

Project:

**ICTY ORAL History - Documented by SENSE**

An Interview with

Gabrielle Kirk McDonald

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Interviewee: Gabrielle Kirk McDonald (GKMcD)

Interviewer 01: Mina Vidaković (MV)

Interviewer 02: Mirko Klarin (MK)

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Gabrielle Kirk McDonald, an ICTY judge from 1993 to 1997 and then its president from 1997 to 1999, talks about the birth-pangs of the court, how it was receiving pocket money instead of the budget from the UN in the first years, and how it was left at the mercy of the authorities of ex-Yugoslav states who refused to cooperate and execute binding court orders.

MV: So you joined the Tribunal in 1993. By coming to the Tribunal, to The Hague, what was in your mind, what you have been looking for?

GKMcD: I don't know that I really knew what to expect. I have read a little bit about the conflict in Former Yugoslavia. But remember, I was living in the US and it really wasn't covered that much. I had the statute that was adopted by the security council, that was drafted by the Secretary General's office, and in an article that had appeared in the Foreign Affairs. But I really didn't know what to expect. I thought that we would be judges entering into a new area, working to develop a court. But I don't think that I fully understood the extent of the development that would be required by the judges.

I expected that the court would be more related or involved with people from the region. I don't think that I met anyone from the former Yugoslavia, except perhaps persons who were maybe interpreters. But at the beginning, or unfortunately for too long, we really

didn't have that connection with the former Yugoslavia.

So, I had never lived in Europe, I didn't have any friends in Europe, I just took a plane and came here. My son came with me. I was excited because I had been a civil rights lawyer, that is why I went to law school. I often say that I never wanted to be a lawyer. When I say that people would say to me, "What do you mean you never wanted to be a lawyer, you have been a lawyer for three decades now or more?" But I wanted to be a civil rights lawyer, so I applied to one law school, Harvard University in Washington DC. Afterward, I joined NWACP, legal defense, and educational fund, traveling the south. This was in the '60s during the turbulent years of civil rights advocacy in the US. That's what I wanted to do.

So, in a sense, this was a kind of a progression. I had been a professor; I had been a federal judge. As a federal judge, I tried criminal cases, cases involving persons charged with crimes. So, it was a kind of a progression. But I can't say that I really knew a lot about what I expected. In a sense, that appealed to me. I think I liked that. I am an adventurous spirit and I like that.

MV: Most of the people I've been talking to told me that was the main problem. People were saying, well there is a group of judges, but there are no cases, there was nothing... There was a lot of skepticism. How did you feel? How did you deal with it?

GKMcD: Frustrated. It was very frustrating. After we met initially in November 93 in the Peace Palace, we then came back and drafted the Rules of procedure and evidence for about two months. I had rented an apartment. We worked very very hard for those two months or so. I was very active. After that, when the first prosecutor decided - he didn't want a job - then he left. A deputy prosecutor came, Blewitt, and then Goldstone. But not

until August. It was frustrating. It has been reported that the judges have decided that they would resign if an indictment was not issued by the prosecutor. That's not true. There was never any collective decision that we would resign. But I can tell you that I personally gave it some passing thought, not resigning but I was terribly frustrated. I came to do justice, I had been a judge who had presided over criminal cases. And I came here for that purpose and although I enjoyed drafting rules, because I had taught that procedure, so I liked that, I did not expect that to be my life's work with the tribunal. So, it was frustrating. I said I rented an apartment, I had to give up that apartment. Then I was here, back and forth. I rented another apartment, that was later when I expected the Tadić case to go forward. Had to give up that apartment... So, it was frustrating and kind of disrupted in your life, because I was neither here nor in the US. We spent time here and in the US, and I wanted to close out what I was doing in the US and be active with the Tribunal.

MV: What made you stay?

GKMCD: Because I was committed, for the reason that I became a lawyer. Because I was committed to the process. I believe that the law makes a difference in people's lives. It's important before conflicts occur, but it is certainly important after conflicts. Racial minorities in the US have achieved a lot through the rule of law. What I wanted to do was beyond the other end of that – dispensing that kind of justice to make a difference in people's lives. So, I stayed. But it was frustrating.

