

Project:

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An Interview with

Antonio Cassese

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Interviewee: Antonio Cassese (AC)

Interviewer: Mirko Klarin (MK)

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Antonio Cassese, the first President of the ICTY (1993-1997), in an interview from June 2003, speaks about the tribulations of the tribunal's first ten years and its struggle to survive and become respected not only by the states of former Yugoslavia but also by the international community.

AC: When I came here I hoped the Tribunal would start operating right away but I realized that actually, we had nothing, zero. We had no budget, no headquarters, no place to meet and to work and only 3 or 4 part-time, actually secretaries with a contract of 3 months only, and 4 or 5 computers. So, therefore when we met after the election of the president and the vice-president, and the chairman of the presiding judge of the Appeal chamber, all judges said: "Let's go back home and wait for the General Assembly to adopt budget because there is no point in remaining here". But I said: "Look, we are going to be paid. How can we justify being paid without working". They said: "But what can we do"? There was nothing, zero, there was no rules of procedure, no case, no prosecutor. We actually met a few days later the prosecutor. You may remember the first prosecutor was from Venezuela, Escovar Salom, and it was very clear he was not prepared to act as a prosecutor because he took time and said: "I can't accept yet because I may become Minister of Interior in my country and, as you know, the Minister of Interior of Venezuela might be even more important than the President. I want to go back and run for this new job, this new position".

So, it was very clear that he was not going to accept the position and, if I may be quite honest, the feeling of most judges was that he was not very particularly skillful man, he was not fluent in neither English nor French and we had no idea of his background. So, therefore as I said, there was really zero, nothing. All judges said then this was about ... we were sworn in on 17th of November and in early December we decided to go back home. I said, "You go back home, I must remain here. I will go just for the Christmas holidays but I will start working at least on the Rules of Procedure and Evidence. Let us do something." And this is what I did. I went home and I worked even on Christmas day, 6 hours only, on Rules of Procedure and Evidence.

MK: But, you were being optimistic in that time. Or, as you put it once, naive?

AC: I was naive, but I also thought that this was such a unique opportunity, that in a way to waste it would be a disaster. I thought that probably by putting a lot of pressure on some countries we would achieve something. I thought we must do something. I thought it would be utterly impotent of us to stay idle and wait for the General Assembly to pass our budget. And what to do with the budget? We had a provisional budget, which was just peanuts, of course, and the budget would be adopted by the next General Assembly in October/ November 1994, and we were in December '93. So, I mean I thought it was a question of morality. I thought it was immoral no to do anything. So, therefore I said: "Let us at least show that we are prepared and willing to work hard." The commitment, when we went home, was that we would meet in February and try to push Boutros-Ghali to appoint the prosecutor, actually propose a new prosecutor to the Security Council. And meanwhile, I said to the judges: "We prepare the Rules of Procedure and Evidence because we need this

legal framework".

So, therefore in a way, I thought ... you know the famous expression by famous Italian writer and politician Gramsci who spoke of the need for optimism of the heart and of the pessimism of the mind. I knew, if I could think in a cold way, I knew we had no chance of succeeding but I thought we should show a lot of enthusiasm and at least work, do whatever we could. We met again in February. I came immediately after Christmas and was alone until the judges came in February and in February, we spent three months drafting Rules of Procedure and Evidence, and then we asked Escovar Salom to come over to have a showdown with Boutros-Ghali. Boutros-Ghali came so I pushed Boutros-Ghali to come here, to meet all the judges and ask Escovar Salom and we decided that he should make up his mind. He said: "I will not accept. I am prepared to appoint a deputy; I appointed the deputy Blewitt." And then we also met to decide... Boutros-Ghali was very helpful and forthcoming. He said if you wish I can appoint Blewitt as the chief prosecutor and you know we met on a Saturday, all the judges. We asked Sir Ninian Stephen, as an Australian, to meet in private with Blewitt to ask him if he would be prepared and also to see if he was the right man and the conclusion was: No, he was not the right man. So, therefore, Boutros-Ghali phoned me. He said: "I will be on Sunday in Paris at the Hotel Crillon." He said: "I will not answer any phone call but your own because your phone call is so crucial". And I phoned him on Sunday and I said: "No, sorry, Blewit will still be deputy prosecutor and you will have to do something back in New York."

MK: OK, you got the money after a year or two, you had the Rules of Procedure and then realized that you were facing a much more serious problem than money and the rules,

the problem of cooperation on the arrests?

