule 92bis, if the Trial Chamber decides that the witness must appear for cross-examination, Rule 89(F) should apply instead of Rule 92bis, since Rule 89(F) has evolved...
to deal with the scenario where the maker of the statement is called for cross-examination.\(^\text{18}\)

After the Milošević Appeal Decision and during the remainder of the prosecution case, we admitted a great number of witness statements pursuant to Rule 89(F).\(^\text{19}\) Each time the witness appeared in court to adopt the statement and submit to cross-examination by the accused, it is my firm belief that, as a result of the admission of Rule 89(F) statements, the admittedly long presentation of the prosecution’s case-in-chief was substantially shorter than it otherwise would have been. It is interesting to note that my common-law colleagues on the bench eventually came to agree with me that admitting written statements with cross-examination was an appropriate and fair way to expedite the proceedings, so much so that the Trial Chamber, in December 2005, unanimously reprimanded the accused for not making use of Rules 89(F) and 92bis himself to speed up the presentation of his case-in-chief.\(^\text{20}\)

The increasingly rigorous use of Rules 89(F) and 92bis, even by benches composed predominantly of judges from the common-law tradition, is a prime example of the internationalization of criminal procedure. Rule 89(F), in particular, is a very flexible rule that affords the judges a number of options to ensure that the manner in which the evidence is presented serves the interests of

\(^{18}\) Shortly after the September 2006 Beijing conference at which I delivered the speech that resulted in this article, Rule 92bis was amended and a new rule—Rule 92ter—was added. Rule 92bis was made substantially shorter, deleting the portion allowing the Trial Chamber to order the cross-examination of a witness whose written statement has been admitted into evidence under the rule. Rule 92ter was intended to take the place of Rule 89(F), and covers situations in which the witness’ written statement is admitted into evidence but the witness is called for cross-examination. Under Rule 92ter the witness statement may go to the acts and conduct of the accused, but only if the three conditions from the September 2003 Milošević appeal decision are fulfilled: the witness must be present in court; he must be available for cross-examination and any questioning by the judges; and he must swear that the written statement accurately reflects his declaration and what he would say if examined. These amendments bring the rules on the admission of written evidence substantially in line with my views. Rule 92bis is only to be used where the written evidence does not go to the acts and conduct of the accused and where the witness does not appear in court, with Rule 92ter being used in lieu of Rule 92bis in other situations—that is, if the witness appears in court for cross-examination or partial examination-in-chief, or if his statement goes to the acts and conduct of the accused.


\(^{19}\) See e.g. Decision on Prosecution Motion for the Admission of Witness Statements Pursuant to Rule 89(F) and Protective Measures for Witnesses B-1770 and B-1619, Milošević (IT-02-54-T), Trial Chamber, 9 December 2003; Decision on Prosecution Application under Rule 89(F) to Admit the Statement of Witnesses Hrvoje Sarińić in Evidence, Milošević (IT-02-54-T), Trial Chamber, 18 December 2003; Decision on Prosecution Motion for Admission of a Summary of the Testimony of Witnesses B-1493 Pursuant to Rule 89(F), Milošević (IT-02-54-T), Trial Chamber, 12 January 2004; Decision on Confidential Prosecution Motion for Admission of a Transcript and Statement Pursuant to Rules 92bis(D) and 89(F) for Witness B-1605, Milošević (IT-02-54-T), Trial Chamber, 12 January 2004; Decision on Prosecution Application under Rule 89(F) to receive the Evidence-In-Chief of Witnesses Diego Arce in Written Form, Milošević (IT-02-54-T), Trial Chamber, 23 January 2004.

\(^{20}\) Decision in Relation to Severance, Extension of Time and Rest, Milošević (IT-03-54-T), Trial Chamber, 12 December 2005, § 20.
justice and protects the accused's right of confrontation. In this regard, Chambers have occasionally engaged in a practice known as 'partial briefing', whereby certain portions of the written statement — for example, those relating the acts and conduct of the accused — may be redacted, with the witness instead testifying live about those events on direct examination. The remaining part of the statement is then admitted into evidence in lieu of oral testimony.

