

The Archives of the International Criminal Tribunal for the Former Yugoslavia

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In 1993, as the war in the former Yugoslavia was raging and the international community found itself divided over the best way to solve the crisis and to deal with largely uncooperative local leaders, the United Nations Security Council made an unusual move, all the more remarkable, at that time, to create an international criminal tribunal. With negotiations with the parties on the ground not yielding results, and bloodshed and atrocities in Bosnia continuing, Security Council Resolution 827 (25 May 1993) was passed in New York, authorizing the Statute of the international tribunal to prosecute suspected war criminals, a document that would fundamentally change the world of international law, as well as challenging widespread impunity for the worst crimes globally.¹ The International Criminal Tribunal for the former Yugoslavia (ICTY) was an international *ad hoc* body, based in The Hague.² The document and the institution it created had a deep impact on that region and signified substantial development, in terms of law, policy and international relations.

Twenty years on, the ICTY is an institution that is being assessed and criticized daily, both by its opponents as well as its supporters.³ It has also been burdened by exceptionally high expectations, some of which the Tribunal even brought on itself, or has not done enough to reject.⁴ Even more recently, some of the judgments coming from the Tribunal have raised significant controversy. At the time of writing, the last three trials are unfolding (for the accused Radovan Karadžić,⁵ Ratko

¹ Resolution 827: http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf.

² ICTY Establishment: <http://www.icty.org/sid/319>.

³ A wide range of literature exists on various aspects of the work of the Tribunal; from articles in journals assessing the law (the use of concepts such as joint criminal enterprise, its practice in defining 'aiding and abetting' and superior responsibility) to reports and publications on the impact it had on local inter-ethnic relations locally (and what is often referred to as 'reconciliation') and its impact on EU integration processes, inter-state cooperation, etc.

⁴ J. Subotic, 'ICTY's legacy hurt by unrealistic expectations in RECOM Initiative! Voice 14-2013', available at: http://www.zarekom.org/RECOM-Initiative-Voice/RECOM-Initiative-Voice-14-2013_en.html.

⁵ Case information: <http://www.icty.org/case/karadzic/4>.

Mladić⁶ and Goran Hadžić⁷), two more awaited possible appeal, having just received first instance judgments (Prlić *et al.*,⁸ Stanišić and Simatović⁹), and another, Šešelj,¹⁰ awaited first instance judgment (after many delays, including a series of contingent contempt cases, involving the accused). There are no more fugitives left. The Tribunal indicted 161 persons, of whom 69 so far had been sentenced and 18 acquitted.¹¹ Aside from the twenty-five individuals still at trial, or on appeal, the remaining cases had been transferred to local courts in the region, working with the Tribunal, charges withdrawn against the accused, or the accused had died. The final trial was set to complete by the end of 2015, that of Mladić (although it will continue into 2016, should something prevent its completion in 2015).¹²

Among the shortcomings of the work of this institution, critics mention a lack of connection to the local communities and fairly low overall knowledge of proceedings and support among the populations in the region; costly and lengthy trials (that sometimes end without a judgment such as in the case of Slobodan Milošević) and time and pressure required to make arrests; controversial judgments (most recently in cases such as Gotovina *et al.*, Perišić, and Stanišić and Simatović) or problematic legal reasoning, sentencing issues, prosecutorial strategy, etc. Among the accomplishments, some are stated more often than others: changing the paradigm of almost absolute impunity globally into one where prosecutions are sought and organized in a variety of international fora (with varying levels of success), significantly developing international law (both substantial and procedural), locating and assisting in identifying missing persons, establishing a record of facts and collecting documents and statements, bringing some justice to victims, managing to secure the arrest of all suspects, while being completely dependent on government cooperation and not having a police force of its own (albeit some with significant delay), and so forth.¹³ This article will focus on one aspect of this complex legacy: – the ICTY archives.

As trials progressed and fewer defendants remained in the dock, the Tribunal's closure and its legacy were discussed and within that debate, a lot of attention was given to the archives.¹⁴ There were significant disagreements between various stakeholders (associations of survivors,

⁶ Case information: <http://www.icty.org/case/mladic/4>.

⁷ Case information: <http://www.icty.org/case/hadzic/4>.

⁸ Case information: <http://www.icty.org/case/prlic/4>.

⁹ Case information: http://www.icty.org/case/stanistic_simatovic/4.

