

Interview: Hague Tribunal President Theodor Meron

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Tribunal is well on course to completing its mandate, but fugitive suspects must be brought to justice before 2008.

In March this year, Theodor Meron, a Polish-born American who is a law professor at New York University, was elected president of International Criminal Tribunal for the Former Yugoslavia, ICTY, in The Hague.

Unlike his predecessors, who had to fight to ensure the court's survival, Meron has inherited an established tribunal with 40 accused in the dock. But he also inherited a deadline by which to try them all.

In an interview with IWPR, the new president - a Holocaust survivor who holds degrees from the University of Jerusalem and Harvard Law School and has written a book analysing the role of international law in Shakespeare's *Henry V* - discussed the proposed 2008 closing date set by the United Nations Security Council, and its implications for the first war crimes court since Nuremburg.

Q: Do you think it is possible to complete the war crimes trials before the 2008 deadline set by the UN Security Council?

A: That much depends on how many new indictments the prosecutor will still bring, and how many people will in fact be arrested or otherwise brought for trial to The Hague. I am constantly watching the numbers and the process. I think it's extremely important to maintain the legitimacy and to protect the legacy of this tribunal in terms of a rational and orderly conclusion or our work. We had a slow and painful beginning with few defendants, not the kind we [or the prosecutor] would have chosen.

Having said that, cases such as [Dusko] Tadic [a low-level Bosnian Serb convicted of killing Muslims] helped keep the tribunal alive. That period allowed the tribunal, because the judges, relatively speaking, had more time - unlike today's unrelenting pressure - to develop some seminal jurisprudence. In the Tadic case they confirmed that the whole notion of war crimes was applicable to non-international armed conflict. That's quite a statement in international law.

Q: Do you think the judges are setting fewer precedents now because they are under so much pressure?

A: No, it's just that [then] they could devote even more time to it. Now we are working under much greater time constraints, but we have developed an impressive model of an international criminal tribunal. We have six trials a day, not always, but typically three in the morning and three in the afternoon - as you know we have only three courtrooms.

From these, an incredible body of jurisprudence is emerging on substantive issues of international criminal law, and just as importantly, on procedural and evidentiary questions such as the legality of the arrests, demands to disqualify judges and many others. There is a tremendous range of issues covered by jurisprudence of importance to the future functioning of all international tribunals, including the International Criminal Court, ICC.

Q: Are you satisfied with how things are progressing?

A: We still have some problems. The trials are still too long - this is in a way the price we are paying for total compliance, on which I certainly insist, with international due process and human rights. We give the accused all the possible guarantees.

I would very much like to speed up the trials, and for the prosecutor to be more selective in terms of the charges. We are a mature court, which has developed predictable jurisprudence, and it should be much easier now for the prosecutor to decide which particular crime to prosecute. We need not always proceed under crimes against humanity, war crimes and even genocide, but select the best possible statutory basis and on which we have the best evidence, just as prosecutors in many countries would to speed up the process. Justice delayed can sometimes be justice denied - we have to move faster.

Q: Is there a way to speed up the trials?

A: Yes, with judicial reforms and more effective prosecutorial work. We are trying to reform the rules of procedure to give the judges better tools of trial management, [for example] encouraging judges to set a number of limits [on time and witnesses].

Of course, trial management has to be flexible. The judges must be responsive in particular circumstances and willing to give more time to the prosecutor or allow more witnesses. But we must do our best to have faster trials in the interests of both justice and efficiency.

Another area where we have adopted useful reforms is this: What happens when the international community invests a tremendous amount of time, money and effort in a case and one of our judges becomes sick or, God forbid, dies? Or what if a judge on a case is a candidate for re-election and is not re-elected? Are we to start all over? We can't be completely dependent on the consent of counsel for a new judge to join the remaining two judges on the panel.

We have now established a very well calibrated system of guarantees and procedures which enable the case to go on with a new judge - two would continue and one would join - and that judge would have to familiarise himself with the case. Such a change of the bench would be subject to automatic appeal to make sure the rights of the accused are respected.

