

MEMORANDUM OF UNDERSTANDING

between

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

and

THE CITY OF SARAJEVO

for the development of the Sarajevo Information Centre

This memorandum of understanding (hereinafter referred to as “MOU”) is entered into by and between the International Criminal Tribunal for the former Yugoslavia (“ICTY”), an international organisation established by the United Nations Security Council, and having its Headquarters located at Churchillplein 1, 2517JW The Hague, Netherlands, and the City of Sarajevo, Hamdije Kreševljakovića 3, 71 000 Sarajevo, BiH (“City of Sarajevo”). The ICTY and the City of Sarajevo are collectively referred to herein as the “Parties” and each individually as a “Party”.

WHEREAS, the ICTY’s judicial records and its evidence collection contain an enormous quantity of information about the violations of the international humanitarian law committed during the wars in the territories of the former Yugoslavia during the 1990s;

WHEREAS, these records are of tremendous value to victims and their families, as well as to legal professionals, academics, historians, journalists, and the national authorities in the former Yugoslavia and other civil society actors working in the field of transitional justice;

WHEREAS, as part of its legacy, the ICTY must ensure that its public judicial records can be effectively accessed and utilised by a wide range of parties in the former Yugoslavia;

WHEREAS, the United Nations Secretary-General stated in his report of 21 May 2009¹ that the creation of information centres in the former Yugoslavia would serve the purpose of ensuring access to ICTY’s public judicial records and would also contribute to informing and sensitising those living in the countries of the former Yugoslavia;

WHEREAS, the United Nations Security Council requested the ICTY to cooperate with the countries of the former Yugoslavia in order to facilitate the establishment of the information and records centres by enabling access to the copies of the judicial records from the archive of the ICTY.²

WHEREAS, the ICTY has facilitated regional consultation on the establishment of Information Centres in the former Yugoslavia and the Presidency of Bosnia and Herzegovina agreed to the establishment of an information centre in Sarajevo³ (“Sarajevo Information Centre” or the “Project”);

WHEREAS, the development and establishment of the Sarajevo Information Centre depends on the availability of external funding;

¹ Report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals; S/2009/258, 21 May 2009.

² S/RES/1966 (2010)

³ The joint decision to proceed with the establishment of the Information Centre in Sarajevo is recorded in the minutes of the relevant Working Group, held on 26 November 2013.

NOW, THEREFORE, and in consideration of the mutual covenants and agreements contained herein it is agreed by the Parties as follows:

1 THE SARAJEVO INFORMATION CENTRE

- 1.1. The purpose of this MOU is to regulate the establishment of the Sarajevo Information Centre and the cooperation of the Parties in providing assistance to the Centre.

Location and mandate

- 1.2. The Headquarters of the Sarajevo Information Centre shall be allocated space at the Sarajevo City Hall, Obala Kulina bana 1.

- 1.3. The main mandate of the Sarajevo Information Centre shall be to provide the public with up-to-date direct and secure electronic access to all publicly available ICTY's records and archival material contained in ICTY's online databases;

- 1.4. Depending on the availability of financial funds and resources, the Sarajevo Information Centre may invest efforts with the aim to inform the public on the war crimes issues, contributing to the process of transitional justice and strengthening the rule of law in Bosnia and Herzegovina and the region by establishing a strong *outreach* components, including:

1.4.1. the component of transitional justice – contribution to the processes of transitional justice and dealing with the past by organizing various informative and educational public events;

1.4.2. the component of support to legal professionals and civil society – capacity building activities targeting legal professionals and civil societies groups handling war crimes cases before domestic courts in Bosnia and Herzegovina; and

1.4.3. the exhibition component – showcasing the work of the ICTY and courts in Bosnia and Herzegovina in adjudicating war crimes cases.

Administration

- 1.5. The Sarajevo Information Centre will be administered by the Mayor.