¹⁰ Case information: <http://www.icty.org/case/seselj/4>.

¹¹ Key figures of the cases: <http://www.icty.org/sections/TheCases/KeyFiguresoftheCases>.

¹² Chief Prosecutor Serge Brammertz announced this in February 2013. *B92*, 10 Feb. 2013.

¹³ I. Vukusic, 'Successes and Failures of Transitional Justice in BiH: The Case of the ICTY', in *Statebuilding and Democratization in Bosnia and Herzegovina*, ed. Soeren Keil and Valery Perry (Farnham, forthcoming 2013).

¹⁴ On the ICTY twenty years after its establishment see more generally: *Prosecuting War Crimes: Lessons and legacies of the International Criminal Tribunal for the Former Yugoslavia*, ed. James Gow, Rachel Kerr and Zoran Pajic (Abingdon, 2013).

political elites, ICTY representatives, historians and other interested parties); tensions rose in relation to the location of the archives (that is, the material held in The Hague), an issue that is above anything else symbolic. Politicians from opposing sides, commentators and activists debated fiercely, some trying to bring the records closer to the region, while others strove to keep them as far away from it as possible. Finally, it was decided that a residual Mechanism¹⁵ would be established and that it would keep all the archives as they are, in The Hague. That institution, that is, its branch for the former Yugoslavia, was tasked with ‘inheriting’ some of the court’s work and scheduled to begin operating on 1 July 2013.

I

The relevance of the material held in The Hague for transitional justice processes in the region cannot be overstated. Recognizing the fact that some denial of crimes committed by members of one’s own group will always exist in the region, this material provides the means to combat some denial and narrow the space where that denial can exist. It also documents some of the suffering thousands endured; as the years go by and victims and witnesses die or become unable to testify, this becomes a permanent record of what happened to them. This material includes documents, images, videos, statements and artefacts that can challenge the nationalistic narratives that have taken root in all the societies in the former Yugoslavia. The predominant attitude among the local populations has been and remains that if the Tribunal convicts former enemies, it is doing a good job, but if it convicts members of one’s own group, then it is biased and its judgments are unfair.¹⁶ Political manipulation of events is commonplace, and depicting one’s own group as the biggest, or even only, victims, prevails. Elections are still won and lost over history and issues of guilt, innocence and victimhood.

That material, especially survivor testimonies, can be used in an attempt to bridge the gap between the communities by appealing to the human experience of suffering and by revealing more information about past events. This includes: the pain of many of the survivors; mothers who lost their children; women raped in front of their families; young men and women who witnessed the death of their siblings; girls who were sexual slaves – bought and sold like objects; men humiliated, starved and beaten repeatedly in camps. These are testimonies that tell stories of suffering, which should be widely shared and presented in an effort to support empathy and understanding between people across ethnic divides. It is also a record of how institutions supported and enabled widespread violence.

¹⁵ The Mechanism for the International Criminal Tribunals: <http://unmict.org/index.html>.

¹⁶ I. Vukusic, ‘The ICTY: Approaching the Completion of its Mandate’, available at: <http://9bri.com/the-icty-approaching-the-completion-of-its-mandate/>.

II

I felt a need to do everything I could to help punish the guilty. They massacred innocent people in my village – my father, family, friends. What should I do? Light a candle? Pray to God? I decided the only thing I could still do for them was testify. It was my duty.

Ivo Atlija, ICTY witness¹⁷

Before continuing, we should define what this material is. Primarily, we are talking about statements of witnesses¹⁸ – protected and non-protected¹⁹ (survivors, eyewitnesses, insiders and perpetrators (some of them indicted themselves, individuals who accepted their responsibility and pleaded guilty – giving statements as part of their deal with the prosecution, testifying against others), UN staff and diplomats, experts from a variety of fields, military officers and foreign observers); documents originating from the time relevant to the case (military and police reports, orders, notes taken at assembly meetings); expert reports (DNA experts, demographers, anthropologists, historians, ballistics experts); medical documents about the health of the accused or the witnesses (often survivors) which requires special consideration and raises issues about the privacy of information; video footage (journalistic reports and amateur footage; propaganda from local TV stations; interviews and statements made to the press after negotiations). The archives also contain artefacts such as hand ligatures and blindfolds used on men shot after the fall of Srebrenica, bullets and shell casings, pieces of glass or wood; bone samples and objects found in mass graves (these objects have all been photographed for usage in the courtroom). There are hundreds of hours of video interviews with suspects and witnesses; videos from mass grave exhumations and sniper shot reconstructions. Additionally, there are recordings of intercepted conversations and logs and diaries of men such as Ratko Mladić (whose diaries have been submitted and admitted into evidence). The archives also include maps, graphs and other visual representations of information acquired during investigation. Some material was provided by various governments, which retained the right to control the availability of material (e.g. the United States provided exceptionally important material for the Srebrenica investigation – aerial images of the surroundings of Srebrenica and images of sites of execution and burial of thousands).

