

Media, Justice and Reconciliation: the case of the former Yugoslavia

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My job is Justice. The objective of the ICTY is to prosecute the individuals responsible for war crimes, crimes against humanity and genocide. The mandate says that this can contribute to peace and reconciliation, but it is not the main goal of the Tribunal. In my view, Justice is only one factor among many others in the reconciliation process, and it is probably not the most important.

What happens in the minds of men and women to seek peace and reconciliation rather than revenge and hate is mysterious. It must have to do with true remorse on the one side, with forgiveness on the other. Can these psychological processes be fostered by Tribunals or by the media? Maybe to some extent, provided some conditions are met:

1. The victims must see the top criminals punished. For this purpose, the work of the ICTY is incomplete for two reasons. First, the two main persons responsible for the worst crimes, Radovan Karadzic and Ratko Mladic, are still at large. Worse even, they may face impunity should the Security Council effuse to extend the mandate of the tribunal beyond 2008 for first instance trials and 2010 for appeals. Karadzic and Mladic are largely perceived among victims' communities as the main perpetrators of the crimes committed in Bosnia and Herzegovina between 1992 and 1995. It is unlikely that a sustainable feeling of justice will exist if they die innocent. A recent poll made in Bosnia and Herzegovina indicated that 86% of the respondents want the ICTY to stay open until Karadzic and Mladic are tried in The Hague. This tells a lot about the feelings of the victims.
2. The victims must see justice made for the direct perpetrators as well. In Bosnia and Herzegovina, everybody would agree that Karadzic and Mladic are the main architects of the horrors they suffered, and that is why such an overwhelming majority wants to see them in a courtroom. But, quite often indeed, victims know personally the persons who committed the crime. For this reason, it is essential that the work of justice doesn't stop in The Hague. The Security Council has tasked us with the prosecution of most senior leaders responsible for the worst crimes. But there are thousands of mid- and low-level perpetrators out there. The domestic judiciaries in the whole region will have to work relentlessly to make sure that, to use the word of Simon Wiesenthal, "*the criminals never enjoy a quiet sleep*". Actually, the example of the nazi war criminals should be inspiring. Still today, more than sixty years after the facts, some of them are still caught and brought to justice. There is no reason the tracking does not continue in the former Yugoslavia as well, as long as needed. War crimes, crimes against humanity and genocide are imprescriptible.
3. The victims must know the truth. Traditionally, in the Balkans and elsewhere, the truth about the crimes was never revealed in full, because there was no proper investigation and trial. The only source was the memory of witnesses, when available, or more often, "hearsay". Over time and generations, such a mode of transmission of facts and knowledge favors legends and mythology and constitutes a powerful tool for demagogues to manipulate whole nations and provoke new wars and atrocities. Using national mythology was abundantly used by the nationalist leaders during the Yugoslav wars, and it gave legitimacy to crimes committed by

the perpetrators. The role of the catholic and orthodox churches must be blamed also in this context. It is my hope that our trials help establish the reality and the detailed factual circumstances of the main crimes. Eventually, the legacy of the Tribunal should also help one day historians to write history books based on facts, not on myths.

4. There must be a general public recognition of the crimes committed in the name of the nation or ethnic group. In most of the former Yugoslavia, the public opinion lives in a state of denial. Only the crimes committed against the own national group are highlighted, while the crime committed by the own nation are ignored or presented in a distorted fashion. Likewise, the work of the Tribunal is most of the time seen through a nationalist prism. Nationalist approaches towards history and crime perpetuate negative stereotypes attributed to neighboring nations. On the other hand, they exacerbate the sense of victimization of the own people. These are huge obstacles towards reconciliation in the former Yugoslavia. It is unlikely that general public perceptions change while the political and media scenes remain occupied by individuals who are personally and emotionally connected to the war. Namely, as we could observe in the case of Germany, a true process of “Vergangenheitsbewaeltigung”, “management of the past”, will more probably be carried out by the generation born during or immediately after the events, when they reach the adult age. Therefore, we may have to wait another ten years before such a process begins, if it begins at all.
5. The criminal structures within the State must be cleaned. In Germany after the Second World War, as well as in most former communist countries that have now joined the European Union, the security apparatus went through a salutary so-called “lustration” process whereby all civil servants connected to illegal, sometimes criminal operations by these services, were sacked and sometimes prosecuted. Nothing like this has happened in any of the countries of the former Yugoslavia. From Kosovo to Croatia, the individuals who waged the war are still in positions of power, except for a few, most notably those who were indicted by the ICTY. The danger exists that, within the secret services and the army, in particular, a strong nationalist culture will continue to be dominant, which will have a negative impact on efforts made to create a more objective vision of history leading to the recognition of crimes and, eventually, to reconciliation. Coming from Switzerland, it is hard for us to understand that the intelligence services in the communist countries were extremely powerful and feared by the population. These services are very talented in influencing the public opinion by planting stories in the media. I witness these practices nearly on a daily basis when working with Serbia on the arrest of Ratko Mladic.

After all this, you must wonder what can be done. I am a simple prosecutor and my focus is on establishing the facts that allow me to get indicted individuals convicted for their crimes. We have here media experts who are much more qualified to speak about how the media can foster public awareness about issues the public and the State are not interested to know about. Therefore, I will limit myself to one recommendation, namely that the legacy of the Tribunal be used actively.

My office has accumulated a wealth of materials – 6 million pages – about the crimes committed in the whole of the former Yugoslavia. The ICTY will close definitely its doors in 5 or 6 years at the latest. What will happen to all our archives? Nobody really knows, but interest for these archives has been expressed already from various parts. In my view, our archives must continue to play a useful role in the former Yugoslavia even after the end of the Tribunal. Therefore, I favor a solution whereby the documents and archives would find their way in the region and be open to researchers, journalists and historians. Bringing the material evidence in Belgrade, Zagreb, Sarajevo, Pristina, and why not Pale and Banja Luka will make it more difficult for lies to become history. It will need a few stubborn brave people to conduct such a project. Very stubborn, indeed, for, as Mark Twain once wrote, “*One of the most striking differences between a cat and a lie is that a cat has only nine lives.*”