

Project:

**ICTY ORAL History - Documented by SENSE**

An Interview with

Richard Goldstone

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Interviewee: Richard Goldstone (RG)

Interviewer: Mirko Klarin (MK)

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Richard Goldstone, the first ICTY Chief Prosecutor (1994-1996), in a July 2003 interview, speaks about the difficulties the court faced at its inception, the first indictments, and the lack of political will of the major powers arrest war crimes indictees.

RG: When I arrived at the Tribunal in the middle of August of 1994 the future of the Tribunal looked bleak. Many people had written it off as a failure. It had already been set up 15 months before. It took 15 months to get a prosecutor and even well-wishers and supporters of the Tribunal were pessimistic. They thought that the major powers had abandoned the Tribunal. There were 11 angry, frustrated judges who had no work being prepared, had spent a lot of time preparing the Rules of procedure and evidence and there was no work being prepared. So, it was a great deal of gloom and pessimism when I arrived. So, when I look back now, ten years later, it's with a great deal of satisfaction that the Tribunal has been the success it has. It's a working court, it's busy, it's had a number of trials and successful trials and that's a matter for great satisfaction.

MK: But when you left the Tribunal two years later, in early autumn 1996, you didn't sound very optimistic. You sounded very critical, you accused the international community, the founding fathers, big powers, of cowardice and double standards and you warned that the Tribunal may be a failure.

RG: When I left there was only Tadić. The prison of the Tribunal was still virtually

empty. Many indictments had been issued, including Karadžić and Mladić, and people were not being arrested. Indicted war criminals were walking around and driving freely in the former Yugoslavia, even in the towns where they committed their crimes. From the point of view of the victims, they felt let down. The Tribunal was set up for them. And the major powers, particularly the NATO powers, were not prepared to risk a single injury to go and arrest war criminals like Karadžić and Mladić.

That's what I was told by the military people in the Pentagon, not the people in the field. The attitude that I found by the senior politicians and the senior military people, particularly in Washington DC in 1995, was that they were not prepared to risk injuries and let alone lives of their soldiers in consequence of arrests of war criminals. They made it clear they weren't so concerned about the arrests. They were concerned about the consequences. They were concerned that hand grenades could be thrown into American barracks, that American soldiers or politicians could be taken hostage. That was their main concern. And I conceded - of course, there was a danger if you go and arrest somebody like Mladić in the former Yugoslavia. He had many people who regarded him as a hero. The same applies to Karadžić. And there could have been consequences. But from my perspective, the United States and the other NATO countries were responsible for setting up the Tribunal and if they took it seriously it was their job to ensure that the people indicted by the Tribunal were apprehended, were arrested, and brought to the Tribunal, even if there was a risk. That's what soldiers are there for.

When I had discussions with political leaders, in particular, I remember with the Secretary of Defense William Perry in the United States in Washington DC, I used the

analogy of domestic law enforcement. I said, if there was a serial murderer, a serial rapist, who went and hid in some cave in the California desert and he surrounded himself with well-owned bodyguards, the law enforcement agencies in the United States, the police, would never have said: We're not going to risk going to arrest this dangerous man who's got, bodyguards. If necessary, they would have called in the army. And if there was a shootout, they would have gone ahead in order to arrest somebody. And I said: I didn't see why it would be different in respect of the best-equipped army in the world not having the will, though they had the power, they had the capability, but not the will to go and arrest these people against whom such serious crimes had been charged.

### *The Forgotten Victims*

RG: I also pointed out that when the United Nations Security Council set up the ICTY it was a statement to the victims: We care about you, we're going to do something about your victimization, we're going to set up some criminal justice system to bring the perpetrators to justice and if they're found guilty to be punished. And I said: The victims must have felt good that something's being done. And then, when it took 15 months and there was no prosecutor, they must have felt: What's going on here? They're playing games with us. And then the prosecutor was appointed and again their feelings must have been boosted and they felt: Well, something's now happening. And then indictments were issued against perpetrators, and particularly against Karadžić and Mladić. And they must have felt: Well, now things are happening. And then, of course, when those warrants of arrest were not enforced, I can just imagine how the feelings of the victims must have been too terrible for them. And it seemed to me, and I made the point publicly at the time when in The Hague

and privately in the discussions I was having, that this is a callous way to treat victims. It's almost playing with their feelings and allowing political decisions to get in the way of morality and justice.

MK: The most important indictment you signed has not been tested in court because the accused are still at large. How do you feel about it?