MV: It was a battle for survival in a way?

GKMCD: Yes, it was. It was nothing but judges. In the beginning, we had a alone secretary and there was a lot of drafting. Antonio Cassese was the president. He was always

feverishly working. Then when Goldstone finally came to the tribunal he was back and forth to the UN fighting for survival. We didn't have a budget in the beginning. The UN would give allotments to us for say three months like you give to a child and say – don't spend it all in one place. How do you set up a tribunal when you can't even give contracts to people?! So, it was frustrating.

MV: And then, the first indictment came.

GKMcD: Yes, Nikolić.

MV: And the first accused arrived finally, which was not Nikolić.

GKMcD: When a person came to the tribunal then in a sense we were truly in business. It was exciting that...we had two trial chambers then, the Trial chamber I handled the deferral proceedings which - we haven't even completed the courtroom, you know – the deferral proceeding was held in what was to become courtroom number one with a table and a tablecloth on it. But the judges did a good job in Tadić. When the initial appearance was handled and the whole case was assigned to my trial chamber. I had been elected the presiding judge. I felt like we were in business, that it was more like what I used to do in the United States. There was a kind of mixed anticipation, but also a concern because we had never had a trial before and we realized we have to conduct it.

MV: In applying international law in this case, how did you manage to do that? What were the obstacles?

GKMcD: First of all, international humanitarian law which the tribunal applies and develops even through its cases, had not been an area of law that many people were

familiar with. Since the Nuremberg trials in the late 40's it had not been applied by an international court, certainly. Just sporadically by some very few national courts. Primarily professors of law worked in this area. I was not one of them. So, I had to learn a lot. We had at the tribunal of the judges - some had prior judicial experience, a couple were professors, some came from the government of their states. So, I had to study international humanitarian law. Which I like. I was a professor and I like learning. Some of the concepts were similar to the law that I was familiar with and applying when I was a judge, but mostly some of the procedural law, not the substantive law. But it was exciting to me. I am an Aries, I was born in April, they say Aries are very good beginners. They don't hang in there for a long time, but they love to get in at the beginning and create and they like that excitement. So the people who write about Aries say.

MV: As the Tribunal was put in business, as you said there was a beginning of another battle, the battle for respect?

GKMcD: Actually, the battle for respect began before that. I think it began with the first trial. Because... This might be a long answer...

For some time there had been talk of establishing a permanent international criminal court. Many people believed it was not possible to conduct criminal trials on an international level because of the differences between civil law and common law. So, in terms of respect, in terms of proving that this can be done, the Tadić case was tremendously important. Because there for the first time, we applied these Rules of Procedure and Evidence. I remember when I was coming back after the judgment had been issued, I was in the hall talking with someone, I said, "I feel like I was one of the Wright brothers" – the two

who flew the first airplane in the US because we did know whether our Rules of Procedure and Evidence would fly, whether they would work, how they would work. But the plane flew, and it landed. There was some turbulence, but it did land. So, I think one of the crucial battles for respect was demonstrating that we could conduct a trial, and I believe it was a fair trial. And the Appeals Chamber has upheld that. So that was a battle for respect.

From the very beginning one of the obstacles we had, which I did not expect, was the lack of cooperation. My background has been a federal judge where, when I issue an order, it is obeyed. If it is not obeyed, then someone is gonna pay the consequences. But in the international setting, we did not have that compulsory power. Not only that, even though the statute required states to comply with requests and orders, the Federal Republic of Yugoslavia (FRY) basically thumbed its nose to us and took the position that it would not, as they put it, "extradite" persons who were nationals of the FRY. So, the FRY and Croatia, they would not cooperate. We could issue the arrest warrants and they might as well had been just paper that flies in the air. I thought maybe they put them in the drawer somewhere in the bottom of the desk and would not execute them.

