

INTERVIEW

Together we will bring the remaining fugitives to justice

Serge Brammertz *Chief Prosecutor of the ICTY, exclusively for «Justice in Transition: Face to Face»*



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In the eve of his third visit to Serbia since he was appointed Chief Prosecutor of The Hague Tribunal on the 1 January by the decision of the UN Secretary General, Serge Brammertz gave an interview to “Justice in Transition - Face to Face”, a journal published by the Centre for Transitional Processes from Belgrade and co-published by the War Crimes Prosecutor’s Office of the Republic of Serbia.

On June 11 he hailed the action of locating and arresting Stojan Zupljanin, headed by the war crimes prosecutor Vladimir Vukcevic, but he also remained true to the gist of his report to the Security Council of June 4, in which he said that Serbian authorities “could do more.” In a written statement following the arrest of Zupljanin he maintained that he expects new results in the near future - the transfer of the remaining fugitives, some of the key documents and the access to the Serbian archives.

On that occasion he also criticised the level of cooperation with the ICTY in Bosnia and Herzegovina, as he did with the cooperation with Croatia somewhat before.

He was on his way to Serbia for the first time after the creation of the government which is believed to be vested into completing The Hague related tasks.

And then, on the July 21, The National Security Council has announced that yet another indicted person, ex-leader of the Bosnian Serbs, Radovan Karadzic, was located and arrested by Serbian security services.

The visit was postponed, Karadzic appeared in the courtroom, and the Prosecution headed by Serge Brammertz started refining the indictment against one of the most wanted accused.

Serge Brammertz arrived to Belgrade on September 10, where he was “informed on the past operations, current activities and future plans.”

“Dedication and expertise of the action team allows me to express cautious optimism regarding the success of the pursuit for the remaining fugitives, Mladic and Hadzic”, were the cautious words of the Chief Prosecutor, followed with congratulations to his hosts on the important results in arrests of Stojan Zupljanin and Radovan Karadzic.

We asked him what does the prospect of the “long term stability in the region” mean for him, as he evoked it regarding the transfer of the remaining fugitives?

- By saying that, indeed, I did commend the Serbian authorities under the leadership of War Crimes Prosecutor Vukčević, for the arrest of Stojan Župljanin. I believe that this is an important achievement and I expressed my hope that other fugitives will also be arrested in the near future. I am looking forward to future cooperation with my colleagues, prosecutors in Serbia and in the other countries in the region.

At the same time, while recognizing the importance of the arrest and achievements in other areas of cooperation, I cannot ignore the remaining deficiencies in cooperation which are reflected in my last report to the UN Security Council. For me, this is not a question about the tone used or vehemence – as you put it – I am not criticizing for the sake of being critical. This is a question of what must be done so that we are able to fulfil our mandate, which is to successfully complete all current and pending proceedings and bring all remaining fugitives to justice.

As for long term stability in the region – in my view, it can only be achieved if the rule of law prevails. This will happen if the remaining fugitives are brought to justice and if sufficient support is provided to our colleagues, war crimes prosecutors in the region, so that they can continue prosecuting war crimes cases well after the Tribunal completes its mandate. Only in this way can we hope to see justice served.



On the next day, in what could be viewed as response to your report, Mr. Rasim Ljajić, President of the National Council for Cooperation with the ICTY, said that the completion of Serbia's cooperation lay in the hands of a new, pro-European Serbian Government. Could you please comment on that?

We are looking forward to cooperating with the new government, and I strongly believe that a true partnership can be further developed.

You describe yourself as an optimist who believes that all of the remaining fugitives will be transferred to The Hague. This also explains speculations that you are "the last ICTY Chief Prosecutor". Pursuant to the ICTY Completion Strategy, the Tribunal should have ended its activities by 2010. As the Tribunal's Chief Prosecutor, will you personally represent the OTP in proceedings against Ratko Mladic, Radovan Karadzic, Stojan Zupljanin and Goran Hadzic?

I do have a positive approach to the work we are doing and I strongly believe in the commitment of people in Belgrade and The Hague to bring the remaining fugitives to justice. This is why I am optimistic that, together, we will achieve our goal. Also, I simply cannot accept the idea that Mladić, Karadžić and Hadžić, would be allowed to escape justice. As for our representation in court, I think that in each case, the Senior Trial Attorney in charge of the case is best able to present the Prosecution case in court. But, we certainly work as a team and it is my job and my main priority to provide the leadership and direction necessary in managing the Office.