RG: I feel angry and frustrated at the failure of the powers in the former Yugoslavia to have arrested Karadžić and Mladić. In 1995 when they were indicted, they could have been arrested. We knew where they were. The NATO forces, the armies knew where they were. They were traveling around. Of course, they had bodyguards, according to reports. But you had, as I say, the best-equipped army in the world there and there can be no question they could and should have been arrested.

I don't believe that any deal was done as a result of which Karadžić and Mladić were not arrested. I'm not a great believer in these conspiracy theories. I think it's much more simple. It was political, it was the absence or the lack of political will to give the necessary orders. And Richard Holbrooke makes that clear in his book "To End the War", in his book on Dayton. He says that he and the White House, the Clinton White House, wanted to have one of the terms of Dayton the arrest of indicted war criminals, but the Pentagon sent a message saying they were not prepared to risk the lives of their men without a written order from their commander-in-chief, the president. And Holbrooke says: Who could expect the president to give that order in writing during the election year 1996. And I said at the time: Imagine again the victims, that the authors of their misfortune Karadžić and Mladić, if it wasn't an election year, maybe would have been arrested. So it was politics. There were

no secret deals. I just don't believe that.

*Moscow's Intervention in Favor of Karadžić*

RG: Shortly before Dayton I had an approach from the Russian ambassador in The Hague, ambassador Skotnikov, saying that he had been instructed to inquire from me whether it would be possible to suspend the indictment against Karadžić to enable him to attend the Dayton meeting. And I explained to ambassador Skotnikov that it wasn't within my power to suspend an indictment. It was possibly in the power of the judges, but I said the judges won't do it if I don't ask them to do it, and I won't ask them to do it. I said: It's just not on. And that was the end of that matter.

*No Dayton Accord without the Indictment*

RG: There's no question that the Dayton meeting would not have been held if Karadžić had not been indicted. Because he was indicted he couldn't attend Dayton. Because he couldn't attend Dayton he had to accept that Milošević would represent the Bosnian Serb administration.

It was made very clear by the former foreign minister and Bosnian ambassador Muhamed Sacirbey and also by president Izetbegović that they would not have attended Dayton if Karadžić was at the table. And, of course, that's obvious because Dayton was in November of 1995, few months after the massacre at Srebrenica and there's no way that the Bosnian and Herzegovina leaders could have sat at the table with the Serbian leaders.

MK: But they sat at the table with Milošević who was later on indicted for all those crimes, including Srebrenica. Did you investigate Mr. Milošević?

RG: I made it clear at the time. I was always asked this question and the answer I gave you repeatedly was that prosecutors can't say who they're investigating. But I gave the assurance that we were investigating all leaders and of course we were investigating Milošević, together with all the other leaders in the former Yugoslavia.

You know, this is the problem that a prosecutor and a war crimes office in a war crimes tribunal has. The journalists make allegations, journalists write their public views in various countries but you cannot indict people on that sort of evidence. It's not real evidence. It's not the evidence that can prove guilt beyond a reasonable doubt. And there were questions asked why we hadn't indicted Arkan and Šešelj, apart from Milošević, and this one and that one. And, of course, it's a slow, tedious, plodding job to get the hard evidence.

MK: You have been criticized by the judges at your time for your pyramidal strategy of the prosecution going from the foot soldiers to the leaders. They issued a declaration asking you to investigate higher echelons of power. What were your relations with the judges at that time and how did you feel about that pressure from the judges?

RG: During the time that I was the chief prosecutor the relationship with the judges was a difficult one. The judges were angry and frustrated and I understood that. And I felt sympathy for them in not having work being prepared. One of the judges, in fact, even said that he felt embarrassed, he couldn't go to his club in his hometown because his friends laughed at him: What kind of a judge are you, you're getting a salary from the UN and you've got no work to do. And they spent a lot of time drawing up the Rules of the procedure and evidence and there was no work being prepared. Our problem was that