Still, a serious problem exists regarding Rule 89(F) statements, and this problem has to do with disclosure. The prosecution's practice has been to disclose to the bench and the defence the Rule 89(F) statement of a witness only after having 'proofed' the witness — that is, just before the witness takes the stand to attest to the statement and be cross-examined. This makes practical sense. Otherwise, a prosecution or Registry official would have to fly to the region to take the witness's statement weeks or, perhaps, months in advance of the witness's appearance in court, or the witness would have to be flown to The Hague weeks or months in advance to give the written statement, and then flown back to The Hague on the day he is to appear in court for cross-examination. Nonetheless, as a consequence of the prosecution's 'last-minute' disclosure, defence counsel unfamiliar with the statement's contents have trouble in coming up with effective questions to ask on cross-examination, and the judges have a hard time following the cross-examination and coming up with questions of their own for the witness. Perhaps, a pragmatic solution to this problem would be to require Rule 89(F) statements to be disclosed to the defence and the judges two or three days before the witness's appearance in court. That way, the witness could be flown to The Hague only once, give the statement, and stay in town just a few days before he appears in court; the judges and defence would also have sufficient time to evaluate the statement before cross-examination occurs. However, to ensure that such disclosure occurs well in advance, an express reference to Rule 89(F) could be inserted into Rule 66(A), which already allows a Trial Chamber or a pre-trial judge to order the Prosecutor to disclose Rule 92bis statements and other witness statements in advance of trial.21

4. Judicial Notice of Adjudicated Facts (Rule 94(B))

Rules 89(F) and 92bis are just two examples of rules already at the disposal of the Judges of the Tribunal which, if used wisely, can go a long way in helping

21. Shortly after the September 2006 Beijing conference at which I delivered the speech that resulted in this article, Rule 66(A)(d)(i) was amended to make explicit reference to Rule 92ter which, as described in note 18 above, was inserted in the same revision of the Rules and effectively serves the function formerly served by Rule 89(F). Accordingly, a Trial Chamber or a pre-trial judge can now order the Prosecutor to disclose not only Rule 92bis statements and other witness statements, but also Rule 92ter statements, in advance of trial. See New Rules, supra note 18, Rule 66(A)(d)(i).
to speed up pre-trial and trial proceedings. These rules have been in our arsenal since December 2000.

Another tool that has been around for a long time — since July 1998 — is Rule 94(B), which allows a Trial Chamber to take judicial notice of facts adjudicated in a previous case of the Tribunal. The purpose behind judicially noticing facts adjudicated in prior proceedings is to reduce the need for repetitive testimony and exhibits in successive cases. Because so many of the cases at the Tribunal deal with the same events, a great deal of identical or nearly identical evidence is produced in case after case, consuming considerable time and resources. I have already cited the example of the Srebrenica witness who has testified to the same events in four different trials.

While taking judicial notice of facts of common knowledge, which is separately governed by Rule 94(A) of the Rules, is a mechanism that exists in all domestic jurisdictions in one way or another, taking judicial notice of adjudicated facts is a new creation of international criminal procedure that does not exist in either common-law or civil-law national systems. Taking judicial notice of adjudicated facts is quite different from taking judicial notice of facts of common knowledge in at least three ways. First, the jurisprudence does not limit adjudicated facts to those that are also facts of common knowledge, and their admission into evidence, therefore, has potentially far-reaching effects. Second, although a Chamber always retains discretion to reject a purportedly adjudicated fact on any ground, including that it may prejudice the accused or would otherwise frustrate the interests of justice, facts of common knowledge must be judicially noticed. Third, taking judicial notice of adjudicated facts merely creates a presumption that may be rebutted at trial, while taking judicial notice of a fact of common knowledge establishes the fact conclusively. In other words, the existence of the fact cannot then be rebutted at trial.\footnote{22 See Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice Karanena, Nideshmita, and Nehave (ICTR-98-44-A-R 73(C)), Appeals Chamber, 16 June 2006, ¶42.}

Moreover, while judicial notice of adjudicated facts may appear to resemble the domestic-law concept of res judicata, it differs in important ways. First, under res judicata, a final judgment on the merits of an action precludes the parties or persons in privity with them from re-litigating issues that could have been raised in the prior case.\footnote{21 See e.g. Allen v. McCarry 449 US 90 (1980).} The Tribunal’s rule on judicial notice of adjudicated facts, on the other hand, allows judicial notice to be taken of facts adjudicated in earlier proceedings involving a different accused who has no privity with the accused in the current proceedings. Second, the rationale behind res judicata is somewhat distinct from that behind judicial notice of adjudicated facts: res judicata aims at relieving the parties involved in the proceedings of the cost and annoyance of multiple lawsuits,\footnote{24 Ibid.} while judicial notice of adjudicated facts aims at speeding up trials by reducing the need for repetitive or overlapping crime-base and background evidence. There is some
similarity in the respective rationales behind the two doctrines, however, in that they both seek to conserve judicial resources and to foster uniformity among the findings of different courts.\(^{25}\)