AC: No, actually, no. I think the question to ask was even more important, namely the prosecutorial strategy, the strategy that Goldstone was embracing, and he said from the outset very clearly that he would take what he called a pyramidal strategy and we thought that it was absolutely absurd, nonsense to start from the soldiers and go up to the generals. I remember I said to him: "Look, it will take you 20 years to arrest or indict Milošević, Karadžić, Mladić, and others, Milutinović... Only in 20 years. Why don't you start from the top?" He said: "No, I will start from the bottom". There was a struggle between the judges and the prosecutor. Huge struggle. You know that we adopted the resolution in January 1995. The judges adopted the resolution. Which is public. It is a public document where we took issue, in a way, with the prosecutor and we said: "We hope that our Tribunal will concentrate on the leaders". This was a major problem we had to face. And of course, it was improper for judges to interfere with the prosecutor, but we thought it was so absurd of the prosecutor to propose this approach that we had to interfere with him. All judges, we all said that we are part of the Tribunal, and we feel that we owe a duty to the international community and that's why we have to push the prosecutor to change his strategy and this happened in 2 or 3 months. He issued an indictment against Mladić and Karadžić. We adopted our resolution in January '95 and he issued the indictment a couple of months later.

MK: But at that time you two seemed like a perfect tandem and at least in the action toward the international community, the so-called international community, and you and Mr. Goldstone acted together fighting this negligence of the international community

against the Tribunal. Later on we didn't see such a cordial relation between the presidents and the chief prosecutors.

AC: No, I don't agree with you. Goldstone and I decided in a way to cover up conflicts and actually our profound difference in views on many issues because we both thought that we should act in the interest of the Tribunal. He decided to concentrate on the media. He said: "My chief purpose is to make the Tribunal credible in the international community by speaking to the media." And he was excellent in that respect. He was really so good with the media, forceful, effective, and with cordial relationships. I think this was a great success. Then he also said: "I must go and talk to governments." And he started traveling. We felt that he was traveling too much, he was away. He felt that everything should be done by his deputy and his staff, and he should be just in charge of relations with 1: media and 2: governments. "All right", we said: "You take this role." And I thought I should take a different role, namely, to push the Tribunal to improve, to streamline its procedure, and I thought I should approach leading personalities in the former Yugoslavia. Therefore, I went to Zagreb, to Belgrade, to Sarajevo many times to speak with either a foreign minister or, normally not to a president, but to the foreign minister and minister of justice, and many times to try to convince them to pass, to implement the legislation, to be cooperative. I feel, I may be wrong, but I feel that Goldstone concentrated on relations with Washington, and probably London, not so much Paris, but he was at least once a month in Washington or New York. He thought that the key was there, in the USA, probably, judging from the frequency of his travels to Washington and New York. In spite of major differences between Goldstone and the judges and particularly me, and in spite of the awareness by the judges that we should not interfere with his strategy, we felt that the prosecutor should not, in a

way, poke the nose into cases. Not to say, look, you indict X, Y, and Z, but the policy, the general policy was of our concern, was a major concern of judges. So, therefore despite all that, we came to some positive results. In that period the Rule 61 of Procedures were successful - what the French call *pis aller*, better than nothing and also to vent our anger at the impotence of the Tribunal. At least we conducted Rule 61 proceedings and the indictment of Karadžić and Mladić was positive and then the arrest of Tadić was also ... and the co-operation of Germany was excellent. Germany has always been one of the best countries to cooperate with the Tribunal. In many respects really number one probably or number two. However. I remember I was in 95 or early 96 in America and I had a public lecture and I said: "Look if there are no developments and if states don't cooperate, I think we should pack up and go home." And this was reported in Christian Science Monitor. I was really despondent because in spite of two years of hard work, in spite of all that we had only Rule 61 proceedings and the beginnings of Mr. Tadić case. Very little for two years of hard work.

MK: How close were you at that moment to resigning? Were those ideas shared by the other judges?

AC: Yes, on at least two occasions many judges in a plenary meeting expressed their frustration, and one or two judges, I remember in particular, one senior judge, very important senior judge said: "Well is there a point in continuing our job? Why don't we resign?" and I immediately agreed and other judges agreed and then we said: "Let us send message to governments. If they don't do something positive, if they don't give more money and also if they don't push the states of the former Yugoslavia to cooperate let us all resign".

And this was a serious threat, very serious. Of course, it was a threat. We said that we would resign in the hope they will push us not to resign, that they will do something. The Americans actually changed their attitude. The Americans became more cooperative. In particular, I would say, Madeleine Albright, deserves to be credited with all this success. She was extremely helpful from the outset. Without Madeleine Albright, I think Tribunal would not be a success story. She was the key person because she was powerful, she was influential, she was genuine in support for the Tribunal. And she pushed David Sheffer to do a lot for the Tribunal. When she became the state secretary she acted through David Sheffer who became ambassador.

MK: Were you afraid during the Dayton peace negotiation that they can make a deal which will push the Tribunal aside for the sake of peace?