In your report before the UNSC, as well as in the statement which you gave to the media following your Belgrade meeting with Serbian War Crimes Prosecutor Vladimir Vukčević, you expressed your support and appreciation for the work of the Serbian War Crimes Prosecutor's Office (WCPO). How do you assess the WCPO efforts to prosecute war crimes perpetrators?

Throughout my career, cooperation with prosecutors in other countries has been at the centre of my professional activities. I worked with colleagues from all over the world which gave me significant insight into what it means to be a prosecutor in a country in transition or in a country with a complex political situation. It is in this context that I expressed on several occasions my respect for the work done by Prosecutor Vukčević and his team. They have achieved some very important results. Long term investments have to be made, not only in his office but, in the judiciary as a whole, in order to strengthen it. All countries in the region face the same challenge.

On one occasion you said that, being a prosecutor, you had no intention to interfere with politics. Nevertheless, do you believe that your present report has any impact on the EU policy, and, if so, to what extent? How much have your overall activities and decisions had political implications, and in turn, has politics had any, if indirect, impact on your work?

I believe that a clear separation between judicial work and politics is important. Achieving justice is always a long-term project which must be based on objective criteria. The work of any prosecutor is technical by nature. We must fulfil our mandate while respecting the highest international standards.

However, international criminal investigations, unlike its counterpart at the national level, rely much more heavily on the cooperation of states. The implication is that the ability to conduct such investigations successfully depends in part on the political will within these states to cooperate.

So, while we are certainly not engaging in the political process by commenting on who may join the EU or sign an agreement or a treaty, we expect the international community to support us in fulfilling our mandate. The international community created the Tribunal and determined its mandate and, therefore, the international community should use all legal means to support us in achieving this mandate. This is exactly what the EU is doing at the moment.

Decisions made by the Hague Chief Prosecutor can have far-reaching political consequences. Can a prosecutor, in any country, be completely independent of politics? In your home country, your reputation is that of a capable legal professional who, in the course of his meteoric career, has managed to remain beyond political influences. Former Lebanese finance minister Zorn Korm believes that you are "too serious to fall under political influences". In terms of political pressures, what has your experience been so far?

As I said, it is very important for the prosecutor at the national and international level to be independent in performing his or her duties. If you want the public to trust the judiciary, all prosecutorial and judicial decisions must be objective and impartial. At the same time, I am fully aware that this independence may be much easier to achieve in a stable country with a long democratic tradition than in a country in transition.

You have been the fourth ICTY Chief Prosecutor since this court was founded in 1993. Before coming to this position, you were the UN commissioner in charge of investigation into the 2005 assassination of former Lebanese Prime Minister Rafik Al-Hariri. The UN Secretary General assigned you to that task in the aftermath of your successful investigations into a series of political murders in Lebanon. It would be interesting if you could share with us a few details of your strategy in that job. How did you manage to cope with it?

The investigation in Lebanon is still ongoing, so it would not be appropriate to comment on the investigation strategy as such. In general terms, the overall approach encompassed detailed crime scene investigation and the use of forensic expertise as used at the national level for investigations into terrorist attacks. This was combined with investigation techniques more common in international investigations, such as looking into political and military structures, the possible chain of command or the analysis of the political context. A specific difficulty was and still is the fact that, while the investigations were ongoing, additional assassinations were being committed and the political situation at the national and regional level remained complex. In this particular context, we also worked with the Lebanese Prosecutor General, which was of paramount importance.

You have been appointed as ICTY Chief Prosecutor after Richard Goldstone, Louise Arbour and Carla Del Ponte. You will certainly agree that the challenge was great. How do you view your present activities in the OTP?

It is a privilege to be a successor to such prominent international prosecutors. They successfully managed activities of the Office of the Prosecutor which have always been challenging but especially so in the first few years of the Tribunal's existence. Today, the main objective remains the same: to bring to justice those most responsible for the most serious violations of international humanitarian law committed during the wars in the former Yugoslavia.

What is different today is that we have stronger judicial partners in the region. As I mentioned on several occasions, the successful completion of our mandate will also depend on the ability of the local judiciaries in the former Yugoslavia to successfully conduct war crimes proceedings and, in that way, continue the work of the Tribunal.

You have investigated cases of human rights violations in the Congo, the Balkans and Darfur. As a law professor at Liège University, you published works on global terrorism, organised crime and corruption. In the period between 1997 and 2002, you were a lawyer and the Belgian State Prosecutor; you worked with the EC Judicial Committee, as well as IOM adviser, investigating cases of corruption and human trafficking in Central Europe and the Balkans. How do you view the Balkan link between war criminals and those involved in organised crime – human, drugs and arms traffickers? Have you had any personal experience in dealing with such cases?