unlike Nürnberg - if you look at the Nürnberg record, you'll find the evidence mainly was documentary, the Nazis left documents, they convicted themselves out of their own handwriting - in the former Yugoslavia there was no smoking gun. We had to build cases with witnesses. Who could the witnesses tell us about? They could tell us about the people in the camps, the camp commanders. Even the people at Srebrenica, who could they tell us about? Their battalion commander they could tell us about. They had no evidence to give us about the orders higher up. So we had to build cases from the bottom up. And we had to prove, for example in Bosnia, that the ethnic cleansing happened over a swathe of villages that were important for the Serbs to join where Bosnian Serbs were to Serbia proper. And that's why we had to start with Omarska and Prijedor and all the rest of it and show that some orders must have been given and the orders were given by the people in charge. But without investigating and indicting the foot soldiers we wouldn't have got up. It wasn't the judges' business to know what evidence we were collecting. If they'd have had that information they couldn't have sat in the cases. And it's in that sense that I said that we in the Prosecutor's office to an extent have to protect the judges from themselves because if they would have had information privately from the Prosecutor's office, they could have put themselves in a position where they had a conflict of interest. I could even have put the Prosecutor in the position of having to ask them not to sit because of information they had. And this was the difficulty, and it was a human difficulty. They were concerned that we weren't progressing quickly enough, but they didn't have the information. And this is really the background at that very difficult time in the Tribunal's life.

MK: One of the problems you had with the judges was that they thought that you were traveling too much.

RG: No, no, that's not correct. There was only one judge who had that problem. No, no. I never had any complaints from the judges that I was traveling around too much. They understood it was necessary for me to do that. You know, before sending investigators to interview witnesses in any country I had to get the consent of the government. I couldn't just send my investigators into Paris to have interviews. The French government had to agree. I wasn't a private lawyer. This was an international office and if I hadn't gone personally to the capitals to meet the relevant government ministers we couldn't have functioned. It was crucial. The agreement with the United States and later with other countries to get intelligence information - that doesn't fall out of the sky. It took many, many meetings, drafting of agreements. And if you don't do that face-to-face... They weren't going to come to The Hague from Washington. I had to go to Washington. So you know, and the judges understood that.

MK: You had been very much present in the media, very successful. And in that time the media were almost the only ally you had. They've been very important for the survival.

RG: My experience with the media in South Africa was very important. I was running a commission of inquiry at the end of the apartheid era which was crucially important to the whole negotiating process. And if I didn't get the media to understand what I was doing and to be able to inform the public what I was doing we wouldn't have succeeded. We had to build up credibility. For any public institution, particularly a judicial institution, to succeed it has to have credibility from a public point of view. And when I got to The Hague I realized that without media support we were not going to succeed. Without media support, we wouldn't have got money. The United Nations organs, the Budget

Committee, had very difficult decisions. The United Nations at that time was almost insolvent. The United States was not paying its dues to the United Nations and every dollar that went to the ICTY was a dollar less for other United Nations agencies. And that was the reason - it's now in the public domain - the reason Nikolić was the first person indicted. They told me in the UN in New York that if we didn't have an indictment out by November 1994, we wouldn't get the money that year, for 1995. And shortly before November, there was only one person against whom we had evidence that I was prepared to sign an indictment. To sign an indictment calling somebody a war criminal is a very heavy responsibility. It's fortunately shared with one of the judges. But Nikolić was the only one. He wasn't an appropriate first person to indict in the first-ever international criminal tribunal, but if we didn't do it we wouldn't have got a budget. So, there were these political considerations which were also driving decisions which were taken.

There was never one incident during my period of office where there was any hint, any suggestion of political interference. And I think one of the reasons was no doubt that the political people involved knew that if there had been any pressure or any suggestion, I would have made that public. And again, the media was my protector and the protector of the Tribunal. But there were certainly absolutely no suggestions from any politician during my period or any hint of or an attempt to interfere with the work of the prosecutor.

*The Prosecutor is Not a Politician*

RG: Before indicting Karadžić and Mladić I had absolutely no consultations with any politicians in any country. After Karadžić and Mladić were indicted there was criticism from many quarters. It was in the media. Many politicians in a number of countries felt that it

was irresponsible to indict Karadžić particularly, but also Mladić when negotiations were in the air. It was before Dayton when the first indictment came out. And my attitude was: That's my job. My job is when we have the evidence to indict people and not to withhold indictments or time indictments to coincide with political events on the ground. No prosecutor can act that way. I wasn't a politician. I had no political advisers. I didn't know what the politicians were doing and for them - to expect me to guess what the political ramifications - would be ridiculous.

