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Center Hosts Conference on War Crimes Tribunal

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Center Hosts Conference on War Criminal Tribunal

by Dharmaputhiran Niles

"One can have short term cease fires; one can even have peace agreements; but I do not believe that the sorts of cycles of violence that one has seen in the former Yugoslavia will stop without adequate justice," said Justice Goldstone, Chief Prosecutor of the War Crimes Tribunal for the Former Yugoslavia (the Tribunal). Justice Goldstone gave the keynote address at a panel discussion on the Tribunal sponsored by the Center for Human Rights and Humanitarian Law on February 23, 1995. (See related interview in *The Human Rights Brief*, Vol. 2, No. 1, at p. 3) Accompanying Goldstone on the panel were John Shattuck, U.S. Assistant Secretary of State for Democracy, Human Rights and Labor; Diane Orentlicher, Associate Professor of Law at WCL; and Tom Warrick, Counsel to Professor Sharif Bassiouni, who was formerly UN Chairman of the Commission of Experts on war crimes in the former Yugoslavia. WCL Professor Robert Goldman moderated the panel.

The Tribunal was created by UN Security Council Resolution 827 in May, 1993 under Chapter VII of the UN Charter as a measure to restore and maintain peace in the former Yugoslavia. Goldstone, who took a leave of absence from his position on the new South African Constitutional Court, was appointed Chief Prosecutor with the unanimous consent of the entire Security Council in July 1994. Since then, his office has issued 40 indictments,

including one for genocide. Trials are scheduled to begin this summer.

The Tribunal's jurisdiction is limited to four general areas of customary and conventional international law, namely violations of the Genocide Convention, grave breaches of the Geneva Conventions, crimes against humanity, and violations of the laws or customs of war. The Tri-



Justice Richard Goldstone answers audience questions

Gabriel Eckstein

bunal's mandate was limited to these four areas because they are beyond doubt part of customary international law and would avoid the allegations of ex-post facto punishment that plagued the Nuremberg and Tokyo tribunals. Due to the magnitude of the crimes that fall within this mandate, however, charging and convicting transgressors will be difficult.

At the conference, Goldstone repeatedly emphasized the need for the Tri-

bunal to stick closely to the evidence, but added that the collection of testimony and documentation would be complicated by the fact that witnesses are spread across Europe and throughout the war-torn Bosnia-Herzegovina. Goldstone stressed, however, that precision in the fact-finding is essential for the successful conviction of the perpetrators.

The Prosecutor's office has two primary goals in carrying out its mandate, according to Goldstone. The first is to establish the events that will form the basis of the prosecutions by identifying areas of the former Yugoslavia in which the most serious offenses occurred, and by recreating what happened through eye witness testimony. There are two reasons for this initial objective. First, it will identify patterns of conduct that are inconsistent with the merely spontaneous actions of paramilitary action in order to show that these atrocities were planned

"I do not believe that the sorts of cycles of violence that one has seen in the former Yugoslavia will stop without adequate justice."

and that there was a command structure established by military and political leaders. Second, this approach will bring the most guilty perpetrators to justice, namely, the people who devised the policies that led to the atrocities and those who gave the orders for the crimes to be committed. Goldstone warned the audience not to dismiss the Tribunal as only trying "little fish." "To talk about people who are accused of having committed multiple murders, rapes, and torture of many people as little fish, seems to me, is a little demeaning to the victims and those who have suffered at the accused's hands," he said. Goldstone contended that the Tribunal is dedicated to prosecuting the leaders who authorized the worst atrocities. He emphasized that "simple participation in the political peace process will not immunize leaders from prosecution."

The Tribunal's second objective is to be even-handed. Goldstone defined this

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Overview of the Draft Protocol

The receivability and admissibility requirements under the Alston proposal are identical to the requirements under the Additional Protocol to the ICCPR. Most important in this respect is the inadmissibility of anonymous communications. Unlike the Protocol to the ICCPR, however, the Alston Draft contains a specific provision for the request of "interim measures" to be taken by the state while the Committee is deciding upon the merits of the complaint "and as may be necessary to preserve the status quo or to avoid irreparable harm." The ICESCR Draft Protocol also contains a three month time limit within which the receiving state must respond to information received from the Committee. Further, in contrast to the ICCPR Protocol, the Alston Draft also states that the Committee may not only examine information made available to it by the author of the complaint and the State Party concerned, but also all other information obtained from other sources.