The proper utilization of the rule on judicial notice of adjudicated facts allows the Trial Chamber to dispense with evidence on the crime base, so that it may focus the trial more squarely on the real matters in issue between the parties, and dispose of supplementary allegations already proven in the past proceedings.\(^{26}\) But taking judicial notice in this way also carries with it a number of potential dangers and concerns that were noted by former ICTY Judge Patricia Wald as early as 2001: judicial notice may have significant negative implications for the accused's right to confront the witnesses against him. The accused in the previous proceedings may have had no interest in defending the interests of this accused, and indeed may have sought actively to lay the blame on him.\(^{27}\) This is the main reason behind the prohibition that has developed in the case law on admitting facts that relate to the acts and conduct of the accused.\(^{28}\)

These concerns relating to the accused's right to a fair trial have also led, until relatively recently, to a great deal of reluctance on the part of Trial Chambers to take judicial notice of adjudicated facts. It is safe to assume that many other judges—including myself—shared Judge Wald's concern. The first use of the rule on adjudicated facts occurred in March 1999 in the Slomšek and others case, where the Trial Chamber rejected a prosecution request to judicially notice factual findings from the Tadić and Delić and others Trial judgments stating that the armed conflict in Bosnia-Herzegovina was international in character as of April 1992. The Chamber remarked that, when determining whether a fact should be judicially noticed, a balance should be struck between judicial economy and the right of the accused to a fair trial.\(^{29}\)

In June 2002, in Milošević, we also denied judicial notice of certain facts alleged to have been adjudicated in the Jelšeč judgment relating to events in Brčko.\(^{30}\) At the time, we interpreted the rule as providing that judicial notice of an adjudicated fact—like judicial notice of a fact of


26 Decision on Prosecution Motions for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92bis, Krstić (IT-95-39-T), Trial Chamber, 28 February 2003, ¶ 11.


28 Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, Karadžić, Njiruć, and Navaratna, supra note 20, ¶¶ 51–52.

29 Decision on the Pre-Trial Motion by the Prosecution Requesting the Trial Chamber to Take Judicial Notice of the International Character of the Conflict in Bosnia-Herzegovina, Slomšek, Slomšek, Tadići, Delić, and Divoki (IT-95-9-PT), Trial Chamber, 25 March 1999, at 4.

common knowledge — established the fact definitively and the fact is, therefore, not rebuttable at trial. The natural consequence of this concern was to limit judicial notice only to those adjudicated facts of a background or historical nature and to reject the rest. In February 2003, however, the Trial Chamber in Krajisnik set forth a different interpretation of the legal consequences of judicial notice as an adjudicated fact, holding that judicial notice establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proven again at trial — unless the other party brings out new evidence and successfully challenges and disproves the fact at trial. Yet in April 2003, we again denied judicial notice of certain proposed adjudicated facts and, in essence, rejected the Krajisnik approach.

In October 2003, the Appeals Chamber reversed our decision and essentially adopted the Krajisnik definition as the definitive one for the ICTY and the International Criminal Tribunal for Rwanda (ICTR); judicial notice establishes a well-founded presumption in favour of the moving party — whether it be the prosecution or the defence — that the fact is accurate. As a consequence, that party does not need to prove the fact at trial, but the other party — prosecution or defence — may put forth evidence to rebuff it.

This decision of the Appeals Chamber widened the possibility for future Trial Chambers to take judicial notice of adjudicated facts; Trial Chambers have, indeed, made much more frequent use of the Rule since 2003. Subsequent to the Appeals Chamber’s decision, the main concern on the part of Trial Chambers has been to strike the right balance between the need for an expeditious trial and the need to guarantee the rights of the accused. With these needs in mind, on remand from the Appeals Chamber we articulated two other concerns that may lead a Chamber to withhold judicial notice of an adjudicated fact even though all the requirements for admissibility have been fulfilled. First, noticing the fact may place too big a burden on the accused in the production of rebuttal evidence, especially where the prosecution seeks judicial notice of a large number of adjudicated facts. Second, the production of rebuttal evidence may also take excessive time and resources, consequently frustrating — instead of promoting — judicial economy.

