

Chief Prosecutor On The Record

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Del Ponte speaks to IWPR about the challenges and successes of her term in office.

In an exclusive interview with IWPR, outgoing Hague chief prosecutor says her team's achievements include proving that genocide happened and that there can be no impunity.

Q: Why haven't you asked the ICTY [International Criminal Tribunal for the former Yugoslavia] judges to lift confidentiality from the transcripts of Supreme Defence Council, SDC, meetings that are currently in the possession of the tribunal? You've asked only that confidentiality be lifted from Serbia's motions in which it demands that these documents remain confidential, and from the judges' decisions granting that request. Is that true?

A: The Milosevic case - the case in which these documents were used - is closed. At this time, the decision [by prosecutors] was made to request the disclosure of two decisions by the judges in the case [in which they granted Serbia's demands]. The reason this request was made is because we believe it is in the interest of justice that the public is informed about the decision-making process at the ICTY when it came to these documents.

Q: Knowing how relentlessly you pressured Serbia over the years to hand over remaining war crimes suspects, many were surprised you gave the green light to Serbia to initial the Stabilisation and Association Agreement, SAA, even though the key precondition - arresting Mladic and other fugitives - hadn't been met. Why did you do that, and do you think that move sent the wrong message to Serbia?

A: The European Union made the decision to initial the SAA agreement. It is not my decision to make. At the time, I had reported certain progress in the cooperation of Serbia [with the tribunal]. This progress had to do with the outstanding obligations in terms of access to important documents and archives, not the search for fugitives.

The European Union has made it clear that signing the SAA agreement will depend on the full cooperation [of Serbia] with the ICTY. Full cooperation means [Bosnian war crimes suspect General Ratko] Mladic in The Hague, and I hope that the European Union will maintain its principled position.

Q: How do you explain the fact that other Serbian top officials who were very close to former Serbian president Slobodan Milosevic, such as Blagoje Adzic, Veljko Kadijevic, Borisav Jovic and Dobrica Cosic, have never been indicted? Veljko Kadijevic was even mentioned as a member of the joint criminal enterprise in the indictment against Milosevic, and yet he was never charged with war crimes. What are the chances that will ever happen?

A: Many decisions had to be made over the years in terms of resources and time. When the tribunal was instructed to implement its completion strategy, we had a deadline. This resulted in a number of investigations being closed before they were finished. That is the perverse effect of the completion strategy.

However, another consequence of this strategy is increased cooperation with the national prosecutors in the former Yugoslavia. Over the past few years, my office has established excellent working relations with the judiciaries in the former Yugoslavia - we are in constant working contact with the war crimes

prosecutors in Serbia, Croatia, Bosnia and Herzegovina and, as of recently, Montenegro.

My transition team is working with the local prosecutors on a daily basis to transfer investigative materials we have gathered over the years to assist the local judiciaries in their efforts to conduct proceedings against war crimes suspects. We have also fostered regional cooperation between prosecutors as an extremely important part of the efforts to prevent impunity.

The most important result of all of this is that no one who has committed crimes should sleep peacefully. There is no statute of limitations on war crimes and all victims must see justice.

Q: A couple of days ago, Bosnian daily Avaz quoted your interview with Der Spiegel in which you apparently said that the ICTY prosecution has evidence that former Bosnian president Alija Izetbegovic paid mujahedin to fight in Bosnia. Did you really say that? If yes, why hasn't that evidence been presented in any of the cases against Bosnian army officers including General Rasim Delic?

If not, why haven't you responded to the letter from Bakir Izetbegovic - Izetbegovic's son - in which he demands that you either prove or deny these allegations, which he says are completely false?

A: As part of the Delic trial, we have evidence that mujahedin fought in the war and were paid. I do not have evidence that Izetbegovic personally made such payments.

Q: There are some experts who believe that the indictments against Bosnian army officers are very weak, because it is almost impossible to prove command responsibility for isolated crimes when there was no preconceived plan to commit them, and when their number is relatively small.

Knowing all the problems you'd have in proving command responsibility in such cases, why have you decided to indict the very top of the Bosnian army? Don't you think that such a prosecution strategy only strengthened the myth that all sides are equally guilty?

A: First of all, my mandate from the [United Nations] Security Council is to prosecute those believed to be the most responsible for the most serious crimes. Secondly, I proceed on the basis of evidence I have available. All of the indictments issued by the Office of the Prosecutor are confirmed by a judge of the tribunal. The judgements speak for themselves. We do not deal in myths, only evidence.

Q: Why, in your opinion, was former Bosnian Serb parliamentary speaker Momcilo Krajisnik acquitted of genocide charges? Some observers say the prosecution didn't even try to prove his responsibility for genocide. In the case against Milosevic, you had witnesses who were giving evidence of the role of the political elite in genocide. But that was not the case in Krajisnik's trial. Why have you given up on him so easily - you didn't even appeal the judges' decision to acquit him of genocide charges.

A: The Trial Chamber concluded that the requirements for the actus reus for genocide were met by all the crimes of murder and extermination as well as some instances of cruel or inhumane treatment. However, it was not satisfied beyond a reasonable doubt that any of these acts were committed with the intent to destroy, in whole or in part, the Bosnian Muslim or Bosnian Croat ethnic group.

