

Project:

**ICTY ORAL History - Documented by SENSE**

An Interview with

Louise Arbour

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Interviewee: Louise Arbour (LA)

Interviewer: Mirko Klarin (MK)

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Canadian lawyer Louise Arbour took over as ICTY chief prosecutor in October 1996 and remained in office until October 1999. In an interview with SENSE in September 2003, Arbour speaks about the transformation of the Office of the Prosecutor, breaking the “arrest blockade” of indictees and the first indictment against an acting head of state, the president of the Federal Republic of Yugoslavia and Serbia, Slobodan Milošević.

MK: Did they know what they were creating, in the moment when they vote to create the Tribunal?

LA: It would seem from the historical records, many people have admitted that they did not know and frankly it is quite understandable. It was very unpredictable. It could have taken all kinds of different directions. I think decisions were made by the first prosecutor, by the judges, by me, by all kinds of participants, that could have changed very dramatically the shape of the institution. I will give you one example: When I arrived in 1996 as you will recall, the biggest problem was arrest. And there were, at that time, very serious discussions about whether we should have the Statute of the Tribunal modified to have trials in absentia. Now, had we done that, it would have been a very different enterprise, not one in which I would have wanted to participate. I was against that right from the beginning. But there were a few critical decisions that were made that shaped the future,

the success, but also the size and the importance of the institution. So it could not have been predicted by the founding fathers and mothers.

MK: What kind of institution did you find there, when you arrived in September 1996?

LA: What I found in 1996... First of all, I came with absolutely no idea what to expect. I don't know what I thought. I thought it was a great legal experiment. I had very little sense of how operational it was. I thought this was a kind of laboratory of comparative law. I think this is what I thought. What I found was very surprising. It was an institution that I thought in terms of its legal definition was very unaware of its powers and its strength. It behaved very much like an NGO, not surprising in a sense. That's the community within which it was operating. All its friends were NGO friends. It had very little presence in a more traditional law enforcement community, you know, intelligence community, policing... that is not where it was operating. I felt that it was not asserting itself as a powerful institution, it perceived itself as very much at the mercy of state cooperation, very uncertain about its financial future, security, very uncertain about the political support it had in world opinion. While in fact, because I only read the Statute I thought this was an immensely powerful institution. It was a Security Council Chapter 7 creature. You can't get any more power than that. And my own attitude from the outset was to try to assert that. To change the mood of the place which was essentially a mood of uncertainty and dependency into a mood of authority and strength and power.

MK: But also you tried to change the mood of some other institutions like NATO. You had a lot of struggle with NATO regarding what you called at that time "the blockade of

arrests". Can you give us some of the details?

LA: It is very complicated. I think, first of all, NATO itself was very unsure about its role, its emerging new role, not just as a kind of peace-keeper, peace broker but sort of policeman of the region that needed a lot of policing, the region that was in the state of total lawlessness. So we were dealing with a very reluctant partner in IFOR and then SFOR but also a partner that was very ambivalent about its mission. You know the language there was all mission creep and tensions I believe between various sectors within NATO, between say the Pentagon and the State Department. Between the UK, later on, after the change of government in the UK, and other players about how proactive they should be in interfering with the arrest of indicted war criminals and basically in being implicated in civil society in Bosnia.

So, yes, we had lots of difficulty I think in the outset, in turning that into a working partnership. We had very different assumptions as to what the consequences would be of NATO, of SFOR becoming a true partner of ICTY. Their assumptions were very pessimistic - that there would be retaliation, terrible consequences if arrests were aggressively pursued. My assumption, I like to think, which was obvious, was that they had to assert themselves also as a powerful force in the region and they had to be very uncompromising with indicted war criminals who frankly were still causing them a lot of problems. So, I thought there was a mutual interest in disabling these people.

MK: Once you admit, to me at least, that you have tried to shame NATO into action by acting together with Jacque Klein in the first international arrest?

LA: Well, first let's start with the proposition that anybody who wants anything done

would be well advised to choose Jacques Klein as a partner. He is, to say the least, a man of action, he was very keen to be a participant in the arrest of Dokmanović. This was a sealed indictment so the opportunity was wonderful and I think he welcomed the opportunity to show off his capacity in UNTAS - which was a very modest presence compared to what, thirty to sixty thousand SFOR troops in Bosnia - that he could do alone what they said was so difficult for them to do. So, it was I think relatively easy to persuade him to be the first player and sure enough, it worked. And it demonstrated, I think, the hypothesis that in fact, this would be a positive development made it easier than to go to SFOR in Sarajevo and say "Surely, you can do it too, particularly in the same circumstances of the secret indictments."