As time has progressed and more final judgments have been rendered in the ICTY and ICTR, the prosecution has sought to make increased use of Rule 94(B), very frequently citing judicial notice of hundreds of facts purportedly adjudicated in previous proceedings. A recent motion in my

31 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts and for Admission of Written Statements of Witnesses pursuant to Rule 92bis, Krajisnik, supra note 26, § 15.
32 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, Milosevic (IT-02-54-T), Trial Chamber, 10 April 2003, at 4.
33 Decision on the Prosecution’s Interlocutory Appeal Against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, Milosevic (IT-02-54-AR752), Appeals Chamber, 28 October 2003, at 4.
34 Final Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, Milosevic (IT-02-54-T), Trial Chamber, 16 December 2003, §§ 11–12.
current case, Popović and others, seeks judicial notice of 534 facts said to have been adjudicated in the other three judgments of the ICTY relating to the events in Srebrenica in 1995. Moreover, in sharp contrast to the initial reluctance just a few years ago to grant motions for judicial notice, the Chambers of the Tribunal have been increasingly willing to grant such notice.

The adoption and increased use of the rule on adjudicated facts is, like the rules on the production of written evidence of witnesses, another example of the process of internationalization of criminal procedure. It will be interesting to observe the continued evolution of the practice of judicial notice of adjudicated facts, and especially how the non-moving party—almost always the defence—will go about rebutting the presumption in favour of the adjudicated fact.

Let me add a final note of interest while I am on the subject of judicial notice. A recent and very famous example of judicial notice of facts of common knowledge occurred in June 2006, when the Appeals Chamber common to the ICTY and ICTR judicially noticed the fact that genocide occurred against the Tutsis in Rwanda in 1994. As a consequence of the mandatory operation of Rule 94(A), all future Trial Chambers of the ICTR must take notice of this fact, which establishes definitively and irrebuttably that genocide occurred.

5. Measures to Reduce the Size of Cases (Rule 73bis)

Trials at the ICTY have been long since the very beginning. Having become aware of this problem after the Tadić trial, the judges introduced Rule 73bis into the Rules in July 1998. This Rule obliged the prosecution to estimate the length of its case-in-chief and the number of witnesses it would call, and allowed the pre-trial judge to invite the Prosecutor to shorten the estimated length of examination-in-chief for some witnesses and to reduce the number of witnesses. In April 2001, Rule 73bis(c) was expanded considerably, giving the pre-trial judge the authority to determine the number of witnesses the prosecution may call, and the time available to the prosecution for presenting evidence.

But certainly the most effective measure for tackling the problem of lengthy trials would be to limit the number of charges in the indictment themselves.

With a more focused indictment, the production and analysis of crime-base

---

35 Shortly after the September 2006 Beijing conference at which I delivered the speech that resulted in this article, the Trial Chamber rendered its decision on this motion, comprehensively discussing and developing the law on judicial notice of adjudicated facts, and ultimately denying judicial notice to more than half of the 534 proposed facts. See Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, Popović and others (IT-05-88-T), Trial Chamber, 26 September 2006.

36 Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, Koremwa, Nyirumbe, and Ntarama, supra note 22, ¶ 35.
and linkage evidence would be a much speedier process than it currently is in the majority of the cases at the Tribunal.

Yet, the Prosecutor and her staff appear to be unwilling, in most instances, to voluntarily reduce the number of charges in their indictments. There appear to be at least three reasons behind this attitude. First, the Prosecutor, many human-rights groups, and much of the public consider that one of the central duties of the Tribunal is to do justice to every single victim of the Balkan wars of the 1990s. Proceeding to trial on an indictment that is less than fully comprehensive of all the crime sites associated with a particular accused could be seen as denying justice to the victims of atrocities carried out at the crime sites not included. Second, the Prosecutor and many human-rights groups seem to believe that it is one of the Tribunal's main duties to actively foster the reconciliation of the various ethnic groups in the region, as well as to compile a complete historical record of the war and determine the truth of what actually happened, both of which would ostensibly require trial to proceed on charges that are as comprehensive as possible. Third, the Prosecutor seems intent on maintaining her ability to go on what has been referred to as a 'hunting expedition': by charging the accused with more crimes through more modes of responsibility, the Prosecutor apparently believes she stands a greater chance of convicting the accused on at least one charge. The persistent resistance of the Prosecutor and her senior staff to the idea of trying Slobodan Milošević first on the charges against him relating to Kosovo, and later on the charges relating to Bosnia and Croatia—even as recently as December 2005, when the Trial Chamber proposed severing the Kosovo indictment and rendering judgment on it before rendering judgment on the other two indictments—^37—is a prime example of this attitude.