The other problem – the statute though of the ICTY gives us primacy, which means since we were established by the UN Security Council, states have an obligation to comply with the requests and orders. Even though they are put in the form of requests. It is a nice way to put "Please but do." We did have, though, an issue that arose and that had to do with the subpoena decision in the Blaskic case. What had happened is that I had signed the subpoena that the prosecution had presented asking for certain documents and the subpoena was addressed to Croatia and a government official, or officials as I recall. I

signed that because I was the judge on duty. That was my job. Croatia then objected. I'm speaking from memory. Croatia objected. I then conducted a hearing just by myself since I was the only judge who signed it. Then it became apparent that this was a major problem. I then convened the Trial chamber, asked two judges to join me. We also asked for briefing from amicus curiae. We received 17, as I recall, 12 or 17 briefs. I permitted maybe 10 or so persons to argue as amicus, as well as of course Croatia and the prosecution. It was important because these were outstanding professors. When you talk about respect for the tribunal, how better to get the respect than to have some of these outstanding professors, persons who spent their lives studying and teaching international humanitarian law. So, they presented their briefs and Croatia did too and the ambassador from the UN presented for Croatia as well as a professor whose name starts with a J... very, very capable.

Our trial chamber issued a decision finding that states had to comply with subpoenas. Basically saying that it did not make any difference what you called it, they had to comply. Then there was a question of whether individuals had to comply. The Appeals Chamber reversed saying subpoena connotes a penal consequence, which means 'under penalty, so if you don't comply, you'll be under penalty. The tribunal cannot institutionalize a state. I took a different position as a trial chamber. To me as a member of the trial chamber didn't make any difference whether it was called a subpoena or a binding order. The fact was you had an obligation to comply that flows from the statute and if you did not comply the penalty would be reporting that non-compliance to the Security Council (SC). But it was the penalty, nevertheless. The Appeals Chamber said: No, call it the binding order. But a rose by any name is still a rose. Binding order, subpoena, whatever, states have to comply. That's tremendously important, I think.

But again, sometimes in the international setting, it is a piece of paper. So, we have a decision, and it says you are supposed to comply - that doesn't mean there is going to be compliance. Because even after that Milošević stood symbolically, I suppose, at the border saying: we will not transfer any nationals. That's why I was telling Mirko a couple of weeks ago when I was over to Tribunal that it was so ironic that the first Serbian to be transferred to the tribunal was Slobodan Milošević. The leader of the country who was responsible for violating his obligation as the head of a state and just refusing to cooperate. It was so ironic, when I visited the tribunal, to sit there and see him in the dock. He was the one who for so long said: no, no, no, it won't happen. Well, it did. He was transferred. Of course, he is presumed innocent until and if the trial chamber finds him guilty.

So, the battle for respect I think began with our first trial. There were a number of other situations. One would have been the subpoena decision. The other would have been just the constant reporting of non-compliance. President Cassese I think reported twice I think to the SC the non-compliance of the FRY, Milošević as the head. Once I think of Bosnia, once of Croatia. When I was president, I twice appeared before the SC complaining about non-compliance and asked the SC to adopt some meaningful measures to bring about compliance. That's the battle that you have when you are in the international setting, in a court that was set up like us. We have to go to the SC to ask that it take action when a state will not cooperate.

MV: What about other countries?

GKMCD: My country, the US... When I became president, I had a few goals. One was to spread the word about the tribunal. Not just to the former Yugoslavia, which was one of the

major components of it, but the US as well. Because the US, for example, did not agree to the enforcement of sentences agreement. The tribunal had agreements with many states – after a person is convicted, they are then sent to that state to serve the sentence. The US would not agree to that. The US was financially very, very supportive. Of course, Madeleine Albright in the beginning was instrumental in establishing it. But other states too were reluctant to assist the tribunal in a meaningful way, like that for example the enforcement-of-sentences agreements. Agreements to allow persons who testify to come to the country to reside. Not any witness protection program, but just allow them to if they can't go back to the former Yugoslavia, to come. You didn't see a lot of that either. It was very difficult.