MK: You have been very criticized for this practice of the sealed indictments.

LA: The first thing I would say is that we were put, because of the noncompliance of the domestic states in the former Yugoslavia, we were put in an absolutely dire position, the position in which in fact our own survival was at stake so they should not be surprised that we had to turn to very extreme measures to ensure what in fact they were obligated to do themselves. Frankly, I don't think there is anything particularly extraordinary about not announcing in advance that you would arrest someone when you know full well they would do everything to avoid the arrest. I don't know a single domestic state, if the police anticipate that the accused will escape or resist the arrest by force, I don't know a single country where the police would send him an advance notice that they would come to arrest him. I mean, these are law enforcement measures that I think are very standard in this kind of climate.

And we had a long track record. There were 74 publicly indicted accused with no

arrest. It is pretty obvious that public indictments did not work. So it seems to me that it was... as it turns out it worked. Unfortunately in some cases, it created casualties. This is regrettable but in a sense it was unavoidable. But I have no misgivings about having used that procedure at all and it was sanctioned by the judges. It was not a cowboy operation. It was a perfectly legitimate, legalized process, very successful.

MK: Back in 1996 in December, you participated in the Implementation Council conference in London.

LA: Oh yes, I remember that.

MK: And I remember how you commented on their discussion about should they arrest or not. And you said, this is not a matter for the debate - this is the law. You have been very angry I would say.

LA: Well, first of all, the background had been just horrendous. We were not invited when in fact all kinds of other sorts of marginal players in the peace process were there at the table. We were not even invited to sit in the back rooms and Nino Cassese, the president then, was furious that ICTY had not been invited to attend. We were a very important piece of that process and yet we were left out. So there were all kinds of phone calls, particularly from him trying to ensure ICTY's presence. And in the end at the very last minute, if I recall, probably at the intervention of the Dutch foreign minister we were told that well, maybe we could come and maybe we could sit somewhere in the back. And president Cassese was unwilling to go on these terms. I tend to be very pragmatic and I felt if anything positive can come of that, why don't I go? I am not the president, I don't represent the whole institution but I am the one who is trying to make things happen. So, I went, I went all alone. I didn't

even bring a single staff member. I was told I could come but certainly, I could not speak so I had no speech, nothing prepared. And when I got there again the Dutch foreign minister insisted that I be given a seat at the table and to my great surprise he insisted that I be allowed to speak which put me, I remember at the time, in the state of the frenzy of trying to draft the few lines. I knew I could not abuse the invitation to speak so I should be very much to the point and very short and basically I thought this is all I can say. It is so obvious that this is not an acceptable debate whether or not arresting war criminals would be a good thing or a bad thing. You were legally obligated. This is the law. And I thought again at that time this was a part of, what I thought was an important strategy, that we had to make people understand that we were not just another player, we were a legal, judicial institution, not an NGO, and not some kind of political actor, we were completely different. But we had, with that, some strengths that were unique such as the law, compliance.

MK: There have been some changes soon after that in the State Department when Madeleine Albright took the position instead of Warren Christopher and also in Foreign Office in Great Britain. So, how important were those changes for the life of the Tribunal?

LA: I think in retrospect, usually it is a series of factors that give you a window of opportunity. And I think in that case if we look back on history, the right moment came and in a sense, we had to be patient, we just had to wait for this right moment and it was the combination of change of government in the UK and the change in the foreign office, a change of atmosphere in, well in SFOR itself there was a change of command, in SECUR, in the command of NATO. There was also the resolution of the issue of NATO expansion which was irritating with the Russians and I felt very strongly that NATO was unlikely to do

something very provocative until this issue of NATO expansion to the East was resolved so as to not further aggravate the Russians. There were lots and lots of issues and the secret indictments were in place and all of a sudden the NATO expansion issue was resolved, all the right players were in place, sympathetic to the Tribunal. The sealed indictment had been shown to work in the Dokmanović case with Jacques Klein. That was the right time and it happened. Now, if one of these factors had not been in place, which one I don't know, but I think that is the way you have to operate in these institutions. You have to be prepared to move, to seize the opportunity very rapidly.