AC: No, no, because I was consulted. I had a lot of meetings, with the Americans in particular, not so much with the French and English but the Americans. I was almost two or three times a week in the American Embassy in The Hague to have important talks with the people from the US State Department or the ambassador's deputy or his legal expert. It was very fruitful. From the outset, Americans who were behind the Dayton agreement made it very clear they will not set aside the Tribunal therefore there was no fear on our side. I always reported to my fellow judges. Whatever I did was put on paper and reported to the judges. I normally circulated weekly confidential reports to the judges so they all knew every week what I was doing as president and I was very active as I say. They said from the outset we will not push aside Tribunal, instead, we will put in some sort of clause stating that the parties to the Dayton agreement must comply with the Tribunal's decisions.

Therefore, there was no fear. My problem was that I wanted to ask them to do more, and I made various written proposals, namely that the NATO forces in B-H should be given the task of enforcement by the police agency..., sort of police, the enforcement agency. They should be explicitly entrusted with the task of arresting people. The reply was "no". Probably this came from the Pentagon and the formal reply was: "No, we can't because these are soldiers, they are not allowed to act as policemen and not able to be policemen". These are soldiers, they have to fight against the enemy, they can't arrest indictees, or suspects, or people accused of crimes. So, therefore, they said: "We can't." I said: "Well, why don't you create a team of enforcement agents, I mean police officers from the UK, France, from the US?" And therefore I said bluntly: "Your counterargument is a pretext, it is a formal argument", and they said: "Don't ask too much." So therefore I accepted it but there was never any fear they would drop or jettison the Tribunal - thanks to the Americans. I think the Americans played a very good, important role in the negotiations and with us.

MK: The Dayton agreement was concluded and there were 70 or 80 thousand troops in Bosnia but still for a year and a half there were no arrests, until the summer of 97. In the meantime, you had to struggle with the Peace implementation council and you made a small scandal in Florence, in June 96. Can you give us your account of it, what did you want to achieve and why the governments reacted so harshly?

AC: The substance was that I made a small speech, a very short speech, in which I said, "let's face the situation realistically. You have so many soldiers there and there are still two people at large, Karadžić and Mladić." It would be ... Mladić, people thought, was still in Bosnia. In any case, Karadžić was in Bosnia and Herzegovina and he could be arrested and I

said, "Why don't you arrest him or them and if the Belgrade authorities don't act or people or the NATO cannot act because of lack of cooperation by the authorities in Sarajevo and Belgrade, why don't you issue sanctions?" And I suggested a few sanctions that could be adopted by the countries concerned. I remember at the end of my speech there was some applause by a part of the delegation from Bosnia and Herzegovina and then sort of silence, terrible silence. People were shocked. And I saw the Italian foreign minister who was presiding, Lamberto Dini, whom I know and I knew he was upset and he looked at me and said: "After the speech by president Cassese, of course, we have to rethink the whole situation." The meeting was adjourned and I remember I was approached by an ambassador from the area and he told me: "Look Nino, you are silly because the Americans are really upset. Why did you say so many things against?" I said, "I thought this was my duty" and of course then quite a few foreign ministers, in particular from the Nordic countries, told me or through other people let me know that I had overstepped my function. Because my function as a judge and a president was not to suggest sanctions. This was for politicians. Again, I said, "Look, it is your very formal and formalistic attitude that judges should only judicate." Yes, if they have cases, if there is somebody at trial, in court proceedings. But if there are no cases, at least the president, not the judges but the president in his authority as the head of the whole institution, with authority provided in the Statute because he has to report to the Security Council and the General Assembly, he may make proposals for more effective action. I am only suggesting taking more forceful action. There was a clash and of course, I was totally dropped. There were interviews. I immediately realized, in a matter of half an hour after talking with this ambassador from the area, the former Yugoslavia, who was very close to the Americans and also a friend of

mine. He came to me and said: "Look, the Americans are so angry at you that you probably made a disaster." I said: " I don't know, This was my duty, I felt this was my duty. Probably I was awkward, not tactful." The result was that ...

MK: The result was that you have not been invited to the next conference in London.

AC: I was not invited to London. I was not invited at all, and there was a general feeling in many foreign delegations that I had not behaved in a proper manner. But as I said, since I felt this was my duty, my moral duty not legal duty, and this was not beyond my function I went on working. This was in '96, I had been re-elected for the second time and despite my request to all judges to take over because I was really so exhausted after two years. I went to see all the judges, all the other judges. We were only 11. So, the 10 judges were all asked by me if they would like to take over. Since they said "No, you should go on", I had been reelected, so I felt that I could go on and I was not scolded or reprimanded by the other judges. I went on and I stepped down in '97 as you know.

MK: Can you recall what was behind the scenes? There were some initiatives from some member states, Germany I think, that the Tribunal should be invited. The conservative government in England was not very helpful.