You know what the turning point I think was? There are two turning points, a lot of turning points. That's when 10 Croats "voluntarily" surrendered. The US envoy Robert Gelbard, according to the news reports, was in Croatia at the airport saying bye, bye. But it was supposedly a voluntary surrender. That shows what can be done when a powerful country, or even a group of powerful countries as it relates to SFOR, really gets behind the tribunal and does more than give finances, which is of course very important. And that is - to encourage voluntary surrender. And that was in October '97 and at that point, we may have had maybe 8 persons in custody. But that more than doubled the number of persons in custody.

And the change in the role that SFOR adopted was also a kind of battle for respect if you want. Or a turning point. Because in the beginning, how embarrassing to see in the press a photograph of someone from IFOR sitting in a cafe next to a person who has been

indicted by the tribunal. IFOR took a position, "That's not our mandate, our mandate is to keep the parties apart, but we're not gonna go out of our way to arrest." Then SFOR and I think general Wesley Clark made a difference. They began to actively, maybe that's a too strong word, but at least arrest indictees. And that's a tremendous turning point too. So, SFOR probably began arresting more about at the same time when the 10 indictees from Croatia surrendered.

Then all of a sudden, the tribunal grew. We had one courtroom, and all of a sudden, we had 18 or so indictees. What do we do? So, we scrambled around, and two courtrooms were built. I was president then and I remember joking saying that I kept cutting ribbons, that I felt like the queen of England. But they were built in a very short span. One of my goals, when I was president, was to get another trial chamber. So, in January 98, I was at the UN lobbying for another trial chamber. So, all of a sudden, we kind of grew very quickly.

I don't know what the turning point was in terms of the battle for respect. But it was a lot of things. The SFOR, the involvement of major countries, the proof that we could conduct trials, subpoena decision which meant at least that, states were obligated to comply with "binding orders". We finally began to get money, whereas in the beginning we had these allotments, and you can't give someone a contract for three months. Who wants to uproot their lives for three months? So, we were able to give longer contracts. So, I think that's about all I can think of right now. It's a long answer to say, it's a long process. Actually, no, it was a short process if you think about the development of the criminal court system in the US or even in your country, it is a very short process. We're babies. I mean ICTY. My heart is probably still there.

MV: Event or emotion or something that you remember as a very impressive moment for you?

GKMcD: Well, one thing, one event that I'm just thinking about now as we're talking was, after we worked so hard on the Tadić decision and we judges, judge Steven, judge Vohrah, and I, made a conscious decision that we would make a historical record of what happened – the guard against revisionism – so we did more than just address the indictment but we tried to show how it developed and how it got to this point. And it was a lot of writing and condensing of the testimony. I was talking with two journalists, and the journalist told me, two journalists...and they told me that they had been to the Prijedor region, and they had talked to the people there. They didn't know anything about the Tadić decision, they didn't know anything about the so-called camps. The reporter asked me: How does that make you feel? What does that tell you? It told me a number of things – It told me that we need an outreach program, which comes later. I was shocked that we would spend all of this time and still the people – and I don't think that it was the matter of their lying, certainly about the collection centers as they call it that may not have been very truthful. But as far as what we were doing, what we did in the Tadić case it was a matter of lack of information.

To my mind, there was a terrible disconnect between what we were trying to do, the mission that we were given to try to bring about and maintain international peace and security, and what's happening in the former Yugoslavia. We are, as we would say in the US, whistling in the wind. We're spending all this time developing international humanitarian law, listening to witness, developing ...and on the ground it means nothing. That was one

thing.

Individual witness testimony was very moving to me. Very moving. I don't know what's harder – to be the presiding judge or to be one of the judges with you.

From a legal point, I am listening to see whether there is going to be an objection and how I would rule on it. At the same time, I personally and I think it is my personality, I was very sensitive to witnesses testifying, whether they were for the prosecution or the defense. I think it is my background, my civil rights background. Maybe because I am a woman, maybe just because I am who I am. I can feel it. Sometimes I get emotional now.