In my view, however, the paramount role of the judges of the Tribunal is to adjudicate, in as fair and expeditious a manner as possible, the guilt or innocence of the accused before them. The task of determining guilt or innocence must take precedence over other, not strictly judicial, considerations. Ours is first and foremost a criminal court: the successful prosecution of the guilty and the exoneration of the innocent must remain our central concern.\textsuperscript{38}

With this consideration in mind, the judges amended Rule 73bis again in July 2003 to include Rule 73bis(U), which allows the Trial Chamber just before the beginning of trial to:

\ldots fix a number of crime sites or incidents comprised in one or more of the charges in respect of which evidence may be presented by the Prosecutor which, having regard to all the relevant circumstances, including the crimes charged in the indictment, their classification and nature, the places where they are alleged to have been committed, their scale and the victims of the crimes, are reasonably representative of the crimes charged.

\textsuperscript{37} Decision in Relation to Severance, Extension of Time and Bench, Milošević, supra note 20.
\textsuperscript{38} I. Bosnjak, The Reality of Conducting a War Crimes Trial, speech delivered at ETHCC regional workshop for Europe, Riga, Latvia on 8 June 2006, published in this issue.
The idea behind this provision is to invite or oblige the prosecution to focus its case on the more important charges against the accused, and to eliminate or simply not proceed to trial on the less important charges. Among these charges envisioned as less important, the rule makes specific reference to those that are not 'reasonably representative' of the crimes charged elsewhere in the indictment. Although it has existed for 3 years, however, Rule 73bis(D) has not been widely used, and its first invocation by a Trial Chamber occurred only in July 2006 in the Mladić and others case.

Judge Bonomy's Working Group on Speeding up Trials, after consultations with the Prosecutor and her staff, also arrived at the conclusion that the Prosecutor was unwilling voluntarily to reduce the size of her indictments, and recommended that if any serious attempt was to be made to focus trials properly, it would have to be undertaken by the judges of the Tribunal. The Bonomy Group recommended that Trial Chambers begin to use Rule 73bis(D), and suggested that appropriate limits could be set in a number of imaginative ways, although it did not provide examples of what imaginative ways it had in mind.

Subsequent to the Bonomy Report, the judges of the Tribunal expanded Rule 73bis in two ways. First, in addition to allowing the Trial Chamber to fix a number of crime sites or incidents that may be presented by the Prosecutor, Rule 73bis(D) now allows the Chamber to 'invite the Prosecutor to reduce the number of counts charged in the indictment'. Second, Rule 73bis(E) allows the Chamber to go one step further and order the prosecution to select the counts in the indictment on which it will proceed at trial. Where the Trial Chamber makes such an order under Rule 73bis(E), either party may appeal against the decision as of right, instead of going through the usual process of seeking certification to appeal from the Trial Chamber. Both these new provisions differ from those that already existed under the Rule, which allowed the Chamber merely to 'fix the number of crime sites or incidents'.

As I have already mentioned, in July 2006 the Trial Chamber in Mladić and others — incidentally, presided over by Judge Bonomy — was the first ever to apply Rule 73bis to preclude the prosecution from presenting evidence at trial in relation to certain crime sites. In the Chamber's view, these sites were not 'reasonably representative' of the theme of the prosecution's case alleging ethnic manipulation of Kosovo's population through deportation, forcible transfer and persecution of Kosovo Albanians. Included among these sites was Račak, the site of a massacre in January 1999 upon which a great deal of time-consuming evidence was presented by both parties in the Mladić trial. Although the Račak massacre received considerable media attention at

---

40 Ibid., at 13.
41 Decision on Application of Rule 73bis, Mladić and others (IT-05-87-T), Trial Chamber, 11 July 2006, ¶ 13.
the time, the incident is geographically and temporally removed from the
deporation and forcible-transfer sites that formed part of the alleged Serbian
ethnic-cleansing campaign in March and April 1999, and which compose the
bulk of the crime base alleged in both the Milošević and Mladić and others
indictments. One particularly interesting aspect of the Mladić and others
decision is that it did not rely on either of the new provisions in Rule 73bis
inserted just a month before the decision, and instead turned on the applica-
tion of a portion of Rule 73bis(D) that had existed and had been gathering dust
for several years.