¹⁷ T. Bouquet, 'Brought to Justice', available at: <http://www.scribd.com/doc/139043213/Brought-To-Justice-By-Readers-Digest-s-Tim-Bouquet>.

¹⁸ Witnesses: <http://www.icty.org/sid/158>.

¹⁹ There are various levels of protection for witnesses, from testifying under pseudonym and with the distortion of image and voice to going into closed session (i.e. testimony given without the public being present). Only a small number of witnesses have required the highest forms of protection, including relocation and a new identity. Also, the number of protected witnesses has been decreasing as the situation on the ground becomes less threatening, as reported by Radosa Milutinovic, 'ICTY Trials Come to Light', available at: <http://www.rnw.nl/international-justice/article/icty-trials-come-light>.

There is also an archive of videos of all courtroom sessions ever held and millions of pages of transcripts (in English and French; increasingly more and more material is available in Bosnian/Croatian/Serbian, while some material is also available in Macedonian and Albanian). Some of those sessions are closed and there is little information available about them.²⁰ Moreover, there are administrative documents on travel expenses and highly confidential documents on moving crucial witnesses who are in danger to other countries with new identities. All that, and more, is the ICTY archive. Given the variety of material, it is clear that the archives will include various formats, documents (paper), scans and images, video and audio. It is important to note that in many cases the ICTY does not even possess the original documentation but only scans, made on site, during investigation, stresses former analyst for the Office of the Prosecutor Christian Axboe Nielsen.²¹ Therefore, much of the material is (or should be) available in local archives in the countries of the former Yugoslavia.

Some of the images the archives contain became iconic. They had value as evidence in the courtroom but also had an impact on public opinion – the complete destruction of Vukovar and the shelling of Dubrovnik; emaciated men in Omarska and Trnopolje camps around Prijedor; Karadžić in the parliament predicting (or, in fact, threatening) the disappearance of Muslims in Bosnia on the eve of the war, Mladić giving a statement after the fall of the enclave in the centre of town in Srebrenica, the attacks on Markale market and people hiding behind a UN vehicle crossing the streets in Sarajevo; the men being shot by members of the Scorpions unit after the fall of Srebrenica; the long lines of refugees fleeing the Krajina during operation Storm in 1995; the destruction of the Old Bridge in Mostar or the expulsions of the Kosovo Albanians. Much of the well-known material can be looked for in recordings of opening (and closing) statements in cases that concern those events as then the Prosecutor often presents some of the most relevant and striking material.

Some of these images, early on in the war, had such an impact around the world that it influenced public opinion to the extent of contributing to the establishment of the Tribunal itself (such as the images from the camps around Prijedor). These images, echoing those from the Second World War camps, hit a nerve when they were released, possibly because decades ago it was said ‘never again’, and yet, horrific atrocities were being perpetrated in Bosnia and the public could see it on the evening news every night.

The archives are composed largely from material that was acquired through the process of investigation and, subsequently, from material presented at trial. At the end of the war and for years afterwards, ICTY

²⁰ ICTY Rules of Procedure and Evidence (Rule 79 – Closed Sessions): http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev48_en.pdf.

²¹ Correspondence with Mr Nielsen, June 2013.

investigators and analysts travelled in the field (and elsewhere), searching state, military and party archives, obtaining access to documents and witnesses (sometimes after considerable effort and difficulty). Many of those documents were later used as evidence during trial. The distinction between investigation and trial is relevant as it has an impact on how the archives are organized and what they contain (and this is what distinguishes archives held by international war crimes courts from material held by or acquired by institutions that do not engage in criminal proceedings against individuals). Material acquired during investigation is managed and stored by the Prosecutor's Office and contains a variety of sources that are assessed during investigation, 'tested' against other material and other witnesses. If deemed credible and relevant for the case (i.e. the accused) this is then submitted as evidence in trial.