AC: No, also because the foreign minister was, I don't remember his name, the conservative foreign minister..

MK: Rifkind...

AC: Rifkind. I can tell you, this was the only time in my life that I had an appointment with a foreign minister, the appointment was for 15 minutes, and that after 7 minutes of a

talk I said: "Dear Minister I don't want to trespass on your precious time and if you don't mind I will take a leave." I went away because I thought he was saying so many stupid platitudes that there was no point in spending, what, 8 more minutes with him just to listen to platitudes he was saying, you know, "the Tribunal is important, we will do whatever we can." And I had a list of issues, questions. He knew because I normally send the agenda in advance and the issues I want to address, and could foreign ministers prepare, and they already have an answer or try to have an answer but he was clearly... So I said: "Thank you, I don't want you to waste your time." Actually I did not want to waste my time with this Rifkind. Rifkind was part of the British establishment, which was not interested at all in the Tribunal, who thought it was just a pain in the neck, a nuisance, whereas Klaus Kinkel, the German foreign minister, was terribly good, he was terribly effective. I met him three times and each time he was extremely helpful and did a lot for the Tribunal. That is why he insisted, not because of me, that we should be invited, I mean the Tribunal should be invited. At that stage I was really exhausted, and also fed up with all this political pressure and political criticisms by foreign ministers. Then also Arbour had taken over and I felt Arbour was actually more competent and more forceful than Goldstone so that's why and I thought she should take over and go on. Later on, McDonald was elected. They didn't get on very well, I was told, but I don't know.

But, it's not true that I got on better with Goldstone than Arbour. Not at all. With Louise Arbour, we had a lot of disagreements but very candid, very frank, between I think two competent people. We disagreed, but we enjoyed our disagreement. Because we felt that we were both professionals interested in a good Tribunal, in making the Tribunal better and better.

MK: I think that since Arbour took the position, the dividing line between the chambers and the OTP became very clear. Before that, you acted almost as partners with the Office of the Prosecutor. That was an outsider's impression. With a good reason, you battled for survival, and you can have a case in which you would be on different sides.

AC: No. Yes...The difference between Goldstone and Arbour is that... when Arbour came we already had cases and therefore she was right in saying: "Look, you judges, you take care of cases and you can not interfere with me, with my cases." Because we had cases and also because her prosecutorial strategy was much better in the view of the judges. Namely, from the outset, she said: "I would drop many cases against minor indicted soldiers or guards of detention camps. These are cases that should go sooner or later to national tribunals, not cases for an international tribunal. I will concentrate on the leaders." We were very happy. So there was no reason for us to interfere with her strategy. And secondly, we had cases. So, therefore the sort of separation she pushed for between the judiciary and the prosecutor's office was accepted by everybody and was in the best interest of the Tribunal.

MK: You mentioned the role Madeleine Albright had, Kinkel had his own, but I think one of the turning points in the international community's attitude towards the Tribunal was in the beginning of '97 when the Labour came to power and Robin Cook became the British minister of foreign affairs. You cannot deny that the British forces had the main role in the operations of arrest of the accused, I mean, 80 percent of the arrests were made by the British and it has started when this Rifkind was removed, and the new people came to the Foreign Office.

AC: I fully agree. This was a dramatic change because the British became extremely supportive and in particular, Robin Cook was extremely supportive. I think Louise Arbour met him a couple of times. I only met the deputy Foreign Minister who was very good, I don't remember his name, but he was very good. We had a short meeting about technical problems of cooperation and so on. But thanks to him, as you said, they arrested quite a lot of indicted in Bosnia and Herzegovina. This was very important. From that moment onwards the Tribunal got a lot of people in prison. Whereas for the French I had wonderful meetings in Paris with the prime minister, the foreign minister, and the minister of justice but I must say they said a lot of good things to support the Tribunal. I had to have a meeting with Chirac, he was the president already, but at the last minute the meeting was canceled, but Chirac let me know that he was extremely supportive of the Tribunal, but I felt that this was a lot of words, I never saw those promises turned into the reality. Actually, I also hinted at the rumors spread by American diplomats about, these were rumors, the unwillingness by the French to arrest Karadžić and I hinted at those rumors but they rejected these innuendos, saying these are insinuations, that there is no truth in those insinuations.

MK: What can you tell me about political pressures on the Tribunal during your time as the president?