Despite this positive precedent, however, the future use of Rule 73bis
may not be as frequent as one might hope. The proper use of the Rule requires
a comprehensive and intimate understanding of the prosecution’s case. Unless
one of the judges in the Trial Chamber also served as pre-trial judge in a given
case, most Trial Chambers are unlikely to have this understanding by the time
of pre-trial conference, when the rule’s possible invocation is anticipated,
because the judges will have only recently been assigned to the case.
Moreover, at least for Rule 73bis(D), the indictment at issue must contain
counts, crime sites, or incidents that are not ‘reasonably representative’ of the
charges. The rule’s invocation in Mladić and others would appear to have
depended on the confluence of two fairly uncommon factors: Judge
Bonomy’s own familiarity with the nature and theme of the charges in the
indictment, which is very similar to the Kosovo indictment in Milošević, a
case on which he had worked for a number of years; and the fact that three of
the alleged crime sites were true ‘bulwarks’ that did not fit well with the theme of
the remainder of the indictment.

Rule 73bis is the most recently amended rule in the arsenal of the judges.
Of course, only time will tell whether Mladić and others is one of a kind, or
instead begins a trend of rigorous use of Rule 73bis to compel the prosecution
to focus the evidence presented on the most important counts and charges
in the indictment.

6. Conclusion

As I have stated several times already, the greatest challenge currently facing
the judges of the ICTY is the sheer enormity of cases before them. For the
Tribunal to be able to process its remaining workload in the time made avail-
able to it by the Security Council, it is incumbent upon the Office of the
Prosecutor to give up its reluctance to take the lead in reducing the size of its
own cases. The indictments should be focused on important charges and the
size of the cases should be manageable so that Prosecution’s case-in-chief does
not last longer than 1 year. An interesting decision was issued in August 2006
in the Šešelj case, where the Trial Chamber, noting Rule 73bis(D), called upon
the prosecution to propose ways to reduce the scope of the Indictment by at
least one-third by reducing the number of counts charged in the Indictment.
and/or crime sites or incidents. This should not be necessary. The prosecution should take the initiative to concentrate its cases on a handful of representative crime bases.

There is also a core duty incumbent on all of us judges to continue to think 'internationally'. We come from diverse domestic jurisdictions with many different methods of running criminal trials, and somehow we have managed to blend these methods together to successfully adjudicate crimes on a scale never attempted or even fathomed in domestic jurisdictions. This is a testament to our vision, our cooperativeness and our empathy. The continued evolution and expansion of international criminal justice demands that we always maintain these three virtues.

42 Request to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, Štelj (IT-03-67-PT), Trial Chamber, 31 August 2006, at 2. There have been several developments at the Tribunal in relation to Rule 73 bis since the September 2003 Beijing conference at which I delivered the speech that resulted in this article. In Štelj, for example, the prosecution emphatically declined the Chamber's invitation to reduce the scope of the indictment, contending that the diversity of Štelj's alleged conduct justified keeping the full indictment. Prosecution's Response to Trial Chamber's Request to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, Štelj (IT-03-67-PT), 12 September 2006, §§ 3, 28. In response, the Trial Chamber insisted that the scope of the indictment be reduced. The prosecution reluctantly proposed to drop certain counts and not to present evidence on certain crime sites; the Chamber accepted this proposal, and also ordered that evidence relating to a further series of crime sites not be presented. See Decision on the Application of Rule 73 bis, Štelj (IT-03-67-PT), 8 November 2006. Furthermore, in both the Perišić and Drašković-Milosević cases, the Trial Chamber also invited the prosecution—again under the newly amended part of Rule 73 bis—to reduce the scope of the indictment. See Invitation to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, Perišić (IT-04-81-PT), 20 November 2006, at 2; Scheduling Order Varying Time-Limits with Regard to the Commencement of Trial and Request to Prosecution to Reduce the Scope of Its Case, Drašković-Milosević (IT-98-29/1-PT), 23 November 2006, at 3. The prosecution declined the invitation, citing policy reasons and invoking the independence of the Prosecutor; but it also noted that, if ordered to reduce the indictment, it would eliminate certain counts, and it suggested which counts could be eliminated. See Prosecution's Response to the Trial Chamber's Invitation to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment, Perišić (IT-04-81-PT), 4 December 2006; Prosecution's Response to Pre-Trial Chamber's Invitation to Prosecution to Reduce the Scope of Its Case, Drašković-Milosević (IT-98-29/1-PT), 5 December 2006.