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## Prosecutor Goldstone Offers Views on War Crimes Tribunal

by Rochus Pronk

ABA/Carl Lebowitz



Prosecutor Richard Goldstone

After months of delay and controversy over the choice of a chief prosecutor of the United Nations War Crimes Tribunal for the former Yugoslavia, the UN Security Council on July 8, 1994, appointed South African Justice Richard Goldstone to the post. Goldstone rose to prominence as chairman of a commission of inquiry appointed by former President F.W. de Klerk in 1991 to investigate the causes of violence during South Africa's transition to democracy. A former Supreme Court Judge who was recently appointed to the new Constitutional Court of South Africa, Goldstone follows in the footsteps of Nuremberg Prosecutor, Justice Robert Jackson of the United States. On his recent visit to Washington, D.C., *The Human Rights Brief* had an opportunity to speak with Goldstone.

I believe that if this Tribunal fails for any reason, it would be a serious setback to the enforcement of international and criminal justice for decades.

**Q.** Why did you decide to leave South Africa at this time and start working for the War Crimes Tribunal for the former Yugoslavia?

**A.** It was a difficult decision, because I had just been appointed to the first Constitutional Court in South Africa. To become the prosecutor to the Tribunal was equally exciting and no less important from an international human rights point of view. I believe that if this Tribunal fails for any reason, it would be a serious setback to the enforcement of international and

criminal justice for decades. Ultimately, it was the decision of the new South African government that I should do this and so it was arranged that I should be released from the Constitutional Court for a temporary period.

**Q.** When and against whom can we expect the first indictments to come out?

**A.** We hope to have the first indictments out by November, and that would mean that subject to any unforeseen delays, and the reasonable requests and the needs of the defense, I would hope that trials will begin by the beginning of March 1995. It

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is the policy of the prosecutor's office not to talk about who and where we are investigating. Any information in that direction could prejudice the investigations and could also affect the lives of possible witnesses and victims. However, we will at all times proceed to indict and prosecute the most culpable people against whom we have evidence.

Let me add that I believe firmly that the people who gave orders of some of the most serious crimes known to humankind are more guilty than the people who executed those orders. If the evidence is there, I can give you every assurance that we will indict the most important and serious criminals without regard to their positions or to any political consequence.

**Q.** How do you view the concurrent jurisdiction of the Tribunal in relation to the national courts, and how does that relate to issues of double jeopardy?

**A.** If somebody is being tried and convicted in a national court for murder or rape there is no problem. We will be charging people with genocide, crimes against humanity and grave breaches of the Geneva

Conventions. Rape or murder will be constituents in that, but it's a different offense. If it's necessary to re-indict such a person before the Tribunal, it will be because there is evidence of that person's involvement in a humanitarian offense. That is not double jeopardy. We encourage national trials whether in or outside the former Yugoslavia for the simple reason that we could never do more than a limited number of significant trials. So the more national courts are involved, the more justice will be done.

However, it is the Tribunal's duty to exercise its powers in a manner that is consistent with international law and international procedures. In other words we must do everything in order to secure procedural fairness for the people we indict. I think there can be cases where we should refrain from re-indicting because we must have regard to the unfairness of double jeopardy in its narrow sense. But at the same time I think we have a broader mandate than that, and I don't think we must refrain from exercising our powers when the interests of justice, and particularly the victims' [interests], are at stake.

**Q.** How will the interests of victims be taken into account in deciding who will be prosecuted?

We will indict the most important and serious criminals without regard to their positions or to any political consequence.

**A.** Their interests are a fundamental consideration that must run throughout. In my view, for instance, evidence should be heard not only in The Hague, but rather as close as possible to the places where the atrocities happened. I think by coming there we will be demonstrating that we are concerned with people who suffered from humanitarian breaches.

Let me emphasize, however, that it is

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not our job to simply get convictions. This is the first time a court will deliver definitive judgments on important questions of international humanitarian law. The prosecutor's office will have to assist the Tribunal in coming to the right decisions, whether they are for or against us. In that light we also have a duty to assist accused people to the extent that they want to be assisted, of course. It is very important that there should be equal access for the accused to any kind of information that could be of importance in a specific case.

**Q.** How would a peace agreement which includes a general amnesty affect the Tribunal?

**A.** The Tribunal won't be bound by any agreement. We will continue to function as long as the Security Council's Statute has not been repealed. If, in fact, appropriate trials were held in national courts in the former Yugoslavia, which comply with normal and reasonable international standards, there would be no reason for the Tribunal to step in. It is only in

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cases where the real culprits are not tried, or where there are sham trials that it is important to look at our concurrent jurisdiction and our right to retry people.

**Q.** Is there enough political will to make the Tribunal succeed?

**A.** A lot of the delay has been interpreted as flowing from a lack of will on the part of the United Nations and of members of the Security Council. I can only judge this on my own experience, and my own experience is absolutely one hundred percent the other way. I believe the delays have been caused by unfortunate but understandable administrative difficulties and blocks. My own belief, from what I have seen and from the people I have spoken to, is that the administrative delays have not been due to any ill-will; they have been really a matter of trying

to fit what we need in The Hague into the administrative and bureaucratic procedures of the UN. I have received nothing but support in New York and from representatives of countries from all over the world. Therefore, I am confident that the Tribunal will succeed.