The genocidal intent of the perpetrator is an essential element to prove genocide.

The chamber properly considered the factual circumstances of the crimes, such as the large number of killings, the number of killings relative to the population in the village or detention centre where the killings took place and the selection of the victims. It also considered the surrounding circumstances, such as the words uttered by the perpetrators and other persons at the scene of the crime and official reports. On its analysis of the evidence as a whole, it was unable to find whether his co-perpetrators had genocidal intent. [In light of this], a genocide conviction against Krajisnik was not legally possible. In simple terms, even if Krajisnik himself intended to commit genocide, if his co-perpetrators do not share his intent when they committed the underlying crimes, he cannot be convicted of genocide.

Q: You recently said you're 80 per cent sure Mladic will be arrested by the end of this year. Do you still believe that and what do you base your prediction on? The Serbian government has promised Mladic's arrest several times before, but nothing ever happened. Do you think the situation is any different now? Do you personally think former Bosnian Serb leader Radovan Karadzic and Mladic will ever be arrested?

A: I still believe they will be arrested some day. However, as I reported to the Security Council, my optimism that this will happen soon has waned considerably.

In my assessment, though, there is a clear, declared commitment in Serbia to cooperate with the tribunal.

We see that level of commitment only in words and not in deeds. There are serious deficiencies in the leadership that is supervising the civilian and military security services. There is no strategy or proper analysis, which is why actions taken are unsystematic, not well prepared and uncoordinated. Decisions taken at the higher level are not always followed up. Specific information transmitted from my office is not always acted upon, properly checked or expeditiously processed. Important operational decisions are not implemented or are implemented too slowly or postponed indefinitely, for reasons which are not always clear.

The civilian intelligence service is unwilling to cooperate more closely with its military intelligence counterpart and continues to refuse to provide full and comprehensive reports.

Despite the Serbian authorities' declared commitment to fully cooperate with my office and improve procedures, there is no clear roadmap, no clear plan in the search for fugitives, no serious leads and no sign that serious efforts have been taken to arrest the fugitives. I cannot deny that steps are taken, but they are slow and inefficient – they definitely do not match the urgency of the moment.

Q: If they do get arrested, where will they be tried if the tribunal closes down in 2010? And what will happen after that? Do you think the regional war crimes courts will be able to carry on from where the ICTY left off and successfully prosecute war crimes suspects, even the highest-ranking ones? And do you think having a regional war crimes court in the Balkans would be a good idea?

A: It is my strong belief that the tribunal must not close its doors before Mladic and Karadzic are brought into custody. They cannot be prosecuted at the local courts in the region and I do not see the point in creating another institution to deal with the same cases. I trust that the Security Council will allow the ICTY to fulfill its mandate.

Q: What do you think should happen to the ICTY archives? Do you support the initiative launched by Bosnian authorities that the archives should be moved to a UN-run facility in Sarajevo after 2010?

The question of what will happen with the archive after the ICTY closes its doors has been raised by many. A working group has been set up at the tribunal, under the direction of [former chief prosecutor Justice Richard] Goldstone, to determine, among other matters, where the archives should be located. This working group will present a set of proposals on the future of the archives early next year.

It is my hope that these documents be accessible to practitioners, prosecutors who continue to conduct war crimes trials domestically, and to the victims.

Where they are physically located may have symbolic consequences. I believe it is crucial that the vast amount of documents be easily accessible and made available to those interested from this region and that the original documents are stored in such a way so as to prevent any possibility of tampering with or destruction of this important material.

Q: What do you think of the tribunal's completion strategy? Some say it's already hugely affecting the fairness of the trials, because the cases have to be sped up. They also claim the UN and the whole world is trading justice for convenience in their decision to close the tribunal so soon. Do you agree?

A: I have expressed my concerns over the completion strategy and the decision of the judges in some cases to reduce the scope of the indictments. I am also concerned when I see the judges drastically limiting the time given to the prosecution to present its evidence. It remains to be seen what effect these developments may have on the ongoing cases.

Q: In your opinion, what are your greatest achievements as the chief prosecutor, and what are your biggest mistakes?

A: My team and I have achieved a great deal. We have issued initial indictments against 63 individuals, and 91 accused [have been] brought into the tribunal's custody. More than 80 people have been put on trial and dozens and dozens have been convicted.

We have proven beyond a reasonable doubt that genocide was committed in Srebrenica, that rape was used as an instrument of terror and should be considered a crime against humanity, that the crimes against civilians during the siege of Sarajevo merit the highest sentence, and many other very important facts about the crimes committed in the former Yugoslavia and the individual responsibility of those convicted.

Bringing Milosevic into custody was certainly a great achievement - we demonstrated that there can be no impunity.

This is never the work of one person. It is the work of a team of highly professional and dedicated individuals.

As for the mistakes, I will let someone else conduct that analysis.

Q: And finally, what can the International Criminal Court, ICC, learn from ICTY?

A: I believe the ICC has already benefited from the experience of the ICTY. Tribunal experts have contributed a great deal to the initial discussions on creating this institution. I will leave it to my colleagues at the ICC to tell you more about what they see as useful for them.

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