The evidence material from the cases on trial also includes submissions, i.e. evidence presented by the defence (including documents, expert submissions and witness statements). At times, the judges themselves call witnesses. Large segments of this material are referred to in judgments. The archive also contains numerous submissions by the prosecution and the defence on various matters (such as arguing and elaborating on matters of law). Some of the trials we are discussing have multiple accused (at times even five or more); they concern events in numerous municipalities over a long period of time when thousands have been victimized. Some trials include dozens of incidents and crime sites (which are described and discussed in detail). The complicated legal issues that the judges have to resolve, such as what constitutes genocide and what is intent, are debated at length. Therefore, the amount of material is simply incredible.

Some of this material was not used because it was assessed to be false, or difficult to establish its credibility and authenticity, and the Prosecution chose never to present it (this material remains with the Prosecutors' office). Some material held by the Prosecution also includes statements and documents related to cases that the ICTY handed over to local courts and cases it decided not to pursue (or where the suspects died before trial). That material must be distinguished from the material presented at trial that is assessed by the judges and that is later used to determine guilt or innocence 'beyond reasonable doubt'. Generally, material from the investigative phase is not available to the public, while material presented at trial, in open session, is. That is the case precisely because during the course of an investigation, much more is collected than actually presented in court and some of that material is simply fabricated or irrelevant or cannot be confirmed by other sources. Some of the available material might, it should be noted, be partially redacted to protect witnesses, but the material from cases that are completed can be searched and, often, located.

Just as an illustration, we should note that, in May 2005, the ICTY held a judicial database with 220 gigabytes (expected to grow to 8

terabytes, by the court's closure), 45,000 videotapes of proceedings and a further 5,500 videotapes of evidence, nearly 6 million items of paper and still photographic evidence, as well as more than 13,000 artefacts obtained as evidence.²² Over 4,000 people provided testimony to the Tribunal.

Today, these numbers are higher, as stated in a recent article: 'Its archive contains 1.6m pages of transcripts. That of the prosecutors has 9m pages of documents, orders and intercepts'.²³

It is also worth noting that a large amount of evidentiary material related to certain crimes has been tested, again and again, in numerous trials and subjected to scrutiny. The Srebrenica cases are a good example, where, in each trial, the same survivors of executions testified (and were cross-examined) and the prosecutors used the same sets of photographs and the same expert witnesses. The judges in several trial and appeal chambers assessed this evidence, and recognized this material as relevant and credible.

We must not forget that this material is also evidence for cases currently tried in the courts of the region (in Sarajevo, Belgrade, Zagreb, Priština and other towns), as well as in cases that are yet to appear before judges in the future. There are no statutory limitations for war crimes cases and, theoretically, we could be looking at decades of trials. This, however, will largely depend on political developments and political will (or the lack thereof, as the case may be). The pressure of victims' associations, civil society, academia and journalists must be sustained to continue with the trials, but also to further endeavours to discover, the better to understand and discuss facts about past events. The international community, and, more specifically, the EU and the UN, must keep up their expectations of the countries in the region to conduct fair and timely trials in war crimes cases. That will contribute to the understanding of the past and, for this endeavour to be successful, archives are essential.²⁴

III

There are two databases at the ICTY that are of most interest to researchers. One is called the EDS database and it stores documents from investigations (this database is managed by the Prosecution). The other database used to be called JDB and stored documents presented at trial. The latter has been somewhat adapted and turned into what is

²² T. Huskamp Peterson, 'Temporary Courts Permanent Records', a Report for USIP, 2006, available at: <http://www.usip.org/publications/temporary-courts-permanent-records>.

²³ 'Winding Down With a Whimper', *The Economist*: <http://www.economist.com/news/europe/21579049-controversial-recent-judgments-tribunal-hague-winding-down-whimper>.

²⁴ For more on archives and their relevance in this context, see: K. Campbell, 'The Laws of Memory: The ICTY, the Archive and Transitional Justice', *Social & Legal Studies*, xxii (2013), 247–69; and ICTJ, *Documenting Truth* (New York, 2009).

now the ICTY Court Records Database holding all public court records, a tool that anyone can use for free, online.²⁵ This, however, includes only documents and, at times, documents that should be there are not (or, they cannot be opened). This database also includes photographs, maps and the like.