Q: Will that be sufficient to help you meet the 2008 deadline?

A: We are going to try to comply with the dates mentioned by my predecessor Claude Jorda to the Security Council in July 2002, but we have to take into account that this year we have been very successful in [bringing] some very prominent accused [to the tribunal].

Their trials are likely to be of considerable complexity and duration, and when it comes to international justice, we can't do something quick or on the cheap - judicial work must be properly done. Recent arrests have to be factored in, and we still have lots of unknowns. The main imponderables are [indicted fugitives] such as [Bosnian Serb leaders] Ratko Mladic and Radovan Karadzic.

Q: But even if there are no new indictments issued between now and 2008, there are still 20 or so war crimes suspects at large, and twice that number in the detention unit. Will it be possible to try all of them?

A: If there are no new indictments I think the [overrun] would not be dramatic, as the date 2008 for the conclusion of trials ... is not written in stone. I am sure the international community wants us to do a good job. As judges we have an obligation to the values that we uphold, to justice and due process, and [cannot

be] constantly looking at our watches. It might [run over to] 2009, and of course there will be two or three years for appeals after that. This has always been understood and been part of the plan.

Q: Have you actually done the calculations - counted the number of accused and the courtrooms and the judges you have to see if it's possible?

A: We are doing that constantly. To be able to comply with those dates it is critical to have a more focused approach by the prosecution along the lines of what I've indicated to you - and also for the judges to take a very robust role in trial management.

We have been working very hard with the Peace Implementation Council under Dayton. Two weeks ago, I spent two days in Sarajevo and we are very gratified by the fact that, after talks and negotiations that have gone on for quite a long time, there has been a unanimous endorsement by the council's steering board for the establishment of a special war crimes chamber in the state court of Bosnia-Herzegovina.

If everything goes well, the next step will be for [Bosnia-Herzegovina] High Representative Paddy Ashdown and myself to present a report to the Security Council in October and ask for its official approval. The plan does not need to be endorsed for legal reasons, but the council would give it stronger moral and political international support.

The plan represents a much greater utilisation of local or regional courts. War crimes trials speak with much greater resonance when they are held close to the victims. Now this has to be balanced by the greater danger to witnesses so part of the plan is to develop an efficient system of security and witness protections. We have made a good beginning and the idea is that there will be a joint task force chaired by the Office of the High Representative and the Bosnia-Herzegovina justice ministry.

It will establish a number of working groups to deal with the nitty-gritty of legal procedures, protection and security. The tribunal will try to facilitate this development.

The Sarajevo project is still dependent on [funding], but one thing should be clear - it is not designed to accommodate high-level defendants. We have to try those cases here at The Hague, as [they] would create too much stress for the local environment. Therefore the type of cases that we would be able to transfer to Sarajevo would be cases of lower and intermediate level suspects.

But I do not believe our tribunal can go out of business before we [have] Mladic and Karadzic in custody and on trial. I think that our historical mission on behalf of the international community will not have been performed.

Q: Aside from the trial Chamber in Sarajevo, there are also efforts being undertaken in Zagreb and Belgrade to convene local war crimes courts. Will the tribunal be able to assist these other local efforts?

A: I would certainly encourage such developments so that local courts may provide credible justice and be respectful of international human rights and due process.

Q: Is there already a process where the tribunal can oversee such local efforts?

A: We are a court of law and don't have a monitoring function, but we have considerable influence through

consultation. So far, we have limited ourselves to the Sarajevo chamber because we have been given guarantees of international standards. Each judicial panel in Sarajevo will consist of one local and two international judges and this just shows the tremendous sensitivity to ensure due process and proper procedures in such courts.

But the idea is to develop the judicial institutions and the rule of law in the area, initially in Sarajevo, and eventually elsewhere. I understand Belgrade is focusing on a war crimes chamber and this is good.

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