AC: There were never political pressures but there was one episode, which is very well known by now because Goldstone made it public. We had all taken the commitment not to make this episode public for obvious reasons. Namely, the visit of the Russian ambassador who asked to rescind, to quash the arrest warrants against Karadžić and Mladić. He came on a Sunday and he found me and of course I told him: "It is absolutely

impossible, let us phone Goldstone together, he will confirm." And Goldstone said and... I said if Goldstone withdraws indictments we will oppose it, we will not allow that and in any case, I am sure Goldstone will never do so. And Goldstone, on the phone with the ambassador, in my office, phoned, through me the Goldstone, and Goldstone said, "I fully agree with President Cassese." So, the ambassador, who was an excellent, very clever man, went home without anything. But it was not political pressure. He said, "Look, you understand my position. I got instructions from Moscow. It is a very urgent matter, please let me know what you are going to do." When he went off an hour later, he was very happy. He said, "For the first time in my life I have settled a matter in one hour on Sunday and will send back a cable to Moscow at least with the full details of what to do and why you are not accepting our proposal."

MK: Was that before the Dayton negotiations?

AC: I think so, yes. Dayton was in November and this was in September, October. It was a few weeks after the issuance of indictment against Karadžić and Mladić. I remember it was sunny here. It was probably in July/August, and I remember vividly it was a Sunday. I was alone, there was nobody at the Tribunal. At that stage, there was not even a guard, somebody at the guard stand. Somebody was calling with a Russian accent and said, "Can I speak to the president?" I said I am the President; I am the only one working in the Tribunal. I remember I apologized for not having a tie. I had just a pull.

MK: But there must have been some other reactions coming to you after this indictment by the so-called negotiators like Lord Owen...

AC: No, no pressure on me of any kind. You mean political pressures?

MK: I mean, just negative reactions or comments by the people who negotiated with Karadžić and Mladić, who said: "With whom are we going to negotiate now?" Did they express this?

AC: Not to me, never. As I say, there was no comment to me by the politicians or diplomats about the action of the Tribunal. No comment and no interference by any country except for this episode of the Russian Ambassador. But otherwise, as I said, no. Probably they made comments, but they knew we are all tough, that we would not change our minds. I, in particular, would not change my mind. Also, because they knew probably through their own channels that on the contrary, I was pushing some countries to make NATO forces in Bosnia and Herzegovina more forceful, more cooperative with the Tribunal.

MK: What was the most important factor which brought the change in the SFOR attitude, starting with the arrests in Prijedor in July 1997, only a few weeks after the arrests in Eastern Slavonia by the UN?

AC: I really don't know of any major political factor. I thought, but I may be totally wrong, this was a combination of the American and the British foreign ministers or probably... I really don't know. There was a lot of pressure on Croatia at that stage. Probably as a matter of being unbiased they thought they should arrest somebody in Bosnia and Herzegovina to counterbalance what they were doing in Zagreb. You remember, at that stage, the Americans were really heavy-handed with Croatia and the Croatian authorities were fed up and eventually they pushed Blaskic to surrender. So, therefore, probably, this is guesswork. Probably you know better. I did not see any sudden change. The whole process started in Dayton which sooner or later had to lead to something, somewhere. Probably

also the action by Louise Arbour. She was very good, extremely effective. I had no role. I don't think I played any role, positive or negative.

MK: Then you became a trial chamber judge, the presiding judge in two trials or more.

AC: More, I had Dokmanović, Kupreškić, and the one on torture, Furundžija. Dokmanović, Furundžija and Kupreškić, and I was in Kovačević. He died. Bad luck. I hope they don't think I am sort of an evil eye.

MK: Dokmanović trial was over and you once said the judgement was written.

AC: It was ready and complete.

MK: Give me the full story about how you felt. The trial was over, you wrote the judgment and suddenly this judgment cannot be delivered.

AC: I was, first of all, terribly sad because of the suicide by Dokmanović, because you know you feel guilty. Also, because during the trial I had felt a lot of sympathy for Dokmanović. I didn't think he was a major criminal. Not at all. Also, because you know, he gave evidence in court. It was very clear that he was a minor character in the whole drama, in the whole tragedy. He was really a minor character. He was not on the same statue as Šljivančanin and the other people indicted. He was mainly a politician, got caught in a struggle which was much bigger than him. He was very honest when he spoke and gave testimony. And also, psychologically for me, it was very sad to know that he had committed suicide. I felt almost guilty. Why? Because, during the whole trial, it was very clear that he was depressed. He looked depressed, I know depression, I myself am very often depressed,

so I know from inside what it means. And he was really dejected and low.

Then when he decided to give evidence, he changed completely. He became almost gay and content, happy, satisfied, and he started looking at me and the judges. Very often he didn't look at the judges or the prosecutors or the defense counsel. He always looked down. And then all of a sudden, he started looking at you and we had this eye contact. And he was excited. I said look, how wonderful, this man probably is delivering himself of a heavy burden and probably he feels that he is coming to the end of this ordeal because clearly, it was an ordeal for him. It was very tough to go through this trial. Because of the evidence we got, terrible evidence - witnesses, photographs of people dead, of course about what happened, not necessarily about him - whether or not he was guilty. And then I realized that he was happy because - in retrospect, I understood that he was happy because he had decided to kill himself. So there for me, it was really a disaster - psychologically - because I was so sympathetic to him, also I was so unhappy because the judgment was ready.

