

Project:

ICTY ORAL History - Documented by SENSE

An Interview with

Patrick Robinson

SENSE Transitional Justice Center

Pula, Croatia

2022

Interviewee: Patrick Robinson (PR)

Interviewer: Mirko Klarin (MK)

Location: The Hague, The Netherlands

Date: 4 December 2008

MK: It seems that you took the presidency in a particularly hard time for this Tribunal, because you're, well, running out of time, apparently. How do you see this moment of the history of the Tribunal?

PR: Well, I agree with you, it's a very difficult time for the Tribunal and a difficult time for me too as the new President, but I hope that the years that I have spent here will stand me in good stead. As you know I've been here ten years, so I'm fully aware of the challenges that we face and I'm also aware of our achievements. But it is particularly difficult because of the completion strategy which the Security Council has set. As you know, the first Resolutions on this from the Security Council indicated that trials should be completed in 2008, appeals 2010. That was always very difficult to achieve because of the kind of trials that we have here, which are invariably very, very long and even though the Tribunal has taken a number of measures to expedite trials, some of which are – most of which I'm sure you know of – they still take a long time, you know. We still have a vast number of witnesses who testify in Court, although we have made significant improvements, we now get a lot of evidence in written form. So that was, that's one reason why it's particularly difficult. Since that time the Security Council, no doubt aware that the time could not be realized, has now given another indication. It has extended the mandate of trial judges to 2009 and that of appeal judges to 2010, you know.

MK: If I go through the list of the trials, I see that at least four or five trials will have to continue in 2010. Do you think you will have the mandate to continue those trials?

PR: Well, we'll certainly have it up to 2010. I think the difficulty, as far as I see it, is that the appeals will have to go beyond 2010, because naturally if there are going to be trials in 2010, then you're going to have appeals running into 2011 almost certainly and perhaps, in one or two cases, 2012.

MK: Do you think that you will get support of the Security Council for a continuation of trials in 2010, not to speak now about the appeal process which will obviously have to go on two years after the conclusion of the trials?

PR: One of the points that I would want to make at the United Nations when I'm there next week is that I'm representing an institution that can be justifiably proud of its achievements. We have tried more persons for breaches of international humanitarian law than any other similar or hybrid institution. We have contributed more to the development of corpus of international humanitarian law than any other institution, any other judicial body. So, I don't think we need to be hesitant or shy in making the representations and I intend to be quite bold about it, but humble, non the less. I think we can stand on our record, and I expect the United Nations to give us the support and the resources that we need.

MK: So how would you define the priorities of your presidency? Obviously the last thing will be to turn off the lights, but before that moment?

PR: I think the first priority has to be the completion strategy. Our political

directorate is United Nations Security Council, and we must respect the dates that they set and we must do everything that is within our power to ensure that we meet the deadlines that they have set and I want to have the Tribunal work towards achieving those deadlines and I think we are working quite well in that direction. Of 161 indictees, 116 have been tried. We are now running 7 trials simultaneously, with 26 accused, and we hope to start the eight trials on 15th of December. For that purpose, we have had to apply to the Security Council for the appointment of the new ad litem judge. So, I believe we are on track, I believe we are on track, but we need support, you know. We suffer from attrition of stuff, we are losing experienced members of staff, we are losing staff who have institutional knowledge that is vital to the success of our work and I hope that United Nations will understand that we need support and give us the support that we need.

MK: In parallel with responsibility you have here, in the last few years you had more and more responsibility in supporting the local jurisdiction, the local courts in former Yugoslavia, which are supposed to continue the work after this institution fulfil its mandate. So, what are your ideas regarding the ICTY cooperation with local judiciary and when do you plan your first visit to the region?