MK: And then in 1998 you announced your intention to start a Kosovo investigation, to send investigators on the ground.

LA: If we go back to January 1998 for instance there was already a lot of information coming out of Kosovo that things were not going well, that the police were very rough that there were incidents here and there. There were many NGOs, particularly NGOs who worked on the ground who were pressing me to assert our jurisdiction. Now I had two problems. The first problem was that all our sources internally were committed. We had finally put in place a strategy of investigating the top leadership. We were very focused, very determined, it was going very well. All of a sudden we had an entirely new file to open and it was hard to convince investigators and so on, to drop their current work and to embark on this thing they did not know very much. So, internally, let's put it this way, it was hard to turn the ship around on a vague theory that bad things were starting to happen.

By the summer of '98 and the early fall of '98 my other big problem was that we only had jurisdiction in Kosovo if there was an armed conflict. To have an armed conflict you



need organized combatants, armies, or organizations that have a command structure. We knew at that point very little about the KLA and Milošević, of course, was always calling them a bunch of terrorists. So, I felt before we... and I knew we would have a terrible battle with him if we tried to investigate, I felt it was important to make sure that our jurisdictional base was very solid and that politicians, including in the Security Council, could not dispute the fact that there was an internal armed conflict.

So, we started collecting information on the KLA. This was very critical for us to be able to show that this was in fact a military-type structure. That took time, it was a new investigation. And then Račak, January '99 blew up. By then we were ready. We knew we had an armed conflict, we had the basis for that, so I felt very sure when I asserted my right to enter because I thought our jurisdiction was unimpeachable. It was a combination of a terrible, highly publicized massacre and a fact that I felt 100% capable of asserting the competence of the Tribunal.

MK: So, then you decided to go to Kosovo.

LA: Not very successfully you will recall. I decided to go. I was very transparent. First of all, I notified, I told Secretary General Koffi Annan that I was gonna go because I knew this was going to be somewhat difficult. I also told Belgrade, I sent someone to the Foreign Ministry in Belgrade and I sent someone to the Yugoslav Embassy in The Hague to tell them that they had to give me a visa. In my view it was just a formality because I was entitled by law, by the Security Council mandate to go to the scene of any investigation and I told them that I would actually, visa or no visa, present myself at the border the next day. So, it did not take them by surprise, in fact, they were very well prepared to deny me entry. Now, the only

interesting comment I can make on this entire episode is that it was my first consciousness of the importance of the media, my first real consciousness of the importance of the press because I was there, I know what happened and I know how it felt, it felt like a total failure, total defeat. I stayed on the border, at the hotel nearby for 2 or 3 days talking to all kinds of people, trying to negotiate my way in. I spoke to general Clark, to general, what's his name, the German general... I spoke to the Russian Ambassador in The Hague who tried to intervene on my behalf. I had lots of contacts, a lot of pressure, and eventually, it did not work. I came back to the Hague almost ready to write a letter of resignation. I felt like I can't do this. Obviously, there was nothing else I could have tried and it didn't work. And yet when I arrived in my office in The Hague the staff were lined up applauding. This was viewed from the outside as a great success moment of the Tribunal, a moment of force and of visibility and yet for me who was there it felt exactly the opposite and then I realized that image and the power of the message. This confrontation at the border was immensely important to explain to the world the work of the Tribunal so what I perceived as a defeat I realized my perception was wrong. The real reality was the reality as perceived by those who of course were not there but were living the moment through the media.

MK: You mentioned earlier that it was difficult to 'turn the ship' because you had the leadership investigation. Was Milošević included in those leadership investigations before Kosovo?

LA: Yes, of course. I say, of course. But, before Kosovo, we had already identified the lines from different crime bases in Croatia and Bosnia that we thought provided an investigatory line that would allow us to move up the chain of command. So, this was all in

place. Now, Kosovo, of course, provided a much quicker route to this kind of investigation. But this was in place and in part this was what was so hard to turn around because these investigations were very focused, were going well and the staff was very dedicated to that. So in fact after Račak we also had the opportunity to then go and seek outside assistance, more resources, gratis personal, you know, a few other things to allow us to do it. Before Račak it was very hard. We had to use internal resources to do a Kosovo investigation.