Where the Committee determines that a State Party has failed to give effect to its obligations under the ICESCR, the Committee may recommend that the State Party remedy any violation and prevent its recurrence, and State Parties "shall implement" any such recommendations. Similar to the ICCPR Protocol there is no mechanism to force states to comply with the recommendations. The Draft Protocol also provides for "follow up measures" through which the Committee can further encourage State Parties to give effect to its views and recommendations. Under these measures the Committee may invite a State Party to further discuss the measures the State Party has taken to give effect to the Committee's views or recommendations. Also, the Committee may invite State Parties concerned to include in their reports under Article 16 of the Covenant details of any measures taken in response to the Committee's views and recommendations. Finally the Committee is required to include in its annual report an account of the communications and the entire examination including the responses of the State Party to the views and recommendations of the Committee. The remaining provisions of the Draft Optional Protocol are identical to the Protocol Additional to the ICCPR.

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as imposing the same punishments for the same crimes, regardless of which side perpetrated the atrocity. "No side would be immune from prosecution," stated Goldstone.

"To talk about people who are accused of having committed multiple murders, rapes, and torture of many people as little fish, is demeaning to the victims."

Goldstone further acknowledged that it will be difficult to get all of those indicted before the Tribunal. He pointed out, however, that under Rule 61 of the Rules and Procedures of the Tribunal, a "super indictment" was available. This means that if an indicted defendant fails to appear, the prosecution could request that the indictment be confirmed by a panel of 3 judges. Once the indictment was confirmed, the accused would become an "international fugitive," an outlaw in almost every country in the world. Goldstone stated that the super-indictment could be enforced through the use of UN Security Council sanctions against any nation that shelters the accused. He also noted that any national leaders who might be indicted would eventually have to travel because of their responsibilities, and therefore would likely be arrested.

Secretary Shattuck, in his response, praised Goldstone and the Tribunal's work. He indicated that the United States would continue its commitment to the Tribunal's work, and noted that the U.S. government was the major advocate for the creation of the Tribunal. Shattuck also confirmed that the Clinton Administration was unwilling to trade impunity for peace during the peace process and stated that the Tribunal was part of an enterprise to create instruments of international accountability and the rule of law. He stressed that it is essential that the Yugoslavia and Rwanda Tribunals succeed in their tasks because this would send a message that the international community will not tolerate impunity.

In addressing the legal difficulties faced by the Tribunal, Professor Orentlicher indicated that this Tribunal would be expanding on the Nuremberg

trials in terms of the development of international law. In particular, the Tribunal would need to define crimes identified at Nuremberg, and to decide whether crimes committed during internal conflicts could be tried by an international tribunal. Orentlicher stated that the Nuremberg trials had the benefit of victors' justice which, despite weaknesses, ensured that the defendants were captured and brought before the court.

In his presentation, Tom Warrick discussed the continued financial problems plaguing the Tribunal and indicated that the Tribunal still lacked the funds necessary for the collection of sufficient evidence to try crimes against humanity. Warrick expressed disappointment with



(front row, left to right) Justice Richard Goldstone; Tom Warrick; Professor Diane Orentlicher; (back row) Professor Robert Goldman

the general lack of logistical and financial support for the Tribunal by the international community, especially on the part of European governments.

All of the panelists at the event recognized the daunting nature of the task faced by the Tribunal. At the same time,

The Nuremberg trials had the benefit of victors' justice which, despite weaknesses, ensured that the defendants were captured and brought before the court.

they also emphasized the need for the Tribunal to succeed in its efforts to bring justice to the worn-torn region that was once Yugoslavia, not only for the sake of the people of Bosnia and Croatia, but also for the future security of the international community as a whole. ☺

Gabriel Eckstein