I was punished in a way - because we had written the judgment in English, we were unanimous, the judges, and since I'm so obsessive I thought let us give a lesson to the other judges and show them that we are able to issue the judgment simultaneously in English and French. So, I went to the head of the translation unit. She said I will put the French team at your disposal, they will work day and night. So, we spent a lot of time having the whole judgment into French. And just a week before the delivery of the judgment he killed himself. I've tried to see whether we could salvage something of our judgment. I sent the letter to the prosecutor and the defense counsel. At that stage, McDonald was the president and she said, "I don't agree with you that we should issue something on the facts". And probably she

was right. I said "In any case, I will consult" because I was so sorry, you know. We had a wonderful judgment, unanimous, very well written in two languages and it was to be put in the wastepaper basket. Fila said "I agree with you if you want to issue" – without saying whether he was guilty or innocent – only the other legal parts and facts. Fila said "I agree" and Arbour said, "No, I totally disagree, you are wrong, you should never". So I said "All right, I will bow to.." Because I needed the consent of both parties. So, it's in my files but nobody knows what we'd said and I think we made a very good judgment – wise and well balanced. Only we three judges know and the interpreters and the translators.

MK: Now we are going to have a new Vukovar trial, since the three are now in The Hague.

AC: This will be a rerun of what happened then...

MK: Šljivančanin, Mrkšić and Radić...

AC: We saw him so many times, there were so many tapes. Many times. He was always there.

MK: Now, the other judgment, in the Kupreškić case. How does the judge feel when the Appeals Chamber overturns his...?

AC: Again, you want me to be honest, candid - with mixed feelings. Why? On one hand, you are happy that you were wrong and therefore three men are acquitted. Because, of course, it's a joy to know that somebody who has been regarded as guilty is now acquitted because actually, he is innocent. So, in a way - happy. But, also, and that's why it's mixed feelings – incredulous. Because we, three judges, we were unanimous on each line of

our judgment. Each line was agreed upon by the three judges and in each line, we felt there was compelling evidence about the guilt of the two brothers and the cousin. So, therefore, as I say, incredulous because I found and my two fellow judges, who are extremely competent, probably better than me, not probably, without any doubt better judges than me because they have a lot of judicial experience, May and Mumba, we all agreed on any, as I said, any line was agreed, but we felt the evidence was so good, so solid to show that they were not guilty of the horrendous crimes of which they had been accused by the prosecutor. Not at all. They were guilty of, in our opinion, of minor crimes. That's why they got light sentences. But, as I say, I bow to the Appeals Chamber and, as I said at the end, I'm happy that we were wrong. It's a good sign that the Tribunal works very well. Namely that I mean, five judges can decide, unanimously, that the three judges unanimously were wrong. Very good.

MK: You were the president of the Appeal Chamber which decided in Erdemović case and you set the criteria, the ground for the interpretation of the importance of the guilty plea for the Tribunal. Can you give us the substance - why is the guilty plea important for the Tribunal and for the victims?

AC: Well, for the Tribunal, I think mainly because to prompt an accused to plead guilty means that you save a lot of money and suffering to the victims and probably to the accused as well, because as I say trial proceedings are horrible for everybody, terrible trial, trial in a sense of the ordeal. In a way you save money, also. If he pleads guilty that means you have only the sentencing. And for the victims as well because in a way the victims don't have to give evidence and they suffer again very often when they give... Well of course you

can say there is a sort of cathartic process because they give vent to their emotions, but they also suffer to see what they consider as the guilty man, the culprit there. So, I think the guilty plea proceedings are very important and are the key to criminal proceedings in common law countries. You know that in common law countries most of the time people plead guilty so 90% of the cases are disposed of by guilty pleas and you can concentrate on major cases. I think it's important. This was proposed from the outset. The Appeals Chamber in Erdemović simply defined the rigorous strict conditions required for the guilty plea to be acceptable. Namely, you must be sure that the indictee who is pleading guilty is fully aware of the consequences of his plea. He must be aware that he will be then put in prison, sentenced, and put in prison.

MK: Do you see an element of trade between the accused and the prosecutor in this, you know, trade - I'll give you this...

AC: You know, we've discussed this matter in February-April 1994. when we adopted the Rules of Procedure. The common law judges said we should have a guilty plea. We had a huge discussion and we decided that we would leave this matter to the prosecutor. We said: "Look, can you have a guilty plea when somebody is accused of such horrific crimes?" You can have a guilty plea in the UK or US or in my own country, in Italy, when you are accused of a minor murder or theft or robbery, but you know genocide! Can you make a trade-off with the prosecutor in the matter of genocide? We felt that this was not very good.