I remember a man testifying how he lost two sons. He died in April, we rendered our judgment in May. He testified about how one son was pulled out of a line, he happened to be a Bosniak, and killed, shot – he could see. The other, he was in Omarska and he was told to go and get his son. I remember this man's name for so long... It's not how you say Ičić... I don't want to single out any name, excuse me. It was another gentleman, but it was kind of like that. He had grey hair, a slight man... he testified, he was at Omarska, he was sent to go and get his son, his son would not come out of one of the rooms they were pushed into. And he said, "Son, you have to come. They are calling you. You have to come." And he testified, he said, "I never again saw him." That was very moving to me.

Then another woman, I remember her name but I won't mention it, she lost her husband, her uncle, her father. The prosecution showed her a photograph and asked to identify because they have to. What went through my mind I think is how could people do this to each other? A young man who was forced to rape, have sex with his mother. Putting a noose around someone's neck ...just horrible things. How could they do this? And what I

keep thinking, and I said it before – is that in the former Yugoslavia, particularly in Prijedor region, in Kozarac, people, the communities lived together in relative integration, intermarriage, going to school together, associating. Elisabeth Neuffer, who recently lost her life unfortunately in Iraq, wrote a book “The keys to my neighbor’s house.” I think was the name of it. The title of the book comes from the testimony from the Tadić case, where the principal in the school in Kozarac testified about how Tadić had gone in this school. I asked this question that I was thinking about throughout the trial. “How could this happen?” I thought, “Here’s the principle, as he said of the most integrated school, he would give me an answer, an answer that would satisfy me.” And he said, “I don’t know.” He said, “a madness came over us.” Then he went on to say, “I can’t explain it, a Serb had the keys... my neighbor, he had the keys to my house.” The question of “Why?” still hangs with me.

MK: Reading the summary of Judgement, you asked that question in Tadić. You asked Tadić this question, and you stopped. Did you expect he will answer?

GKMCD: No, no, I didn’t. It was the first time we issued the judgment and we set the date for sentencing. The night before I felt I should say something to Mr. Tadić. My fellow judges told me I had to say something to him. So that night I... you know, when you sentence someone in the US you kind of talk to them and say something... When I asked him why, why? And I didn’t expect him to answer, because I had the answer, I got the answer from the testimonies of another witness. I haven’t looked at it since, but I still remember the witness, it was a woman, I think her pseudonym was AA. She came from that area and testified. She was a friend; her husband was a particular friend of Tadić. He (Tadić) had told her, or her husband, and she heard at least - that this area would be for Serbs only

and that no Muslims would be living there.

And so, when I asked the question why I knew what the answer was, he told me what the answer was during the trial. It was a rhetorical question where I was trying to put out the question why and answer it not only for what he did but for, as he said for the Greater Serbia campaign. How can people do this?

What was important about the Tadić case – There was a big discussion about small fish versus big fish. He was a small fish, but you know, it's the small fish who commit the crimes. These are the ones who, I think, have the direct contact with victims. These are the ones who have to be told, and it has to be demonstrated, that if they commit these acts, that their leaders are encouraging them or directing them, or ordering them to commit, that they would be held accountable. And I think that's what's important about Tadić. It's the neighbor next door who unfortunately in this conflict did it. It's the neighbor next door who committed these horrendous crimes in Rwanda. You have the leaders who set the tone, who further on their personal desires for power and for territorial gain, who are responsible and they are the symbolic and the actual head, so to speak. But it's the foot soldier who carries out these things that needs to be told is not gonna happen.

And to show you the impact of the ICTY, of international criminal justice period, recently in Iraq, when the war was going on in Iraq, the US administration issued a warning, at least it was reported on TV, to the military, "If you carry out, if you violate international norms, if you commit war crimes, you will be held accountable." Recently the Secretary-General Kofi Annan said the same thing in Sierra Leone for what's going on in Liberia. If you violate international norms, if you commit violations of international law,

you'll be held accountable. You never heard about that before. You never heard that happened. But that's how far we've come. It was a long process of gaining respect starting with the first draft going all the way through to Mr. Milošević finally in the dock.