- 1.6. The Mayor's Council for Sarajevo Information Centre (hereinafter referred to as "Council") shall be set up in accordance with the City of Sarajevo's procedures and shall be responsible for:

1.6.1. Preparing documents, annual plan of activities and budget of the Sarajevo Information Centre

- 1.6.2. Development of activities of Sarajevo Information Centre
- 1.6.3. Development and implementation of the plan for fundraising; and
- 1.6.4. Cooperation with representatives of ICTY in order to ensure constant access to the ICTY's public archives.
- 1.7. The Advisory Committee shall be established by the ICTY and shall be made up of representatives selected by the ICTY, and may include Judges and staff members of the ICTY and representatives of institutions in Bosnia and Herzegovina selected by the ICTY.
- 1.8. The Advisory Committee shall assist the Council in performing its duties, particularly with respect to public activities of the Sarajevo Information Centre and fundraising – related activities.
- 1.9. There shall not be overlap in membership between the Mayor's Council and Advisory Committee.
- 1.10. The Council shall consult with the Advisory Committee about the following issues related to the work of the Sarajevo Information centre:
 - 1.10.1. Changes to the mandate of the Sarajevo Information Centre
 - 1.10.2. Relocation of headquarters of the Sarajevo Information Centre
 - 1.10.3. External action of the Sarajevo Information Centre, including, but not limited to, the activities stated under Article 1.4 above; and
 - 1.10.4. Preparation and submission of proposals for collecting funds to potential donors.
- 1.11. The Council can, if deemed appropriate, consult the Advisory Committee on any other issues.

Financing

- 1.12. All administrative costs of the Sarajevo Information Centre, including the costs of equipment and personnel, shall be covered by voluntary contributions from donors in the initial period of five (5) years (hereinafter referred to as "Initial Period"). Upon expiry of the Initial Period, the City of Sarajevo shall take over the responsibility for financing the Sarajevo Information Centre and all of its activities. The Initial Period can be extended by written agreement of the Parties.

2 OBLIGATIONS OF THE CITY OF SARAJEVO

- 2.1. Within six (6) months from the effective date of this MOU, as defined in Article 9.1 below, the following requirements shall be completed:

- 2.1.1. Prior to commencement of operation of the Sarajevo Information Centre, the City of Sarajevo shall implement all the changes to the general acts and be granted all necessary permits from the Sarajevo City Council;
 - 2.1.2. The City of Sarajevo shall allocate necessary space to the Sarajevo Information Centre in the Sarajevo City Hall;
 - 2.1.3. A bank account number in Bosnia and Herzegovina in the name of the City of Sarajevo shall be set up by the City of Sarajevo with the aim to collect funds for the establishment of the Sarajevo Information Centre.
- 2.2. The City of Sarajevo shall, with Advisory Committee's assistance, actively seek external funding for the Information Centre, identifying and approaching potential donors.
 - 2.3. The City of Sarajevo shall enter into contribution agreements with selected donors, to secure the necessary funds for the establishment and operation of the Sarajevo Information Centre. ICTY shall not be a party to these agreements.

3 OBLIGATIONS OF THE ICTY

- 3.1. The ICTY shall establish the Advisory Committee and appoint its representatives.
- 3.2. ICTY will, through the Advisory Committee, and to the extent possible, provide support to the City of Sarajevo in approaching potential donors for purposes of securing funds for the establishment of the Sarajevo Information Centre. The ICTY shall not be responsible for providing funds or administering funds for the Sarajevo Information Centre.
- 3.3. Through the Advisory Committee, the ICTY shall provide support to the City of Sarajevo in planning and implementing external action of the Sarajevo Information Centre, including, but not limited to, the activities stated under article 1.4 above.
- 3.4. The ICTY shall provide the City of Sarajevo with a direct and secure access to publicly available records and archival material contained in its databases upon the establishment of the Information Centre Sarajevo and as soon as there are sufficient funds for procuring the necessary equipment.

4 FINANCIAL RESPONSIBILITY

- 4.1. Each Party shall be responsible for its own financial costs, if any, incurred in connection with this MOU, included but no limited to:
 - 4.1.1. Its own personnel;
 - 4.1.2. Its own administrative costs;

- 4.1.3. Its own costs incurred for communication with the other Party or third parties;
- 4.1.4. Transmitting materials to the other Party via facsimile or regular postal service;
- 4.1.5. Any costs incurred as a result of printing or photocopying materials.