On the other hand, it may be helpful to speed up the whole process of reconciliation and finding of guilt. So, in the event, the compromise was to accept the guilty plea

proceedings but to leave the whole matter to the prosecutor. We said we don't want to get our hands dirty. Let us leave the matter, this dirty job to the prosecutor. If the prosecutor wants to make a trade-off, a compromise with the accused, it's his or her job and then we will say whether we can accept this sort of compromise. Namely, whether we can say we don't want a trial proceeding. We may decide, we thought, in the interest of justice one could even think of rejecting. No, it's no longer possible now, but the judge is not bound by the guilty plea. He can go on because you can feel that in the interest of justice it will be important to have trial proceedings proper, not just the sentencing proceedings which are very short.

In any case, I think, I mean it's a guess, I'm guessing now, of course, the prosecutor and the indictee reach a compromise. I assume this happened also in the case of Plavšić. It's very clear if the prosecutor withdraws some charges and proposes a relatively light sentence, that means that the other party - the indictee - has promised first of all to cooperate and then to plead guilty. These are the two things that the indictee can promise: "I will avoid a huge trial, a lengthy trial and then I will also help you to find, I will testify against somebody else."

On the other hand, you know, why do you need factual evidence? If he himself says: "I am guilty" and you ask him: "Are you aware that you are pleading guilty to terrible crimes which may involve the heaviest penalty" - why do you need evidence? I mean, this is the chief evidence - confession, admission of guilt by the indictee. I would say this is top evidence. Unless he is crazy, totally crazy. That's why we decided one of the conditions that you have to establish that he is *compos sui*, as we say in Latin, namely that he is fully aware

of his own mind, he is the master of his own mind and feelings and aware of the legal consequences. I would say there is no point in having evidence if the prosecutor is satisfied that...

MK: The mission of the Tribunal is not only to condemn the accused but to establish the facts which will prevent the revision of history and denial of the crimes. That is why the factual basis, the facts that the accused admits, which are the part of the crimes he admits, are so important, they prevent the revision of history, denial.

AC: No, I don't agree, because what you do without, in the case of the guilty plea, is not the facts, the facts are set out in the indictment - what you do without is the evidence. You just say: If the accused admits to those facts, he admits he is guilty of those crimes. We don't need the evidence, witnesses, and so on. But for history, the indictment is the record, the record accepted by the accused. So, therefore for history, it is not so bad. Unless you have a big trial involving not minor defendants but key people. If Milosevic had pleaded guilty probably the judges should have rejected that guilty plea. Because it was so important to establish the chain of command, whether he had issued orders and so on. Let us assume that he had pleaded guilty. You never know. Let's assume Karadžić is arrested, comes to the Tribunal, and pleads guilty, and he tries to make an agreement with the prosecutor so that he gets not a life sentence but say 25 years imprisonment. I don't know. The judges in theory could reject. It is a moral issue to see to what extent it is necessary to establish the facts. If the facts have already been established through other trials, against Krstić and other people, why do you need a trial against Karadžić if he pleads guilty? It is a question of balance, I think.

MK: You mentioned Milošević. Have you seen him in the courtroom?

AC: Not yet, only on TV.

MK: As the first president of the Tribunal, how did you feel the moment when you heard that he is coming?

AC: I was very happy that he had been arrested and unhappy about the way he was coming. Because of the reasons for his arrest, the pressure by the Americans, a sort of blackmail by the Americans to Đindić – either you arrest him, or we withdraw the money.

MK: But you were the one who, as the president, pressured the Americans to put pressure on the Croats and the Serbs.

AC: You're right. I know I am not consistent, but probably at that stage, it was so important to arrest some of the key people. I would say that later on probably it was not so necessary. Particularly with the top men. I felt a bit uneasy about the way this result had been achieved. I know. Also, because it was no pressure from the international community. What I was asking for in Florence in June 1996 was that the whole international community put pressure on politicians and military leaders in Bosnia and Herzegovina and Belgrade. Not one or two countries. I am for a multilateral action, against any unilateral action by somebody. It's particularly when this somebody is inconsistent on matters of international criminal justice.

MK: Do you know that Milošević is using your arguments, he wrote it somewhere, he quoted you two or three times.

AC: I was not aware of that. I should get hold of the record. Because this is what I

had said that I was not very happy about the way. You can express your evaluation of events. The end result is good, positive - his arrest and the fact he is standing trial is a very positive development.

MK: At the beginning, one of the catchphrases you used was that the Tribunal will be the voice of the victims. After 10 years, what do you think the Tribunal has done for the victims of the crimes in the former Yugoslavia?