MK: After Račak, there was a conference in Rambouillet, and then the NATO airstrikes started. At that moment it looks that some politicians, especially Brits and Americans, want to use the Tribunal as a kind of stick against Milošević. How much material did you get from the NATO countries during the airstrikes? How much intelligence or some other material that you could have used in the investigation?

LA: I am very reluctant to comment on the kinds of evidence and information we received because obviously it is before the court at the moment or at least it's been put before the court what material we decided to use. You must recall something that in retrospect I think is a real burden on the work of the prosecutor is that we obtain a lot of information from what you could label "professional information collectors" or "professional information providers" states that have great collection capacity. Most of what we get from them we get under the rule 70. That is we get for lead purposes only. And we have to give an undertaking not to use it unless they then consent and of course they'll never consent unless it's absolutely imperative that we use the evidence, and they feel they can expose the extent of their collection. So, I think typically the prosecutor will not use in court this kind of information if the case can otherwise be made without revealing it and

that is not always within the prosecutor's control. You have an ongoing relationship with these parties and sometimes you just have to accept that they will share but they will not allow to be put in the public domain the information that they provide.

Now, having said that, they always provide less than they purport to when it suits their interest to claim that they are great supporters. So, essentially I think what's critical is that - in the months preceding the indictment of Milošević, on the one hand, I felt quite confident that we were getting close on the important counts that we decided to proceed on, that we had enough evidence to get an indictment confirmed. I was also persuaded that the minute we brought the indictment that would be the end of the supply of information because they would decide that we had enough. So, I tried very hard especially in the weeks just before we confirmed the indictment to get everything I could because I thought it was my last chance, that after the indictment was confirmed basically they would say, "If the judge is satisfied that there is enough evidence we don't need to give anything more". So, I made a very last effort going to all the important capitals to try to pull out everything that I thought was still out there.

MK: And they have been cooperative?

LA: To some extent...You never know what you don't get. Sometimes you can speculate that it is not credible for instance that some forms of information has not been collected, and is not available, particularly in two areas - in signal, in interception, electronic interception of communications, and also in highly sensitive human intelligence. Sometimes you think there's got to be more, but on the other hand, you can allege that you can assume that, but you can never prove that because obviously, you don't have it.

MK: Isn't that a way that foreign governments can influence the work of the prosecutor, by giving or withholding some information. This is a critical question.

LA: The question of access to evidence is absolutely critical for the work of these institutions and it is a problem that you don't face in national courts, almost never. First of all, because you have coercive powers. In national courts you get the court to issue an order to the ones who detain the relevant information and also typically in domestic courts, in either civil or criminal cases, you don't make a living as a prosecutor trying to probe highly sensitive sources like the military intelligence community. Once in a lifetime as a domestic prosecutor, you may have to do that. But in the routine cases, the information that you seek is information that the holder does not want to share but it is not otherwise immensely sensitive for state interest. In international courts, virtually anything you want, or the best information you want, you have to go and get it out of these sources over which, one, you have no authority and, two, who are not in the business of sharing with anybody, let alone with foreigners. They don't even share with their own nationals. I am talking here about the intelligence, criminal intelligence, and military intelligence community are not in the business of sharing. So, the key there is to develop a professional working relationship based on trust and mutual respect and start working with these communities in developing long-term channels of exchange, not just information but analyses. It is one thing to have information and it is another thing for analysts to get together and try to comprehend the significance of these snippets of information that they have here and there. It is very difficult.

MK: I know that many times you have been asked by the journalists why you haven't

yet indicted Mr. Milošević. Did you ever get those questions from politicians or diplomats?

LA: From journalists all the time, from other sources not directly. Diplomats never ask direct questions like that. They... No, I can not recall any pressure, direct or even subtle, to move any faster than we were moving, except I think it is fair to say from the NGO community, groups that were interested in victims rights, which is perfectly normal, that is what they do, and also internal pressures. I think early on, it is clear that judges were part of a movement that was pressing very hard for the prosecution to move faster, not to any particular target but to move faster. I have no recollection of particular incitements or pressure coming from political or diplomatic sources to indict anybody. In fact, they seemed to be quite puzzled that we were still there, doing this work, and I am not sure that anybody thought that we would actually, eventually come up with the indictments at the highest levels.

MK: When have you decided that you have sufficient evidence for the first Milošević indictment and what did you do when you have decided to sign the indictment? Did you consult anyone outside of the Office of the Prosecutor?