*The Prosecutor, the Judges, and the Plea Agreements*

RG: The question of plea agreements, or in America they're called plea bargaining, is a difficult question. They're two kinds of plea agreements. The one, and that's common in the United States, is where the prosecutor can give an assurance to the person accused, to the defendant, that if they agree to plead guilty to a lesser crime there'll be an agreed punishment. That binds the judge and the judge is bound by that agreement. The kind of plea agreement as I understand it in the ICTY is a different kind of plea agreement. The prosecutor enters into an agreement with the accused in terms of which the prosecutor says: If you plead guilty to this lesser crime I will withdraw the more important crime and I will suggest the following punishment to the judges. But the judges aren't bound. The judges still retain the discretion to give a higher punishment than the one that's been agreed to between the prosecutor and the defense. Subject to the prosecutor being satisfied that he or she can't prove this more serious crime, I don't believe there can be any moral objection. I think it would be objectionable if there was evidence of genocide and that's withdrawn for a plea of guilty to a lesser crime. I would be very unhappy about that. But if

the prosecutor felt that the genocide evidence was a bit debatable or shaky and the accused person was prepared to plead guilty to crimes against humanity or other serious war crimes, I can see no reason for the prosecutor not exercising discretion, subject to the control of the judges, because the judges have the final say.

I think guilty pleas are very important. It reminds me a little in South Africa the Truth and Reconciliation Commission were made more powerful by the people who came forward and confessed. When Mrs. Plavšić pleads guilty and other people now are pleading guilty it's sending a message that this happened. Their own supporters can't say: Well, this is fabricated evidence. The guilty person himself or herself says: I did it, this is what happened. And sometimes they apologize for it. But that's the best way to convince the people back home that these things really happened.

*The Official Documenting of the History*

RG: For reconciliation, you need the truth to be established officially. And whether it's proved by prosecutions, by truth and reconciliation commissions, it's all part of the same recording the history officially. Don't go doing it in journals and newspapers. You need some official body to do it, whether it's in the South African case the Truth and Reconciliation Commission, court prosecutions, and in the former Yugoslavia the work of the ICTY, it's recording the history officially. And that's important because people won't, the victims won't reconcile until they have been acknowledged. They need the acknowledgment of what happened to them, publicly. If that happens then there's a prospect of reconciliation. Of course, time is an enemy. The longer it takes, the more difficult it is. And we're talking about events here that happened more than ten years ago.

That's a long time to wait. In South Africa too. The importance of the plea of guilty is that people are confessing to what happened. If somebody pleads not guilty and they say right through the trial: I'm innocent, and at the end, they are found guilty, there are many people who support them, who regard those criminals as heroes, they say: Oh, well, this was all false evidence, fabricated evidence. But when those people themselves say: Yes, I did it, and give information and give details of what they did, then it becomes beyond the question, beyond any doubt that these things really happened. And that's a very important acknowledgment.

### *Politicians Call the Shots*

You know, the changes after I left in 1996 were again political. It's the politicians who call the shots and who determine whether there are going to be arrests or there are not going to be arrests, the money that's going to be devoted to the ICTY. And what made a crucial difference, in my view, was the change in leadership in London, Robin Cook becoming the foreign minister and joining with Klaus Kinkel in Germany, who was always a great supporter of the tribunals. And then, of course, crucial was Madeleine Albright being appointed as a permanent representative of the United States in New York. I refer to her frequently as the godmother of the tribunals, both Rwanda and Yugoslavia. And it was that political drive, the political will to start making arrests and to increase the funding of the tribunals and, of course, the continuing pressure from the Tribunal itself but also from NGOs, from international and national NGOs in America and in Europe, the French NGOs and, of course, pressure from the former Yugoslavia, from NGOs in the former Yugoslavia.

### *The Prosecution and/or a Truth Commission*

RG: I was involved with a meeting in Sarajevo about two years ago to discuss setting up a truth and reconciliation commission for Bosnia-Herzegovina. And it was the one issue incidentally on which I had a difference with my successor Louise Arbour. She was always against a truth commission during the lifetime of the Tribunal. I disagree strongly and I'm happy to say I think Carla Del Ponte is more, her view is more similar to mine that there's no conflict between the prosecution and a truth commission. What pleased me at the meetings in Sarajevo is that the work of the Tribunal was viewed as having been positive in helping lay the basis for a truth and reconciliation commission, laying the basis for reconciliation between the various groups, ethnic groups in, not ethnic groups, but political groups in Bosnia and Herzegovina.

*Tribunal's Contribution to International Justice*

RG: I think one of the most important contributions of the ICTY and the ICTR has been to establish that international justice can work, that international courts can produce fair trials, that the international law has developed as a consequence. And it was those successes that really built up pressure for the ICC. Without those successes, I don't believe that the diplomatic conference in June and July 1998 would have happened. The ICC now - I'm moderately optimistic. I mean there are big problems, particularly in consequence of the attitude of the Bush administration, but 91 nations have now ratified and the court's ready for business and there's a prosecutor and judges. And I've got no doubt it will act professionally and efficiently and will over the next number of years establish itself as a successful organization.