AC: Probably not enough. But I would not put the blame on the judges or the prosecutor. Probably it is too difficult. Probably to help the victims you need to help them psychologically, not financially, of course, I am not thinking of that sort of help. So, psychological support. And also help the whole process of reconciliation which goes through the sort of emotional delivery of traumas, a sort of trauma inside the soul of people who have suffered. This can happen probably if trials are conducted on the spot - in Belgrade, Sarajevo, Zagreb, in other towns. Direct visibility of the Tribunal. This is not the fault of the Tribunal if it has not gone to hold hearings in those towns. You know that in Kupreskić we decided to go to Ahmići and we had prepared everything and the evening before the day we had to depart very early in the morning, it was canceled for security reasons. I don't know. I have never shared these security reasons. The security officer said: "We can't risk the lives of judges who have the status of under-secretary generals". I said I don't care about my legal status, I would like to go there, see the place, and be seen. Because we would go there with the defense counsels, the accused, or without the accused. To be seen by everybody that we were trying to be fair. Security reasons. Booby traps on the road. I think this is ridiculous, but these are military people, security people who in a way

prevent the Tribunal for this obsession with security from going there.

But you can probably do more for the victims if you go there, sit in judgment in Sarajevo or Belgrade for weeks, months and you show how you do justice. They can also criticize you. They can attack you: "You are not a fair Judge. What you're saying is not fair." Why not! If you can come to court, not through the TV. I think this is probably the only way. To have visibility. Otherwise, what can you do for the victims apart from financial help? You cannot set up a unit of psychologists to go there and help them. It is not this. The question is the emotions, the tragedy that they are living every day inside. I am thinking of the lady who was raped not by Furundžija but by the other man who was with Furundžija. This lady, this Muslim lady's life has probably been destroyed. What can you do for this lady? Probably help her psychologically but if you do justice and everybody knows the justice has been done – I don't know. Probably it is impossible to help that poor lady. She was a wreck when she came to the court, it was horrible to see her psychological and physical conditions after being raped for three months. But you are right, this is one of the many defects of the Tribunal.

MK: You have heard many victims in those trials, what are the effects of their stories on you?

AC: Oh, devastating of course. I remember once – you know judge May, he is typically British, has a lot of self-control, and I remember in Kupreškić once I saw tears on his face. I mean even May. To me, it was horrible because I had controlled myself. I could not allow, as the presiding judge, to cry in court. Because if you see some witnesses, they are credible - of course, if they are not credible you don't share their emotions - if you share their emotions,

you can't help crying. Now a judge is not expected to cry in court and there were at least on one occasion, not only me and Mumba, weak people. Mumba and I were probably weak, fragile psychologically. But May, who is very strong, had tears on his cheeks. So this is devastating. You can't help sharing what they tell you. The feelings. Also, I remember in Dokmanović it was terrible to see. Particularly the mothers of young people killed in Vukovar. They came with their pictures, you know, photographs: "This is my son, this was my son. 20 years old, now buried in this mass grave." And they were crying. And this is, again, devastating.

MK: Do you consider this is really a miracle - this Tribunal?

AC: Well, a miracle – it's too much to say a miracle. I think it is really surprising, astonishing for something that was established as a sort of device destined to die. It was very clear. Very clear. I immediately realized here in The Hague in 93, that it was a diplomatic pretext. Nobody really thought that it would work. Now it is working so well. It is a huge success if you think how well it is working.

I don't say a miracle because I am a non-believer. I was brought up a catholic, but I don't believe in miracles. In the gospel, what Jesus Christ used to call a miracle was something else. I don't like the word. I'd say it is extraordinary and unbelievable. Probably because of the combination of so many good people. There were many people who worked very hard. How many Sundays I spent in court, here at the Tribunal seeing a lot of young people. There were dozens, hundreds of people working on Sunday for free. Not paid to work, and they were there just for the sheer love of their job. These are wonderful professionals. A lot of young people working hard on Saturdays and Sundays everywhere in

the Tribunal – at the Office of the prosecutor, chambers, so on. All this sort of combination.

Probably a moral commitment. There was a lot of feeling of moral commitment by many people who thought: "Well, we have by mere chance and also because of the oddities of politics and diplomacy, we have a tool in our hands – why don't we make it work! Why not. Let us try". So people kept trying... Everywhere there are people who are either lazy or skeptical, but there were so many people who were not lazy and not skeptical and who I think contributed. And also I'd say some countries, the US, the Americans were crucial, the Germans, the British, they were crucial in helping the Tribunal. And of course the Dayton agreement, the turning point was the Dayton agreement. So, all these factors combined led to the wonderful success of the Tribunal. And so, it's a turning point and I hope it will live ten years, still, ten years are probably necessary. That will be ten years of greater success because they are doing such a wonderful job, all of them.

[End of interview]