**Q.** Do you see the creation of this Tribunal as a step towards the establishment

of a permanent international criminal court?

**A.** I strongly believe the world should move forward to a permanent international criminal court, though one set up by a treaty and not by a Security Council resolution. Although this is not the route that should be taken, the successful func-

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## Yugoslavia War Crimes Tribunal Update

Although trials are not expected to start until March 1995, the first indictment by the first international war crimes tribunal since World War II was filed on November 7, 1994. Charges against Bosnian-Serb concentration camp commander, Dragan Nikolic, were brought by the Prosecutor's Office accusing him of murder, torture, and mutilation of Muslim prisoners. Although a warrant for Nikolic was presented to Bosnian Serb authorities, the tribunal has no power to compel the Bosnian Serbs to hand Nikolic over, and it appears unlikely that they would do so voluntarily.

Nonetheless, the Tribunal and the Prosecutor's Office are proceeding with their operations. With a budget of \$11 million, the UN has rented 24 cells in a Dutch prison to hold the accused, the Tribunal's judges have adopted rules of procedure and evidence, and a witness protection program is being developed by Acting Registrar, Professor Th. C. van Boven, according to Goldstone. In addition, the Prosecutor's Office, manned by 60 staff members, is sifting through thousands of complaints. The Bosnian government alone has named more than 5,000 alleged war criminals, has assembled evidence of 42 alleged mass murders, and has located what it claims to be 20 mass grave sites. The Serbs and Croats have submitted similar cases. Meanwhile the war in Bosnia continues.

In a related story, on November 8, 1994, the UN Security Council voted to establish a separate war crimes tribunal for the conflict in Rwanda. The creation of such a court had stalled because of disagreements over the location of the trials and whether the court should be independent of the Yugoslav tribunal. In early October, Rwanda President, Pasteur Bizimungu, had made a strong appeal for a tribunal in a speech to the UN General Assembly. Rwanda, however, voted against the Security Council resolution in protest over the absence of a death penalty and the measure's cutoff date of January 1, 1994. Currently, there are more than 6000 Rwandans in custody awaiting trial on charges of murder, torture, and other atrocities.

The Rwanda tribunal presumably will try individuals for "Crimes Against Humanity" and "Genocide." International human rights lawyers, however, also advocate that it prosecute individuals for violations of the laws and customs of war applicable to internal wars (i.e. Common article 3 to the Geneva Conventions, and Additional Protocol II). This would be a significant step in the development of international humanitarian law as no international instrument applicable to internal armed conflicts deals with individual criminal responsibility. The "grave breaches" provisions in the Geneva Conventions, under which individuals can be held criminally accountable, are only applicable in situations of interstate armed conflict. ●

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tioning of this Tribunal would be an important step in that direction.

**Q.** If a permanent international criminal court existed presently and had universal jurisdiction, would you want to see such a court involved in South Africa?

*In my own view it would be a serious mistake if Rwanda was not added to the jurisdiction of this Tribunal.*

**A.** In the apartheid years there were serious breaches and violations of human rights and international humanitarian law. I have no doubt that a permanent international criminal court would and should have been involved then. But now there is a legitimate democratic government and it seems to be determined to proceed with the Truth Commission [The Truth and Reconciliation Commission was established to investigate gross violations of human rights under the former government]. I believe it would be inappropriate for the international community to be involved now. It's in areas where there is no endeavor to deal with past human rights abuses that the international community should start playing a role.

**A.** Should the Tribunal's jurisdiction be expanded to include Rwanda?

**Q.** In my own view it would be a serious mistake if Rwanda was not added to the jurisdiction of this Tribunal. First, it is essential that the same procedures and standards are applied in prosecuting individuals from Rwanda and former Yugoslavia. With two separate Tribunals we are bound to get different procedures, different standards and different law. This would be most unfortunate as comparisons would undoubtedly be made between a Tribunal sitting for an African country, and one sitting for a European country.

Secondly, it would be cost effective because it would save a great deal of expensive duplication. The facilities in The Hague can be expanded to include the Rwanda situation. At the moment we have eleven judges, five of whom constitute the appellate chamber, and six judges constitute two trial chambers. I would suggest adding two additional trial chambers (another 6 judges) and keep the same appellate chamber, whose judgments on interpretations of law and procedures would apply to all the chambers.

Not the least important, it would also save further delay in setting up a new Tribunal. With the present Tribunal we could get investigations going in matter of weeks. So for these reasons I would advocate that the Tribunal's jurisdiction be expanded to include Rwanda. I wish it were otherwise because we have enough to do as it is. But if one takes into account the interests of international justice, I think it's important to have consistency. ☉

**Editor's Note:** In the inaugural issue of *The Human Rights Brief*, we reported on the then current status of the War Crimes Tribunal. A Point/Counterpoint treatment of the purpose, effectiveness, and necessity of such a tribunal accompanied the article. [see Vol. 1, No. 1 (Spring 1994)]

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