Chapter 44

On Regional Cooperation, Progress, and the International Legacy of the ICTY

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Helping war-torn societies reestablish the rule of law and come to terms with large-scale past abuses, all within a context marked by devastated institutions, exhausted resources, diminished security, and a traumatized and divided population, is a daunting, often overwhelming, task. It requires attention to myriad deficits, among which are a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in government, a lack of official respect for human rights and, more generally, a lack of peace and security.1

As Pierre Hazan, the distinguished professor of post-conflict justice at the University of Geneva, stated in reference to the UN Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: “Transitional justice is a utopia in the positive sense of the term, a utopia which, according to its postulates, enables societies to mobilize and to act, mindful of the fact that they are facing formidable challenges.” This UN Report highlights the problems that we have been coping with while bringing about justice for victims.

When the veil of war and darkness covered the Western Balkans, when all rules of warfare were cast aside, when the dregs of humanity became the “political elite,” the rules known to the civilized world were completely marginalized. The judiciary ceased to be independent and ruled by gauging the current political trend of the country; war criminals were acquitted to the spectators’ applause, as if they were playing for their country’s national team, and they all together mocked the victims, their misfortune, and their suffering.

Had the crimes committed in Zvornik been prosecuted in a timely fashion, and had the perpetrators of those crimes been sent to prison, the inferno of crime in Bosnia would have been stopped and Srebrenica would not have happened. Had we sanctioned Ovara when it happened, numerous mass crimes committed in Croatia during the 1990s would not have occurred, including the massacre of civilians in the

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minefield in the Croatian village of Lovas or the hoards of refugees in the “Storm” and “Flesh” operations.

The United Nations reacted appropriately when it happened. It made it clear to the blinded political elites that their monstrous ideas were going to be dealt with in The Hague, where their crimes were going to be equally investigated and considered, no matter if they played a political, police, or military role. Holding these political elites responsible for their actions contributed to the rise of democracy in the region. When democracy won in Serbia, despite an extremely unhealthy atmosphere poisoned by Milošević’s propaganda, the people were still confused. They were torn between “patriotism,” a strong sense of national belonging, the fight for Serbia, and the horrible crimes their compatriots committed in the name of such a fight. The easiest response was to rationalize and minimize the crimes or let them fade into the past and oblivion.

However, with the establishment of judicial institutions dealing with war crimes in Serbia, a clear message was sent that Serbia had distanced itself from the crimes of the past, and that all war criminals would be brought to justice. Despite the dilemmas, the judicial institutions of Serbia gave an appropriate response to the attacks of the remnants of Milošević’s and Šešelj’s legacy, a response that advocated for justice for the victims and their families. There is clear political will and sufficient resources to finish trying all the war criminals.

As a war crimes prosecutor, I have never forgotten a single perpetrator of a war crime against whom there was evidence. For example, in 2001, although one person is still at large, four perpetrators were convicted in the first war crimes trial held in Serbia after the conflict. At the time, the trial was complicated by the political conditions in Serbia. There were many representatives of right wing parties in government who did not support the trial. The fact that it was conducted properly was a big success for the Serbian judiciary, a legal system inexperienced in war crimes prosecutions.

As a citizen of Serbia, I have never forgotten a single name in the list of victims from Srebrenica: Vukovar, Lovas, and Zvornik. As evidence of tragic events from the past, their names are an integral part of our indictments. Our role is not only to enforce justice through trials, but also to demonstrate that justice to the families of victims, as well as to the future generations in Serbia. We wish to send them a message that such evil must not happen again; that we are still paying the price for such crimes; and that the only road that can be taken is the one of punishment for the perpetrators of those crimes.

Cooperation with the Office of the Prosecutor (OTP) and the Tribunal in The Hague is professional and exceptionally good, with a high degree of confidence and trust among parties. The same goals are pursued: justice for the victims; arrest and

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2 I believe that Serbia should pass a resolution on the events at Srebrenica similar to the one passed by the European Parliament.

3 There has been a tendency in the international community to refer to regional prosecutors as “local.” This term is problematic because the states of the former Yugoslavia have legal systems, and their lawyers do not need to be trained.