MK: What was your idea in starting the Outreach program?

GKMCD: It kind of goes back to as I said the interview I had with these reporters from Prijedor. After we, the judges, spent all our time and we came up with this wonderful decision we thought was so intellectual and just so beautiful with all these pages and foot-notes and whatever – it did not mean anything in Prijedor. And it was clear to me that something had to be done about it.

Again, I think it comes, I never really thought about this aspect, maybe it comes, again, from my being a civil rights lawyer, because it's believed that law can change attitudes. When I talk about the desegregation efforts in the US, it was the decision of the Supreme Court and Brown vs Board of Education in 1954 that outlawed this "separate but equal". There was a belief that law plays important role in changing attitudes. But if the law is being dispensed by an international court, hundreds of miles from Yugoslavia, and people don't understand the processes and it is not their court - like in the US or any country where people create their own court and it is their culture, their laws – then how can the decision mean anything? How can the decision really do what the Security Council said they were to do, and that is to bring about peace and reconciliation.

So, in my heart, it's the belief that law can change attitudes. As a judge with ICTY, it was our mandate for the decisions to be used to bring about this change, this end of retaliation, retribution. But you needed to get from those decisions there. So we invited -

before the outreach program was really formally launched - we invited judges from the former Yugoslavia. It was wonderful. One judge came from Belgrade and they came from Banja Luka, Sarajevo, Croatia. They were amazed at what we were doing. They, so many of them, had the opinion that the judges kind of listened to the prosecutor, that the prosecutor would present evidence and the judges would say, "OK, guilty." They did not understand that the trial was really a hard-fought process. That the judges required that the prosecutor prove guilt beyond a reasonable doubt. That made a tremendous impact on the judges - and hopefully with the people. But more needs to be done with the outreach, from what I understand, I am not there.

The Tribunal can't try everyone. Are the courts in former Yugoslavia ready to try cases involving war crimes? You would think that ICTY would have somehow assisted in this process, helping the courts. We met with the judges, they came to the Hague, we were kind of helping them to pick up the mantle, to take the next step because ICTY can't possibly do the job. And now it's coming...the deadline has been imposed, at least they are talking about a deadline in 2008, 2010.

So the battle for hearts and minds is a battle. Part of it is educational because they have to know about the tribunal, they have to appreciate it. When I was president I traveled to China, to Beijing, I went to Rome, must have been 1997, December 1997, any way to Beijing, to Africa, to Italy, to Egypt - this was in a two year period, always talking about the tribunal. To Austria, to the United States several times because I was really adamant about that, being an American, that the US should understand what we were doing. Because so many Americans would tell me, "What are you doing over there? What does that have to do

with us?" That was like an affront to me personally. The battle for hearts and minds never ends. It never ends. It is something that has to be done constantly if a tribunal is to help bring about international peace and security. Now the tribunals are kind of more mixed, like the one for Sierra Leone has an influx of national judges and is more connected to the country. Which I think is tremendously important if you are to accomplish this great purpose.

MK: As a president, you travelled also to former Yugoslavia?

GKMcD: Yes, I traveled to the former Yugoslavia which was wonderful. We had planned so many trips to the former Yugoslavia, in the period of two years. But it seems like that every time we were going crisis would come. One time we got warned that Karadžić is going to be arrested and at that point, I was thinking of going to Pale. I considered it would be inappropriate for me to go to Pale at that time if it was true that he was gonna be arrested. Here we are, five years later, he still has not been arrested. I went to Sarajevo, and it was wonderful, it was wonderful just to meet with the people again for whom this court has been created. And to have the dialogue.