LA: No, I never consulted anyone outside the office of the prosecutor. Inside the office, we had a core group. We met virtually every day, certainly every day that I was there I met with that team every morning. Now we are talking in the last month preceding the indictment. There were a few critical questions that we felt we had to answer which is - it was not so much "Do we have enough evidence", the question was "Do we have enough evidence for what?" We knew we had enough evidence for some things, the question was should we wait. For instance, I won't say this was critical, do we have enough evidence for a

count of genocide and if not should we wait and should we develop this, or should we go just on crimes against humanity, and if so is extermination essential. You know, these were very legal debates, lawyers, investigators, lots of views. Usually, I did not participate very much, I listened and then I decided on what I thought was a serious enough indictment that was not pro forma, that was not just to say “we have something”. It was a very serious indictment and we moved to have it confirmed as soon as we could put it together. Which, as you can imagine, is a huge amount of work in collecting, relating the allegations in the indictment to the supporting evidence. So it took a lot of drafting and drafting and revisions and we worked on that and we presented it. The timing was completely driven by this internal process.

MK: But didn't you feel a need to share this huge responsibility for this move, with some senior statesmen or diplomats who may give you some advice? Are you going to provoke a Third World War, things like that you know?

LA: No, I never felt the need... First of all, I was extremely well supported internally. I had full confidence in the lawyers I was working with, I had confidence in their professional judgment, in assessing the quality of the evidence and so I felt really good that we had a team in place. Now, as to the political environment in which we were working, you know, I read the newspapers, I am not a political scientist, I am not a politician and frankly, that was not the job I was assigned to do and we had very little, sort of, political analysis capacity within our own office. You know, we read the newspapers like anybody else but we were not a foreign ministry, this was not what we did.

I felt very strongly that the Security Council had given me a mandate. They knew

what I was doing. I was doing exactly what they told me to do. They could change that mandate at any time. They could stop me, they could give an amnesty to Milošević, they could tell me to stop. They could change the terms of the Statute, they could take Kosovo out of it. They could do anything they wanted if they felt that an action on my part along the lines of what they told me to do would provoke the Third World War. That was their problem, not my problem. I did exactly what I was told to do, which is to investigate and prosecute the persons most responsible for serious violations of international humanitarian law in the former Yugoslavia. It was not a secret that Kosovo was that and I was doing it. I had no second thoughts and I certainly did not agonize about timing and political consequences. That was for others to worry about.

MK: But, in many circles, the indictment was perceived as a kind of, almost as a part of NATO operation against Serbia, legal part of the military operation against Serbia. Were you concerned about this perception?

LA: Well, in the end, I think... I learned, again as I said, this lesson that you can't control how others will perceive certain events. I think history will make very clear, when all the archives are open, when everybody can consult all the internal documents it will be very clear that, and I think it should be relatively obvious, that we were not working under the kind of authority or direction of NATO. NATO had no idea what direction to give us, even if they had wanted to direct our work. Frankly, I think they were as confused as everybody else about what the effects of this indictment would be. They were very wrong in their assessments of what the effects of arrests in Bosnia would be in 1996 and 1997. And as for what the reaction would be to a Milošević indictment during the Kosovo conflict, I think if I



had asked, which I was wise enough not to, they would have probably told me that it was likely to be a negative effect. That would be my guess. Why? Because they don't like anything they can't control.

I never received instructions from NATO. I never sought instructions from them. I certainly never asked them what do you think about the Milošević indictment now or tomorrow or in three weeks, would it be good or bad? Frankly, I think they had no idea, I think they were very ambivalent as to whether this would precipitate a settlement of the conflict or precipitate an endless war. My guess is that if I had asked they would have told me to do nothing. Mostly because I believe that they don't like the uncertainty of a process they can't control. But at the time I don't think anybody had a sophisticated analysis of the likely consequences. I didn't. And I felt that it was not for me to hold back on some kind of political analysis of consequences that, I think, were quite unpredictable. I wish I could take credit and now say "Oh, I knew full-well that this indictment would demoralize the Serb leadership". It would be great if I could take credit for that. Unfortunately, it would not be credible or accurate.

MK: How much you were influenced by the speculations that Milošević may be offered some kind of amnesty or kind of "golden exile" if he accepted a peaceful solution for the NATO Serbia crisis? There was a lot of talk about it.