5 INDEMNIFICATION

- 5.1. The City of Sarajevo shall indemnify, defend, and hold and save harmless, the ICTY, and its officials, agents and employees from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the ICTY.
- 5.2. The commitment under Article 5.1 includes, but is not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to any acts or omissions of the City of Sarajevo, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the MOU, which give rise to legal liability to anyone not a party to the MOU, including, without limitation, claims and liability in the nature of a claim for workers' compensation, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.
- 5.3. The ICTY shall advise the City of Sarajevo about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The City of Sarajevo shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of the ICTY or the United Nations or any matter relating thereto, for which only the ICTY or the United Nations itself is authorized to assert and maintain. The ICTY shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

6 CONSULATION AND COMMUNICATION

- 6.1. The Parties shall promptly inform each other of any event or situation which might affect the implementation of the MOU and which may necessitate an amendment thereto.
- 6.2. All notices required to be sent in connection with this MOU shall be sent to the following persons by personal delivery, registered mail, facsimile, courier, or by electronic mail:

To the ICTY:
United Nations International Criminal Tribunal for the former Yugoslavia
Attn:
Judge Fausto Pocar
John Hocking, Registrar

Churchillplein 1,
2517JW The Hague,
The Netherlands
Facsimile: +31 70 512 8860

To the City of Sarajevo:

Attn:
Ivo Komšić Ph.D., Mayor
Hamdije Kreševljakovića 3,
71 000 Sarajevo,
Bosnia and Herzegovina

7 ASSIGNMENT/TRANSFER

7.1. The Parties shall not assign, transfer, pledge, or make any other disposition of any rights, obligations, or claims arising under this MOU without the prior written consent of the other Party.

8 CHANGES AND AMENDMENTS

8.1. This MOU may be amended by mutual agreement of the Parties. At any time after the effective date, either Party may propose changes and amendments to this MOU. The Party proposing the change and amendment shall communicate such request to the other Party in writing, pursuant to Article 6. Any change and amendment to this MOU requires the prior written agreement of both Parties.

9 DURATION OF MOU

9.1. This MOU shall go into effect as of the date of last signature (hereinafter referred to as "Effective Date") and shall remain in effect for the duration of the mandate of the ICTY, unless terminated earlier, pursuant to the conditions of this MOU.

9.2. Either Party shall have the right to terminate this MOU if the other Party substantially fails to satisfy any of the conditions of this MOU and if that failure is extended to thirty days (30) upon receipt of the notice of the said failure, pursuant to Article 6 above.

9.3. The ICTY may terminate this MOU at any time by providing written notice to the City of Sarajevo in any case in which the mandate of the United Nations or ICTY applicable to the performance of the MOU or the funding of the United Nations or ICTY applicable to the MOU is curtailed or terminated, whether in whole or in part.

9.4. The provisions of this Article are without prejudice to any other rights or remedies of the United Nations under the MOU or otherwise.

10 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

10.1. No personal identifying information about any ICTY witness ("Confidential Witness Information") shall be disclosed or made accessible to the public without consent of the ICTY. All information shall be redacted or anonymised by ICTY prior to disclosure. No document classified as confidential (hereinafter: "Confidential Court Documents")

including, but not limited to, submissions, orders, rulings, claims shall not be disclosed to the City of Sarajevo.

- 10.2. In the event of inadvertent disclosure of Confidential Witness Information, the Party discovering the disclosure shall immediately notify the other Party. Any documents or other media containing Confidential Witness Information shall be promptly destroyed by the City of Sarajevo, or returned to the ICTY, at the ICTY's election.
- 10.3. All other information and data that is considered confidential or proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the MOU, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:
 - 10.3.1. The Recipient of such Information shall use the same with care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and,
 - 10.3.2. The Recipient of such Information shall use the Discloser's Information solely for the purpose for which it was disclosed.
- 10.4. These obligations and restrictions of confidentiality shall be effective during the term of the MOU, including any extension thereof, and, unless otherwise provided in the MOU, shall remain effective following the termination or expiration of the MOU.

11 SETTLEMENT OF DISPUTES

- 11.1. **AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the MOU or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, such conciliation shall take place according to a procedure as shall be agreed upon by the Parties in writing.
- 11.2. **ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the MOU or the breach, termination, or invalidity thereof, unless settled amicably under Article 11.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then pertaining. The ICTY acknowledges that the preferred venue for arbitration is Sarajevo.

12 NON-WAIVER OF RIGHTS

- 12.1. The failure by either Party to exercise any rights available to it, whether under the MOU or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the MOU.

13 PRIVILEGES AND IMMUNITIES

13.1. Nothing in or relating to the MOU shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

14 DISCLOSURE

14.1. Either Party is authorized to disclose the terms and conditions of the MOU to appropriate Government officials upon their request.

For and on behalf of the City of Sarajevo

For and on behalf of the International
Criminal Tribunal for the former Yugoslavia

By: _____

By: _____

Ivo Komšić, Ph. D.

John Hocking, Registrar

Mayor of the City of Sarajevo

International Criminal Tribunal for the former
Yugoslavia

Date: _____

Date: _____