During my 13 years as a national prosecutor, I worked mainly on organized crime cases, which often included an international component: drug cartels from Latin America, ecstasy drug trafficking from Europe to Asia and trafficking of human beings from Central and Eastern Europe. These criminal organizations often adapt their field of activities to those that provide the best opportunity for financial gain. Political instability and armed conflict create a favourable environment for organised crime whose activities are often linked to the conflict, as for example, in arms trafficking.

Your public image is that of “the man of change”, given the fact that you have performed a whole range of offices – from a municipal court judge in your home town to the ICC Deputy Chief Prosecutor, when that court was founded in 2003. Your critics say that, just because you do things “in too much of a hurry” and change offices so often, you tend to “start a lot of projects, yet finish but few”. Since there is not much time left for Hague Tribunal, do you believe that you will be able to finish this job?

I have been a prosecutor for the past 20 years and I plan to continue performing that function at the national or international level well into the future. Successfully achieving the work I have undertaken as the Prosecutor is the priority, but the successful completion of that work is dependent on many factors including, as I have said, the full cooperation of all States. So, not much change there.

Ms. Florence Hartman, the former ICTY spokesperson, says that many states have blocked the efforts of the ICTY by denying access to evidence in their possession; among other such examples, the U.S.A. refused to disclose records of the talks held in 1995 between the Serbian authorities and representatives of Bosnian Serbs. Do you have any insight into the obstacles which prevent the remaining ICTY indictees from being arrested?

As mentioned on many occasions, the arrest of remaining fugitives is extremely important for victims and it is an obligation for the states in the region as well as the international community to the extent that it can assist.

I expect the commitment of all those involved to yield results like those we saw recently with the arrest of Stojan Zupljanin and Radovan Karadzic.

Mr. Jorg Rikman, a Frankfurter Rundschau commentator, describes your previous assignment as dangerous and politically delicate. As German State Prosecutor Detlev Mehlis’ successor, you had a UN mandate to clarify the assassination of former Lebanese Prime Minister Rafik Al-Hariri. In that situation, as Rikman puts it, beside your skill as investigator, you demonstrated a substantial amount of tact and consideration, which had a pacifying effect on a divided Lebanon. On the other hand, some critics observed that your way of handling cases slowed down the investigation. Among our public, you are already viewed as a calm and soothing professional. The impression is that Europe is willing to offer the Balkans a European perspective, which is so crucial for the peaceful development of a region burdened by the experience of a recent civil war. In the case of Serbia, are you going to demonstrate the same amount of tact and consideration as you did in the case of Lebanon?

The prosecutor, particularly at the international level, depends very much on cooperation. The best way to obtain cooperation is to convince your interlocutor that helping you in fulfilling the court’s mandate is in everybody’s interest. You can only be convincing if you establish relationships with interlocutors based on trust and respect. And this trust and respect must be mutual and real. It is this partnership that I wish to continue to develop with Serbian authorities and others in the region, and expect to do so in the same manner I approached my work in Lebanon.

At the regional conference which recently took place on Brioni islands, you had the opportunity to fathom into the regional dimension of war crimes prosecutions in the Balkans. How do you assess cooperation among prosecutors in the region?

As I mentioned earlier, the work done by the national war crimes prosecutors is the logical continuation of the work of the ICTY and will continue beyond the completion of the Tribunal’s mandate. We have strengthened our Transition Team which interacts on a daily basis with colleagues in the region. What I saw in Brioni was the commitment of our colleagues to strengthen regional cooperation despite some remaining legal obstacles, such as, for example, the non-extradition of own nationals and the impossibility to transfer war crimes cases from one state to another. Such barriers allow many war criminals to evade justice. We intend to assist these efforts to the greatest extent possible and encourage the international community to support this approach.

In your opinion, how does transitional justice work in the Balkans? What are its main shortcomings, and what are its greatest achievements?

Transitional justice is still a recent development and has already produced important results, especially when we look at the recent judicial decisions in Serbia, Croatia and Bosnia. I hope that my colleagues will continue to receive the political and public support to fulfil their mandate. In order to strengthen that support, it is important that political leaders across the region accept historical facts and realities and avoid denying proven facts or abusing them for political purposes.

Finally, the international community is supporting and investing in the national war crimes prosecutor offices and it is important that the judiciary in the Balkans is strengthened at all levels. Recently, I met with a group of Bosnian prosecutors from all parts of the country explaining the extremely limited resources they have in performing their functions. A strong and independent judiciary is an important component of all democratic states, especially during transition.

Interviewed by
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