LA: The question of possible Milošević being put out of reach of the Tribunal was a huge concern for me. That I took very much into account in trying to speed up that process. I imagine that there must have been all kinds of political discussions about the NATO exit strategy in Kosovo. This bombing campaign had been going on for weeks. And I assumed, I

have no information but I assumed that the part of the exit strategy might have involved either an amnesty, which frankly, I think, would not have been binding on the Tribunal, only an amnesty issued by the Security Council could have had legal effect. I thought this was very unlikely since NATO didn't even have a Security Council mandate to be there in the first place. So I wasn't worried about a legally binding end to that process but I was worried about a deal that would make him more out of reach, would make it more difficult in reality to move forward. So I figured, certainly from that point of view, that the sooner we move the better.

MK: One of the negotiators, international negotiators with Milošević Mr. Martti Ahtisaari said that he didn't know whether he should laugh or cry when he heard about the indictment. You said you have informed UN, a few days in advance, only UN as far as I remember. But the OTP channels leaked the information through the Dutch Foreign Ministry to some other countries.

LA: Yes. First of all, I informed no one outside the OTP, obviously, of the existence of the indictment until it was confirmed. I didn't ask anybody's permission and I didn't tell anybody that I had an indictment. In fact, I signed it, I think, on a Saturday. We produced it to the judge over the weekend and the formal confirmation hearing was on Monday and it was confirmed on Monday. During those days I never told anybody that this was happening. It was absolutely imperative for me that, first, I had to have the indictment before I told anyone.

After I had the indictment I asked the judge to keep it secret, sealed, for a few days for several reasons. The main reason was that there was a UN sort of investigative team that

I knew was in Kosovo to sort of evaluate what their humanitarian needs would be after the conflict, what the UN would need to deploy, and so on. Part of that team had one of my staff members. I felt that this person was at risk if the indictment was made public before they left Kosovo and that the UN team generally might have been at risk. So I was very concerned to ensure that the indictment was not made public until they had an opportunity to leave and they were scheduled to leave on Thursday, I think, of that week.

I also knew that Martti Ahtisaari was negotiating in Belgrade on behalf of the Secretary-General and that, again, this bomb-shell, which produced on his part this puzzling response as to whether he should laugh or cry, might terribly complicate his position and I saw no impediment to letting him know if the Secretary-General felt it was appropriate, so he would not be caught sitting in Belgrade with this event unfolding. So I personally told the Secretary-General essentially for those reasons. I told him that the delay was very short, that the indictment was gonna be made public on Thursday unless there was a delay in getting the UN team out of Kosovo in which case if he knew there was any delay, he should let me know so I could try to expand the secrecy period of the sealed indictment. I was very concerned that we could not keep it secret for very long, I thought there was a danger of a leak. Then I asked the Dutch foreign minister to inform others, essentially of just that, that there was an indictment, it was confirmed so we had reached the point of no return, and that it would be made public with all the details on Thursday. I didn't tell them who else was indicted and that became a very hot issue in these few days. I think because when they realized that Milosevic was indicted there was a great deal of interest in who was the dolphin, who was the fall-back position for negotiating purposes and that of course depended on who else was indicted.

MK: You informed Kofi Annan on Monday?

LA: On Tuesday, I think.

MK: And also Dutch Foreign Ministry. Did you get any reaction before the indictment was made public?

LA: Well, Kofi Annan I met in Stockholm. I communicated to him that I had very confidential information to convey to him. Surprisingly enough there were no secure channels of communication that could be used. So I flew, that's why I think it was Tuesday but maybe I'm wrong. Maybe it was Monday, now I forget. But I, he was in Stockholm and I flew there and I spoke to him, totally in private, there was nobody else present at that meeting. My recollection of that event is that, as usual, he was first of all very supportive, very calm. I think grateful that at least he had some room to maneuver. I think he was worried about his delegation in Belgrade, about Martti Ahtisaari, his mission in Belgrade, and the team on the ground. This was very operational. He told me he would confirm they were leaving on Thursday, would let me know if was any delay, and would insist that they would come out on Thursday. I don't have a recollection of a great...we did talk a little bit about where this would all go, but this was a very serene meeting not confrontational. Essentially, we both understood that this was sort of history unfolding and we just had to wait and see.