The EDS contains both the material used in trial (presented by the Prosecution, assessed as credible and useful) and the material not used in trial (assessed as not useful), and is unlikely to be 'opened', in its current form, to the public in the near future. As already stated, this database is full of material never used in trial and cannot be always considered reliable. The documents in the EDS are all marked with ERN numbers that are essential in locating the document. Documents in the database can also be searched by using names of individuals or locations. The database usage was at times made difficult by the diacritics in the Bosnian/Croatian/Serbian language (some documents had them, some did not and therefore searches were often conducted both including them and removing them, i.e. using *c* or even *cc* instead of *č* and *ć*, and the like). There have been other problems, such as the quality of the scans, as well as numerous duplicates appearing under different document names. In addition, there are redacted documents or documents that have been made confidential on the request of various states.

The ICTY Court Records Database, in contrast, is much more accessible for researchers. Anyone can use it, as long as he or she has some basic knowledge of the cases (as this is how the documents are organized). Once a case is chosen, various categories can be selected, depending on the type of document that is being searched for (categories include briefs, correspondence, exhibits, judgments, decisions and orders, witness related materials, motions, etc.). It is also important to select the language (English seems to be, by far, the one most likely to yield results). For some documents or images, one can find a Portable Document Format (PDF) that is easy to save, but for others, such as videos tendered into evidence, there is no video itself, but there is trace of its existence, a number at least and a brief description that the researcher can use in trying to locate the footage. Researchers can also specify the date or the exhibit number, making the search more likely to be successful. Once the search results come, in a list of document matches, certain information is immediately available, such as, for example, who presented the document (the Prosecution or the Defence). It is possible that the document is listed under one number but that the scan also makes another number visible on the pages (which is usually the earlier mentioned ERN). With using the database and following trials and reading transcripts, researchers will also notice useful little details such as protected witnesses often being named after the initials of the accused in the case (e.g. RM 313, a protected witness in the Mladić

²⁵ ICTY Court Records Database: <http://icr.icty.org/default.aspx>.

case). Overall, it takes time to upload the material into the database for a case, so a lot of the material from the most recent cases is not available (although, occasionally the same document is presented in different trials so one can try to see if that is the case). As a result, 'older' cases are often easier to research.

As for the statements of witnesses who testify openly, the ICTY Outreach office often makes available witness statements through the website Scribd.²⁶ The ICTY also posts relevant courtroom videos on YouTube,²⁷ such as trial and appeal judgments, and on its website it also presents a small selection of witness statements of survivors that it deems to be relevant and useful for the public to see.²⁸ Overall, the Tribunal has attempted to develop tools to address its communication needs and it has used the internet to bring its work closer to the public. The Tribunal has also developed and changed practices of court management during its twenty-year history; overall, it has become a better source of information to the researchers than it used to be. However, many issues remain, and one of them is the lack of a searchable instrument to locate video material (in this particular case, video footage presented as evidence, not the recordings of courtroom sessions in their entirety).

Access to transcripts in English (and to a certain extent French) is fairly easy, but transcripts in the local languages are still mostly lacking (a significant effort to translate proceedings is currently under way at the Tribunal, and there are NGOs in the region that have tasked themselves with translating all, or parts, of transcripts in trials they consider relevant for their communities). Given the volume of the transcripts, slow progress can be expected. Naturally, this has caused some criticism in the former Yugoslavia as, arguably, those whom these proceedings concern the most have a language barrier that not everyone is able to cross. However, transcripts in English are widely available.

Researchers can support their search by looking to other sources of information and material (as well as clues as to where to locate documents, statements and images). Among them are Sense News Agency, which specializes in covering all sessions of all trials and reporting on them, daily, in Bosnian/Croatian/Serbian and English.²⁹ The Balkan Investigative Reporting Network (BIRN) is another valuable source that follows events in the courtrooms in The Hague regularly (they also follow proceedings in the courts in Bosnia and Hercegovina where many of the ICTY witnesses appear to testify).³⁰ Other sources, such as

²⁶ Documents available here: <http://www.scribd.com/ICTYnews>. Also, through its Facebook page, the ICTY makes available links to witness statements and other documents that are public and relevant for the Tribunal.

²⁷ ICTY YouTube channel: <https://www.youtube.com/user/ICTYtv>.

²⁸ Voice of the Victims: <http://www.icty.org/sid/105>.

²⁹ Sense News Agency: <http://www.senseagency.com/home/home.4.html?verz=2>.