PR: Well, I'm very glad that you mention that you know. I have a background in international law that makes me very sensitive to capacity building and anything that will help countries to develop capacity to perform certain functions and I intend to place a lot of emphasis on capacity building and partnerships with local jurisdictions. You asked about projects, I can mention two. There is a project with United Nations body, I think it's the United Nations Interregional Crime Institute, and also another with the OSCE body, and the

purpose of those projects is really to ensure that the best practices are extracted from the work of the Tribunal and passed on to local institutions, so that's the best practices project. We also have in mind establishing memory centres in the local jurisdictions. These memory centres will provide access to the work of the Tribunal, using electronic means, and I intend to pay a lot of attention to that particular project.

MK: And when do you plan your first visit to the region? I mean, you have been in the region, visiting with the Trial Chamber, I suppose, sometimes.

PR: Yes, I've been twice. I went first to Sarajevo in 1999 and of course I visited the famous tunnel. I went back the last year and I was amazed at the development and regeneration that was so evident over that period of 8, 9 years. I missed an opportunity to be there, to be in the region. Because I was invited to attend the meeting in Belgrade earlier this week, but, as you know, I'm exceptionally, as a President, I'm still presiding over a trial, so it wasn't possible for me to go. But, I had two very experienced judges, the former president and judge Agius, they attended and they shared their experiences with, in the seminar. As for my first visit I can only tell you it will be at the soonest possible time, it can't be too soon for me. I very much wish to go.

MK: In future occasions we will develop some of the subjects you mentioned, like memorial centres and legacy questions and so, but since you are busy, and also we are running out of time now, what are the most memorable moments for this 10 years you have spent here? If you have to choose, what was the highest and the lowest moment from your point of view, from your experience, as a judge in this institution?

PR: I believe that I would have to say that the most memorable moment is the

Milošević trial, the Slobodan Milošević trial. Such a remarkable trial. Judge May who was presiding initially, passed away and then Slobodan Milošević himself passed away and we were all very disappointed that we were not able to write a judgment in that trial. After all, we had spent 4 years, you know. And so the... it was regrettable that the justice to which both Slobodan Milošević as well as the victims were entitled, we were not able to deliver it through our judgment and that is the massive regret. In that trial I had one of the saddest moments of my professional carrier. I remember listening to a witness who had lost practically every member of his family. I numbered about 19 members of his family. And that actually brought tears to my eyes, although it might not have been visible to other people in the courtroom. But I would have to mention the Slobodan Milošević trial.

I've had other moments that I remember. When I came here first the general rule was that accused persons were held in detention, they were not given provisional release or bail and that was not in accordance with international human rights norms and in 1999 I made a proposal that was accepted which brought our rules to conform with International Covenant and civil and political rights. And I'm really proud to say that generally now accused persons are granted provisional release if they deserve it, of course, you know, so that provisional release, or rather detention, is not the norm. Detention is the exception for persons who are awaiting trial, you know. And it had become almost a practice that persons were detained without provisional release for the first 3 or 4 years that I was here. And that has changed, I witnessed a change in that.

One other matter in which I was involved had to do with expediting trials. I made a proposal on the 10th of June 2002, which is now reflected in rules, and it is reflected in

almost the same language that I had proposed it. And it is the proposal now which, more than any other measure, allows trial chambers to reduce the indictment and to leave the indictment in a manner that is generally representative of all the charges that is within that indictment and that I think is now being used in other Tribunals as a measure to expedite trials while at the same time being fair to an accused person.

MK: If I remember well, you were dealing with one very interesting problem back in the beginning of 90s. It was the legality of arrest in the case of Stevan Todorović.

PR: Yes, oh, yes, yes, yes.

MK: That was terribly interesting, and we never came to the conclusion because he pleaded guilty.

PR: Yes, I remember that very well. That was a disappointment for me that we never had to write a judgment on the very interesting issues that were raised by his, the method he was arrested, you know. And he pleaded guilty and I happen to have been involved in a number of other cases which never came for one reason or another to final judgment, about two or three or four. I don't know why, but in at least two or three cases accused persons pleaded guilty during the trial. [laughter]

MK: So, was that your influence before, in the pre-trial stage?

PR: I can't say. It's really a quirk of fate.