MK: But from this second channel, did you get any reactions before the indictment was made public? Dutch Ministry of foreign affairs and the other ministries.

LA: Let's put it this way. I made it very clear, first of all, in case there was any

misunderstanding, I repeated that the indictment was confirmed. I also said it could not be kept under seal for very long, I only had an order until Thursday, and I believe that even if I tried to expand the secrecy of the indictment, that too many people knew, as much as we had been very prudent in the Office of The Prosecutor,. The press I think, were very agitated over the whole issue, everybody was very intense. So I thought realistically, “this is gonna come out, it’s a matter of days, not of weeks”. So it didn’t leave a lot of room to intervene. I also made very clear that interventions, first of all, would be completely futile because this was done and would be quite inappropriate because I didn’t seek instructions beforehand as I shouldn’t have, and that any attempt to influence me was in any event too late and, secondly, would only look bad in a historical context. So I think as a result of making that position clear, I didn’t get any feedback.

MK: But after the indictment was made public, did you get some reaction?

LA: The reaction I got was, as is usually the case, the first reaction was from the press and the press was overwhelmingly positive. And therefore the political response was also very positive. To me, that’s quite inevitable. I think that if the reaction coming out of the media had been negative and so on, I am sure that I would have heard in no uncertain terms, “what a foolish thing I have done”, and “how dare I go along”. But essentially even before it yielded more positive results, the press was supportive and consequently... And still, I think people had no idea, the response was...how can it be negative? I have done exactly what they told me to do. When I say “they” I mean the key members of the Security Council, the ones who had an interest, the key NATO members, and members of the Security Council. How could they tell me that this was inappropriate when I had done

exactly what I had been mandated to do. Now, they started to speculate about what this would do but then...

MK: Did you feel relieved when after eight days the peaceful solution was found to stop the...

LA: Oh, I was very relieved. I mean, for all I said about myself not having a political role and a kind of political accountability I was not blind to the fact that I was an actor in an intensely political environment about critical issues which involve warfare and potential loss of life. You can't ignore that environment. And in fact, even though I would have had no reason to feel in any way responsible if this had complicated the outcome of the case I think I would have felt terribly ambivalent about my strategy had it had adverse consequences. So, no, I was delighted that events turned out as they did.

MK: And then you left and two years later Mr. Milošević came. What was your reaction? How did you feel at the moment when you heard that Mr. Milošević is in The Hague on the basis of your indictment?

LA: At the time the indictment was issued I said publicly and I firmly believed that Milosevic one day would be tried one day in The Hague. I resisted all the questions that asked me to speculate when this would happen.

It was impossible to speculate in the spring of 1999 to try to predict when Milošević would be turned over and in what circumstances. Again intuitively I thought it was more likely it would be through a loss of power internally. Even in my most optimistic predictions, I would have never believed it would happen that quickly. I think it did happen

surprisingly rapidly. But I remember very clearly the moment I found out. I was coming out of the plane in Australia and I was meeting my daughter and John Ralston who had been, of course, so much part of my life around that indictment and I had a message as soon as I came out of the plane and the message said: "watch TV". And that's when I found out that the arrest has been effective and I spoke to John Ralston then expressing our mutual surprise and delight at how rapidly and how well this had all turned out.

MK: After indicted Milošević, you have also created one working group to study allegations that NATO has committed some crimes during the air campaign in Yugoslavia.

LA: This was in the very last weeks of my... by then it was clear that I was leaving. There were groups that were adamant that they had credible evidence alleging, and some things certainly had specific enough content that I thought that they had to be looked at, as a matter of law and as a matter of fact, like the use of depleted uranium for instance. I felt that, well first of all, let me make it very clear, that right from the day one of the NATO bombing campaign, I went to each one of the lead NATO capitals and was very poorly received in most of them when I took the opportunity to either remind them or to announce to them, because frankly, I can not tell whether they had already thought of that, that I had jurisdiction over their military action in Kosovo.

The reaction was in each one of them, in some cases they seemed to be surprised, in which case I question the quality of the legal advice they got before embarking on this adventure. In other cases, they seemed outraged that I would have the nerve to even suggest that they could do anything that would trigger my competence. I told them it is not the question of whether I think you will or will not commit the crime, I just want that we

both understand that if you do, I will be there. This was as I said very very poorly received. And at the same time during the bombing campaign, the NATO spokesman took many opportunities to explain how carefully planned the operations were and how attentive they were to compliance with international law, so that's fine.