³⁰ Balkan Investigative Reporting Network: <http://www.justice-report.com/en/page/home> (this source is also useful for following trials in the region).

Cinema for Peace, collect oral histories from survivors, some of whom have themselves testified in The Hague or in proceedings in the region.³¹ There are projects focusing on memory, such as that at the Erasmus University Rotterdam.³² Extremely relevant work has been done by non-governmental organizations in the former Yugoslavia, many of which are or were included in the RECOM project,³³ such as the Humanitarian Law Centre³⁴ in Belgrade, the Research and Documentation Centre³⁵ in Sarajevo and Documenta³⁶ in Zagreb. There are relevant groups that work on the local level, such as the NGO Izvor in Prijedor (which also collect documents and statements). Several independent researchers and academics have tried hard to make the archival material more visible in public. Additionally, other non-governmental organizations across the region collected testimonies and material, made copies of trial proceedings videos, translated transcripts and published books about trials. There have also been numerous documentary films made about the ICTY cases and the victims they concern.

In very practical terms, locating material on the Sense News Agency website, for example, might include starting with any of the weekly TV reports (589, at the time of writing, broadcast in Bosnia and Hercegovina primarily) made so far by the Agency (approximately 25–30 minutes long, available free of charge, in Bosnian/Croatian/Serbian). The TV reports summarize the events in the courtrooms and often present lengthy segments on witness testimony or documents tendered into evidence. In English and BCS, it is possible to search, case by case, or through a general search, the thousands of daily reports from courtrooms, filed in over a decade of reporting. If a name or pseudonym of a witness is known, the search is fairly simple. It is important, obviously, to keep in mind that the same person testifying in different trials under protective measures will be given a different pseudonym. Dates of testimony or the presentation of a document are relevant for searching both here and, for example, in the ICTY transcripts. Sense is currently in the process of digitizing thousands of tapes containing full court sessions, listing and organizing them, in order to facilitate future use. The Milošević trial has been kept in its entirety (in English and BCS), and the same is being done with Karadžić and Mladić (only in BCS). These sets also include interviews with and statements by officials, prosecutors and defence counsel, victims and commentators after significant events (such as arrests made or judgments delivered).

³¹ Cinema for Peace: <http://cinemaforpeace.ba/en>.

³² 'Croatian Memories' (aka 'Unveiling Personal Memories on War and Detention'): http://www.eur.nl/erasmusstudio/projects/current_projects/matra/.

³³ RECOM initiative: <http://www.zarekom.org/In-The-News.en.html>.

³⁴ Humanitarian Law Centre: http://www.hlc-rdc.org/?page_id=14406&lang=de

³⁵ Their (until recently operational) website at <http://www.idc.org.ba/> seems to be currently unavailable.

³⁶ Documenta: <http://www.documenta.hr/en/home.html>.

Sense also collected other footage and evidentiary material presented at trial that is currently being listed and organized.

One of the most relevant challenges to using this archive (e.g. through the ICTY Court Records database) and material related to it, available through other sources, is that there is so much of it. One must know the cases well in order to navigate the material successfully. These cases are at times extremely complex, and there are just too many statements, too many reports, too many municipalities and communities affected. The archives are currently not accessible and simple enough to use for the average citizen. A separate question is how much interest and possibility (i.e. internet access) there actually is, among citizens, for this material to be explored (but this issue remains outside the scope of this contribution). In order for the world of complex and lengthy trials to become more accessible for the average citizen with no training in law and research, it needs to be presented adequately (and the Outreach section is making some efforts in that regard). Otherwise, it will be extremely difficult to locate material and, at times, even more difficult to understand it.

As for researchers, for now, it appears that the material is being used somewhat more internationally than in the region. Requests for assistance with working on the material come mostly from outside the former Yugoslavia. Journalists, filmmakers, academics and activists search for footage and documents for projects that focus on a variety of topics, from the events on which the cases focus, to legal reasoning, and the impact on local political developments today. The ICTY Outreach office is working on bringing the public in the former Yugoslavia closer to the work of the Tribunal and, for that purpose, ICTY representatives visit schools and universities in the region regularly. They produce films and host students, activists and journalists in The Hague, giving presentations on the work of the ICTY.