MK: More than three to four, I can tell you. First of all, Sikirica, Dosen and Kolundžija, there were, you know, the Keraterm case, they all pleaded before the end of the trial.

PR: Yes, I remember that.

MK: Then, you had Banović Predrag, then you had Bralo Miroslav, then Biljane Plavšić, of course, the big case. Then Stevan Todorović, which we mentioned, you know.

PR: I don't know, maybe I should have been involved in more trials. We would then have accomplished the mandate of the Tribunal. But that's uncanny. I don't know what explains it, quite frankly.

MK: More pre-trial stages. For the end the most difficult question now. I saw that you wrote the book about Jamaican athletics, "A Model for the World", and that you say that, you know, it's a model for the world in national level and international level. What's your interest in athletics? Is that just the pure national sense of pride with a great achievement?

PR: No, I could spend another two hours with you on that subject. My book is right over there if you wish to have a look at it.

MK: Yeah, we would like it.

PR: But the fact is, you know, that Jamaica only has 2.7 million people, you know, at the last Olympics only the USA and Russia were ahead of Jamaica in medals won! We were third out of 204 countries! Now, why is that? That is what I seek to explain in my book. And the question which I ask, which is more important, is why Jamaica can't have the same level of achievements in other areas of national life. What is there about athletics that can be translated to the wider society in Jamaica, that's what I'm looking at in the book. It is the system that has developed in Jamaica for about 100 years now. We have been producing athletes year in year out and it has to do with the secondary school's system which takes

boys and girls up to age 18 and 19 and the athletic program that has been developed over the years and the stress that has been placed on it, that we have particularly over the last 20, 25 years now. We produce our own coaches. If you notice the young man who won 100, 200 meters...

MK: Bolt.

PR: Bolt, you know. He was trained in Jamaica, locally trained and I stress that, because prior to the 1970s all our athletes went to the US for their tertiary education and for training, so it's the achievement that we now train our own people, capacity building, you see. It's the form of capacity building.

MK: Your conclusions are not leading only to the national level, you know, but you also suggested something which is more on international level. You proposed, you know, to hold and to give them the medals for world peace and prosperity. Can I ask you, why only politicians? Why don't you think that judges also can have their Olympics games? Have they reached that level of excellency, judges or justice, let's say?

PR: I think an Olympics is possible for every facet of life because the Olympics is really about excellence. Excellence. And that is the main purpose and virtue of the Olympics, that it encourages you to do your best, and that really is what we want of the entire world – for people to do the best, achieve their potential.

MK: Including this Tribunal?

PR: Including this Tribunal and the other tribunals that are working because we are not alone, you know. But remember that the tribunals alone cannot do it, you know, and

that is one of the first things that I discovered when I came here and I saw the vast number of witnesses in the case. Because the kind of work that we do usually stems from mass crimes, crimes involving thousands of victims and an international tribunal alone will never be able to resolve and that is why capacity building to enable local jurisdiction to try cases and to try them in accordance with the highest standards of human rights law is so important. International tribunals will never be able to do it alone. The first port of call must be the local jurisdictions, so the capacity building in the states of former Yugoslavia must never be neglected and I intend to attend to that while I'm president.

MK: And they have an extra advantage over the Tribunal – they don't have the expiration date.

PR: They don't have expiration date. That is a big advantage. [laughter] They don't have an expiration date.

MK: Which means that we can have war crime trials even 50 years after the war, as we had some for crimes committed during Second World War. There are still some trials going on for those.

PR: I mean, crimes are really meant to be tried in the countries that have jurisdiction over them, whether that be territorial state or some other state, they are really not meant to be tried by international tribunals. They are tried by international tribunals for one main reason. If you look at the Statue of the International Criminal Tribunal, trials go there on a residual basis when states are unable or unwilling to try persons, you know. So we are acting in a residual manner and in the ideal world what we want is a situation in which it is not necessary to have international criminal tribunals, but that may be a utopian dream.

MK: Thank you very much, mister President

PR: Thank you very much, too.