In any event, when these allegations were made, some came from extremely non-credible sources, others came from sources that seemed a little more respectable. Just before I left I thought we should look at the legal and factual foundation of these allegations.

MK: Did you read the report, afterwards?

LA: I can't comment on anything that happened after I left.

MK: Let's just go back to deal with one specific subject which is a plea agreement. During your period I think there was only one, as far as I remember. Now, as you can see, I call that "acute guilty plea syndrome". It's a kind of virus. You had six this year, 14 altogether in the ten years of the Tribunal. What's your opinion on plea agreements?

LA: This will be a reminder that the whole time I was in The Hague, of course, I had dual capacity. I was also the chief prosecutor for the Ruanda Tribunal where I then felt that at that time I felt my greatest achievement was the guilty plea of Jean Kambanda who had been the prime minister of the interim government at the time of the genocide.

In retrospect, I became a lot more ambivalent about the real value for international justice of these guilty pleas. The reason I thought, particularly at that level, and I won't comment on any particular case but in general terms, I thought the great value of a guilty plea is the ultimate barrier to revisionism. Because if you convict, the accused and his



supporters can continue to say “Oh, the court was biased, the evidence was weak, I didn’t do it”. But, when the participant himself, the perpetrator admits his guilt, and if he expresses remorse, it is even better. But even just this admission of participation I thought would kill revisionism in a very fundamental way. It was very important in Rwanda and I think it was very important in many sectors of the war in the former Yugoslavia. So, in that sense, I thought it had a tremendous value.

I don’t think we could talk of plea bargaining as we do in some national jurisdictions in which there are all kinds of trading of sentences and cooperation. There I don’t think it happened. That’s not the point. The point is not to try to bargain a huge volume of cases. So it seems to me that the legal capital is on this question of getting an insider basically to admit culpability. There are a lot of disadvantages, but maybe a lot less so as more and more pleas are taking place, is that the story is not told. It doesn’t matter so much when you have multiple trials, as you have in the ICTY, when the various parts of the story, of Vukovar, Srebrenica, Ahmići, these stories have been told, in fact in cases, they are told time and again. In the case of the Rwanda tribunal, this culpability of the prime minister which was is all contained in the short 20 pages agreed statement of fact, did not have the effect of the unfolding of a story in court with witnesses. I think its impact in a sense, got lost. And in retrospect, I am not sure it had the benefit I hoped it would have. So, in a Tribunal that is under a lot of pressure to wrap up its proceedings, I think it is inevitable that it becomes very attractive, certainly for the prosecutor, to move along by possibly dropping certain charges and focusing on the essence of the case and obtaining a guilty plea.

MK: So, It may somehow dilute the effect of the trial, the storytelling during the trial,

the witness, and victims' testimonies?

LA: Yes, but you know, but after 10 years in the Hague it is possible to suggest that there is a bit of storytelling fatigue, certainly on the part of the judges.

I think in cases for instance where the guilty pleas are occurring in cases where the main story related to the events has been already told, I don't see any downside. I think the guilty pleas are then very positive. But they are not a very good substitute for the richness of a trial in the cases where that story has not been told.

MK: The final question would be, now, to wrap up all the most important contributions, ICTY contribution to international justice. A kind of legacy.

LA: I think, without inflating the importance of this institution, I think the existence of ICTY will be as important to international law and peace and to the development of compliance with humanitarian law, it will be as significant as the war in former Yugoslavia was for that country and for Europe. In that sense, as an institution, it is as significant as the war itself was.

It's an odious comparison in the sense that war created loss of life and so on, but the breakdown, the death of Yugoslavia, was an earthquake in that country and in the region itself. I think ICTY was an earthquake in international law of the same order of magnitude in terms of the wave that it has created. ICTY has created a point of no return in accountability, in the end of the culture of impunity and in the world's expectation that military and political leaders must be made to account for their criminal actions. To me, it was an extremely dramatic change in world attitudes and the legal support for these

expectations.

So I think it is immense what its contribution has been. In more detailed terms, its professionalism, the quality of the work will be, you know, there will be debates as to whether any particular decision was correct or incorrect in law but that will never displace the I think, legacy of the fact that it succeeded against most expectations at the outset.