IV

Today we only have a fairly vague idea of how this material is being assessed and prepared and how it will be made available to the public once the trials are completed. It is not clear what will be made available to researchers and under what potential conditions (large segments of the documents are classified), and how the process of assessment is conducted, and on what criteria the assessment is based.³⁷ The Tribunal has been largely silent on details. As discussed previously, there are numerous challenges to be kept in mind, and, among them, two should top the list. First, the security of witnesses and second, the ethics of using this material – these are records about the death, torture, rape,

³⁷ On transparency at international tribunals more generally, see: <http://ilawyerblog.com/a-freedom-of-information-act-is-needed-for-international-criminal-courts-and-tribunals/>.

humiliation and suffering of thousands and thousands of people. What is appropriate and how to use this material responsibly should always be a matter of sensitive and conscious reflection. Victims' associations have approached the Tribunal, in the past, asking for certain materials and artefacts to be used for memorials. In the future, we might see more initiatives of this kind. It not known what plans, if any, exist to develop and work with these groups, but it is to be hoped that whatever exists so far, more will be developed.

As Mirko Klarin rightly argues, the location of the archives is not really important, and the ICTY's legacy does not depend on it.³⁸ The material will be available through the internet and copies of certain proceedings have already been made and are held by various NGOs in the region. Focusing exclusively on the location of the original material collected has previously meant missing more relevant aspects of this problem, with certain advocates for moving the originals out of The Hague sometimes not considering issues of security of the documents (and witnesses), the integrity of the archives and the costs of keeping them in good condition. Additionally, it is likely that large parts of the archive will be physically accessible elsewhere, for example, in state archives in the region that hold many of the original documents (and copies of proceedings are being made available to various non-governmental organizations that are becoming repositories for sections of the archives). A much more important debate is one that focuses on the material itself: how is it being assessed and what material will be made available and how as well as when? How will the passage of time influence the accessibility of material – will more be released in twenty, thirty years? We don't know how much of the material is in a digital searchable format and how much of it will remain classified (and what standards are being used to determinate levels of access). In any Tribunal dealing with war crimes trials there will be material that is, quite properly, kept away from the public. Governments that provided documents may still be (sometimes reasonably, sometimes not) interested in keeping them out of reach. What is necessary, though, is a clear understanding of the criteria used and for the process to be as transparent as it can be given the realities of protected witnesses or state cooperation demands of secrecy. The balance to strike between access to information and the security of witnesses is not an easy one to achieve.

For the general public, there could potentially be some 'digest' versions of trials and cases made for those who have no interest in substantial research efforts (e.g. through documentary films, but not only those produced by the Tribunal itself that often lacks a critical approach in assessing its own work) and centres established, small ones even (close to the crime-sites and to affected communities but also in large

³⁸ M. Klarin, "What are we actually to "inherit" from the Tribunal?," in RECOM Initiative! Voice 14-2013, available at: <http://www.zarekom.org/RECOM-Initiative-Voice/RECOM-Initiative-Voice-14-2013.en.html>.

cities across the region), with trained staff able to assist the public in accessing information. Local governments could support their stated commitment to the rule of law by bearing, at least in part, the cost of disseminating information about the trials.

Another point is that the ICTY cannot and should not be expected to create any definitive 'ready-to-use' version of events in the former Yugoslavia for the period in question. The communities in the region are still fiercely divided over how they perceive the events and whom they consider to be the most responsible for crimes committed during the war. The Tribunal focuses on individual responsibility and the innocence or guilt of persons for crimes that were committed. Facts established by this institution (to a 'beyond reasonable doubt' standard) and confirmed on appeal can and should make a significant contribution to discovering what happened, but they cannot, on their own, provide a simple narrative about those complex events. We should also consider that the Tribunal is a group of people and that among them some are more competent than others and mistakes or wrong assessments can be made, resulting in judgments that may not represent the reality (and responsibility) accurately. That is no different in a national judicial setting. Imperfection is part of the judicial system. This is why these sources are even more important. They provide insight and clues about those events – they can facilitate discussion and enable citizens to inform themselves and form their opinions based on evidence. Additional efforts are needed to understand the complex realities of war because trials don't provide all the answers. The documents and testimonies that the ICTY collected are invaluable in that respect.³⁹ The Tribunal and the material it gathered have already contributed immensely to our understanding of the history of that part of the world and we must continue using everything the ICTY acquired through the years to understand how these events took place and why.

³⁹ Eric Gordy in BH Dani, in BCS: http://www.bhdani.com/default.asp?kat=txt&broj_id=834&tekst_rb=8.