

Project:

**ICTY ORAL History - Documented by SENSE**

An Interview with

Serge Brammertz

SENSE Transitional Justice Center

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Interviewee: Serge Brammertz (SB)

Interviewer: Mirko Klarin (MK)

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*Shortly after taking office in January 2008, Belgian jurist Serge Brammertz talks about the priorities of his first term as ICTY Chief Prosecutor.*

MK: Let's start with your motivation. Why did you accept the offer to become the last Chief Prosecutor of this Tribunal, the one who is going to turn off the lights?

SB: When I started, when the conflict started in the former Yugoslavia, I was a junior prosecutor in my hometown in Belgium. And as many others, during this period I was very much shocked by the events and it was difficult for me to believe that a war could still happen in Europe and since then I, of course, followed the evolution and the creation of the Tribunal with its success in prosecuting those mainly responsible for crimes committed during this conflict, but also with all its challenges in terms of difficulties in cooperation, difficulties in arresting fugitives. And during the last six years of my professional career as a federal prosecutor in Belgium or at the ICC, I worked very often with colleagues from the ICTY, so I was asked to become a part of this process, a part of the Tribunal. I accepted without hesitation.

MK: Can you define your priorities now as a Chief Prosecutor for the last three or four years for how long this institution is going to last and work?

SB: Yes, of course. First of all, continuity is extremely important. First priority is

continuity in the ongoing activities of the Tribunal. As you know, there are still proceedings ongoing in relation to 50 accused at the pretrial, trial and appeals level, still for remaining fugitives, so after the continuity, on one hand, continuing ongoing trials. The second priority of course is to arrest the remaining fugitives. And we are asking the support of the international community to have the remaining four fugitives arrested. It's indeed very difficult for me to imagine that this Tribunal could close its doors one day without having brought to justice those persons. The third priority is of course the interaction with the region, with the prosecutors. The closer we are coming to the final date or the closure of the Tribunal, the more it is important that our colleagues, prosecutors, war crimes prosecutors and local prosecutors, can do their job. And one of my priorities is of course to support my colleagues who are doing a difficult job in a not easy political climate, and I think that also our support and the support of the international community is needed.

MK: Can you be a little bit more specific concerning this last question. Because over those 15 years the Tribunal has indicted and tried some 160 suspects. But this is only the tip of a bloody iceberg you know and there are so many notorious unindicted persons for which there is more than reasonable doubt that they have been involved in the war crimes in former Yugoslavia. It's obvious that you have here an enormous documentation about what happened there. How are you going to transfer those evidence and cases to local prosecutors?

SB: As you know all cases where the Tribunal has started investigations, formal investigations, have in the meantime been transferred to the region. We are on other cases in daily contact with local prosecutors who are receiving requests for assistance almost

every day in order to transfer documentation available with the Tribunal. It's of course important that in the future the prosecutors have to have access to this information which means a strategy will be needed to deal with the archives, with all the documents available to make sure they are still accessible to the prosecutors, also after the finalization of the completion strategy.

MK: Can you speak... can you give us an idea, a vague idea on how many cases can be transferred, approximately, to all countries of the former Yugoslavia?

SB: All cases where the OTP has started investigations as such, have been transferred. So, currently, we are working with local prosecutors and local international prosecutors to see what kind of cases can be started also thanks to the information available here. But to give a figure, I'm really not in a position today to give a figure about the volume of cases.

MK: Let's try this way. In the many indictments, especially in the last five or six years, there have been mentioned a lot of participants of joint criminal enterprises. Some of them have been indicted and some of them not. Are all those who have been named in the indictments among those cases who were transferred to the region?

SB: You will have to look into all these cases individually to see what kind of information is available, what is not available. What is possible for the local prosecutor to do. But, as I said, I'm not yet in a position to really give a full assessment about the volume and about the way exactly this will be handled. We are working on it, of course.

MK: Let's go back to the fugitives, Karadžić and Mladić. Obviously, you said that you

cannot imagine that this Tribunal closes before they are brought to justice. What, if anything, you will do differently than the previous prosecutor who also tried to get those indictees, specially Karadžić and Mladić. Do you think you can do something differently?

SB: I will of course do what my predecessors have done, which means that I will do everything in my power, everything in my possibilities to make sure that these persons are arrested but, as you know, as we all know, it will largely depend on the cooperation of the countries in the region and the countries of the international community. So I will remind every day, if necessary, the international community that the international community has the obligation to support us in this project and that there can be no long-term stability in the region without having brought to justice those remaining fugitives. So, as I said, it is a partnership between the Tribunal on one hand and the countries of the region and the international community on the other hand.