But one of the high points of the time, when I was with the tribunal, was that I was actually meeting, I used to say our constituents, the people in the former Yugoslavia, and they need to understand that the judges are not the prosecutors. In the civil law system, which is a problem, the judges play more of the role that has a kind of connection with the prosecutor. ICTY is a combination, the rules are a blend of the common and civil law, but the trials are more akin to common law. That's why it is sometimes hard for the people in the former Yugoslavia to serve as lawyers because they are not used to cross-examinations,

they are not... I remember one lawyer saying... she wanted me to get the prosecutor's file and give it to her. I said the procedure do not call for that. That's what you used to do in the former Yugoslavia. But they need to understand we are totally independent. We sit there and the prosecution has to prove its case, and if it doesn't prove its case beyond a reasonable doubt, the case is being subject to being dismissed. But they don't know that if they don't even get our decisions in their language. They don't know that our decisions are readily available in their language. That's unfortunate. But then, the resolution creating the tribunal and the statute, which is our guide, doesn't have that as one of its explicit responsibilities. That is why outreach is a kind of an adjunct, but I think it needs to be given more respect, with all due respect to the ICTY and greater emphasis. This intellectual endeavor is tremendously important, but if people don't know what you are doing, then what you're doing is writing decisions for professors and for lawyers.

MK: As a president, you haven't been in Belgrade. You were supposed to go, but ...

GKMCD: I was on my way to Belgrade, invited by Natasa., it was the Humanitarian center there, giving a conference. At that point, the prosecutor was denied a visa. As a matter of policy and respect for the rule of law, to make it clear that the Statute had to be complied with, and the resolutions which had directed the Federal Republic of Yugoslavia to allow investigations, they denied her visa, and I said I am not going either. And I didn't go... I think I was right. I'm sorry though that I didn't get a chance to go because it was good for people to see me as a judge. As a president of the tribunal, a kind of representative of the judges who I have so much respect for, who are impartial.

MV: What could be the heritage of ICTY to the ICC?

GKMcD: Well without the... You know... There's never one institution or one event that causes another event necessarily or another institution to come into being, but certainly, without the experience of the ICTY and the ICTR you know - we forget about the ICTR, Rwanda tribunal, you know, the sister institution - without their experiences, without proving that it can be done and done fairly I say dispense justice fairly. I guess it's not justice if it's not fair but in any case, without that experience, I don't think there would be an ICC because they tried and tried so many international law commissions, etc um...

I have always been a supporter of the International Criminal Court. When I was president, I supported the International Criminal Court. One of the reasons I went to Beijing was for a conference at Peking University about the International Criminal Court. The judges - very early on when there was just a draft statute - commented on the statute. And when I was president, the US chose and continues to choose not to be a part of this important endeavor.

So, I believe in global justice. Just as there are breaches of the peace in national systems, and we would never think of not having a criminal justice system, well they're breaches of peace on the international level as well, only of horrendous and mass consequences. 800 thousand Rwandans killed in three months. So there needs to be a mechanism in place to address this propensity I suppose for behavior before it gets to the end of the conflict so to speak or even the beginning of a conflict. ICTY was established after the fact. ICTR was established after the fact. There's a hope that if you have in place an international criminal court people will be put on notice that - if they engage in this conduct- they will be held accountable. Because there's a feeling that there may be some

deterrence. We don't know whether there is deterrence or not.

The ICTY didn't deter Srebrenica, that was a big blow. You talk about frustrations, here you are in the middle of trying to develop the court and then you have in July of '95 something like this. But the ICC is needed I think as I said hopefully to deter, but I think it's needed because in a sense it's almost hypocrisy and this is what I used to say when I was president, for the international community to come together and to agree to all these treaties and these conventions that outlaw this behavior and then to do nothing about. It's hypocrisy.

It's almost like having a speed limit and not enforcing the speed limit, only of course you know much more serious. So it's important for the international community to mean what it says and that's what the ICC is all about. And it's a coming together now of whatever number of countries, ninety countries or so, coming together who say we believe in the globalization of justice, we believe in international criminal justice. We believe that not only did we sign these treaties on you know sign on a piece of paper, but we believe that they're worth more than the paper. And I used to always talk about them being paper tigers I just remembered.

So, without a doubt, ICTY and ICTR played a major role in the establishment of the ICC, because we demonstrated that it could be done even though the structure is different. We demonstrated that it could be done. It's unfortunate that the United States is not a part of this effort. Kind of makes me feel embarrassed, as an American.