Judge Wald at the ICTY: A Tribute

David Tolbert*
President, International Center for Transitional Justice, New York, NY, USA

I am honoured to write about a great judge and a wonderful friend. I have had the good fortune to know and to work with Judge Patricia Wald over the last decade or so, from the first day that she arrived at the International Criminal Tribunal for the former Yugoslavia (ICTY), located in The Hague, Netherlands, in November 1999. I watched her work ably at the ICTY and to quickly become a leading light on that bench. Later she was on the American Bar Association Central European and Eurasian Law Initiative (ABA-CEELI) Executive Board when I was its Executive Director, always asking the most penetrating questions and raising thought-provoking points while at the same time being very supportive. During those times, my wife, Dee, and I lived around the corner from Pat and her husband Bob, and we spent many evenings together, discussing legal and political issues as well as just having a good time. Later after another turn in The Hague, I served with Pat on the American Society of International Law (ASIL) Task Force on the United States and the International Criminal Court, where she led our group in an exemplary manner and produced a valuable consensus report from a group with more than a few partisans, myself included, that has had a positive effect on the Obama administration’s approach to the International Criminal Court (ICC).

Thus, I have had the opportunity to see Pat’s work up close as a judge and to know her as a friend. While such proximity does not always result in admiration and fondness, it has certainly been the case with Pat. I hold her in the highest

* The author is formerly the Deputy Chief Prosecutor, Deputy Registrar, Chef de Cabinet to the President, International Criminal Tribunal for the Former Yugoslavia (ICTY); Special Expert to the Secretary-General on the United Nations Assistance to the Khmer Rouge Trials; Registrar, Special Tribunal for Lebanon; Executive Director, American Bar Association Central European and Eurasian Law Initiative. The author would like to thank Laura A. Smith for her valuable assistance in preparing this article.

regard professionally and with great fondness as a friend, not a combination that I have otherwise experienced often in my career. During these times, Pat has had the great benefit of an extraordinary partner in Bob Wald. Bob was brilliant as well, not only as a lawyer but as a collector of art and a true Renaissance man. He was a man of great kindness and gentleness of spirit. My wife, after losing her father and father-in-law, wisely decided to adopt Bob as her substitute father, and he always fit the bill. Forever kind and thoughtful, Bob will always be remembered by his friends, as a great person in his own right. I will miss him and his kind good humour. He was a singular man and friend and his departure from our midst will always be felt by his many friends.

Pat Wald has been a highly respected legal professional in the United States for several generations, as a judge, U.S. Justice Department official and voice for the rule of law, but over the past decade she has also played an important role internationally on justice and rule of law issues. She and Bob worked on rule of law projects in Eastern Europe and the former Soviet Union in the 1990s before Pat became a judge at the ICTY. Following her ICTY tenure, Pat has continued to be a leading commentator, trainer and activist on international criminal justice issues. While her work in these areas is, as usual, laudatory and valuable in its own right, Judge Wald also made very important contributions to the jurisprudence of the ICTY, which have had a powerful impact in shaping key principles of international criminal law. While there are a number of decisions that Pat was involved in during her time at the ICTY, I will focus on three separate cases, in which her decisions and opinions have had, and continue to have, a decisive impact on the field and, perhaps more importantly, on the rule of law with respect to the work of international courts and tribunals as well in the emerging field of international criminal justice.

Perhaps the seminal, and certainly the most horrific, single event in the Balkan wars of the 1990s occurred over two days in July 1995, when some 8,000 Bosniak

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2) E.g., Patricia M. Wald, ‘General Radislav Krstić: A War Crimes Case Study’, 16 Georgetown Journal of Legal Ethics (2003); Patricia M. Wald, ‘Trying War Crimes in International Courts’, 31 International Journal of Legal Information (2003); David Tolbert, ‘Tribute to Hon. Patricia M. Wald’, 66 New York University Annual Survey of American Law (2010) 21 (writing “I am pleased to say that Pat has continued to keep a hand in international law. She has flown off to Arusha, Tanzania to train the ICTY and the International Criminal Tribunal for Rwanda [ICTR] appeals counsel; and when our appellate lawyers came back and debriefed me, they said that the best and toughest questions always came from Judge Wald. Moreover, Pat continues to help in any way that she can to promote the law and international justice. She has done so at my request a number of times and continues to do great work for the Open Society Justice Initiative, which she chaired for a number of years, among other groups.”).