MK: But still. Are you continuing the work of a so called tracking team who is trying to help the local authorities to locate the fugitives?

SB: Of course, the mechanism which was put in place by my predecessors will still operate in terms of interaction with war crimes prosecutors, with coordination by the setup in the region to coordinate with us. And of course, we are looking forward to the interaction and cooperation with the law enforcement and intelligence community in the international domain to obtain the information.

MK: Recently you've been in Brussels, you met with Mr Solana and Ms Rhen. Do you feel that the European community or the European countries' support of the Tribunal is slowly crumbling?

SB: I've indeed been in Brussels where I met with Mr Solana and Ms Rhen and I met in the meantime quite an important number of ambassadors of European and non-European countries. Personally, I have no doubt that the EU is very supportive of the work of the Tribunal. The respect of the rule of law, the fight against impunity is one of the fundamental principles on which the EU is built. So, for me, it is quite impossible to imagine that the EU and European countries are not supportive of the work that the Tribunal is doing.

MK: So, do you think that the policy of conditionality is important in the sense that without that policy the countries are not ready to fulfill their obligation or less ready to fulfill their obligation...

SB: What we have asked the countries of the EU, the European institutions but also other countries, is to use all legal means to put pressure on those who can be helpful in arresting the remaining fugitives. This is the strong message we are giving to everybody. Now, the conditionality, of course, if you look into the past, everybody has to agree that the conditionality was very successful in having fugitives arrested.

MK: So, you hope...

SB: We, of course, hope that everybody, EU included, keeps pressure on all countries to help us in fulfilling our mandate and to have the remaining fugitives arrested, of course.

MK: How you are planning your first mission in the region and if you are planning, can you tell us when approximately you plan to go there to meet the people, to meet the representatives of governments, maybe representatives of victims, and also what would be

your message to them.

SB: Yes, I'm of course planning to go to the region. January I'm mainly dedicated to trying to learn my job here and internally and having presentations on all ongoing cases and I'm of course looking forward later this month, February and March, to go to all countries in the region. It's extremely important for me. What will be the message? As you know, I'm asked by many people to make assessments about cooperation. And of course, I've made no comments so far in this regard and I'm only referring to assessment, critical assessment, made by my predecessor Carla del Ponte. So, I'm looking forward to go to the region to establish my own contacts and to establish a trustful relationship with all the interlocutors from the law enforcement community but also from the political level. And what will be the message? The message is of course that while respecting each interlocutor for what he is and what he represents, I will at the same time be very firm in insisting on the necessity and obligation to cooperate with us in order to continue fulfilling our mandate. I think it's in the interest of the countries in the region, it's in the interest of the Tribunal, it's in the interest of Europe, it's in the interest of the international community that the Tribunal can complete its mandate in the best possible way and, as I mentioned several times, the arrest of the remaining fugitives is one of the key elements where we have altogether the responsibility.

MK: Are you optimistic?

SB: You know, I have been asked several times by people, so you are arriving at the end of the mandate of the Tribunal. For me, it's a new job, it's a new start, it's a 4 years mandate, so, of course, I'm optimistic because I think that there is no alternative to a

successful completion of the Tribunal's mandate. At the same time, I'm realistic enough, I'm not naive, I'm realistic, I know that the political situation has always had an impact on the work we are doing but as I already said, I'm personally absolutely convinced that this page of history can only be turned, that long term stability in Europe can only be achieved if this process has the end as I described by having the main responsible brought to justice.

MK: And if they are not brought to justice, I mean those four fugitives, before the end of your mandate, do you see the possibility of some reduced or rumped Tribunal to stay in place or to stay in standby in case that they are arrested later?

SB: I think that we have to put all our energy in having those remaining persons arrested in the near future, so we can't hope and put too much energy today in this future mechanism. Having said that, I think that the message must be very, very clear, that there can never be a safe haven or the impunity for the remaining fugitives. There must be a mechanism in place that those arrest warrants, international arrest warrants will remain valid and that a mechanism, a body, is created to make sure that whenever these persons are arrested in the future, they are brought to justice.

I think this is quite, quite obvious. Even after... even once the Tribunal has to close its doors, there are still many functions to be performed. You have mentioned access to archives, access to information, but there are still witnesses in witness protection programs, there will be still persons in serving their sentences, there will be for years legal questions to be addressed by a kind of downsized Tribunal, and as I said it's very important that this is clear to everybody, that this is not because perhaps one day the Tribunal will be closed that it would be the end for the search of the remaining fugitives and in particular

Mladić and Karadžić.

MK: Thank you very much.

SB: You are welcome.