

Face to Face

FACING WAR CRIMES: A MISSION THAN CANNOT BE AVOIDED

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The people of Serbia face several important anniversaries this year. Some of them will remind us of tragic events, some may symbolize optimism or a new beginning. They should prompt us to reflect upon the past and serve as reminder of what still needs to be done.

July 2005 marked the tenth anniversary of the massacre in Srebrenica. Ten years have passed since the war in Bosnia and Herzegovina ended, leaving tens of thousands of victims. There were those who died in combat but there were also thousands of victims of heinous murders, mass executions, tortures, rapes, ethnic cleansings and other crimes. Finally, on 5 October 2000, five years ago, the people of Serbia rose up and toppled the regime of Slobodan Milosevic, a regime that brought tremendous injustice and suffering to its people and to its neighbors. The most painful legacy of this regime for the state and society as a whole, is the question of how to cope with the truth about the grave atrocities committed in the name of Serbian nation during the conflicts in the former Yugoslavia.

Both victims and perpetrators can be found among every nation and every state that came out of the dissolution of Yugoslavia. It is important, however, that every society first looks at its own past and faces the crimes committed by its own. As a Serbian proverb says: "Everyone first needs to clean up in front of his own house".

Only by taking decisive steps in coping with the past and taking on the subsequent responsibilities can society and the state gain the credibility, reputation, moral and political advantage and give an even stronger argument for its call that the suffering of its own victims be acknowledged by others.

I am pleased to see that a lot of progress has been made in facing the legacy of the war crimes in recent years since October 5, 2000. Bringing those responsible to justice and fully acknowledging the truth may be a long process with a sometimes slow pace. But the culture and policy of impunity for crimes committed against other nations that existed during the 1990's no longer exists in Serbia.

Specialized institutions have been established and mandated to investigate and try war crimes cases – the War Crimes Prosecutor of Serbia, War Crimes Chamber of the Belgrade District Court, specialized war crimes chamber within the Supreme Court of Serbia and War Crimes Investigation Unit of the Serbian Ministry of Interior. They are real pioneers. So far they are the only specialized official institutions in the world established solely under domestic law, staffed exclusively with domestic personnel and tasked to deal with war crimes committed in ethnic conflicts that their own nation was a party to. They will have to build up a new practice and jurisprudence, relying on domestic and international law as well as experience of international tribunals and other countries' courts. People working in these institutions have demonstrated commitment, professionalism and great willingness to constantly improve and update their knowledge and skills. They co-operate closely with their colleagues from the Hague Tribunal, former Yugoslav republics and other countries. All along the way of developing these institutions, the OSCE Mission, together with its partners, has provided assistance through expertise, training, study trips, work-shops and regional conferences.

Cross-border co-operation among the judiciaries of Serbia, Croatia, and Bosnia and Herzegovina in war crimes proceedings is constantly improving. Co-operation between War Crimes Prosecutor Vukcevic and Croatian State Prosecutor Mladen Bajic demonstrates how formerly belligerent parties can combine their efforts in prosecuting individuals responsible for war crimes. It is a good example for regional reconciliation.

It is also of crucial importance that the War Crimes Prosecutor's office and War Crimes Chamber have maintained direct and regular co-operation and partnership with the International Criminal Tribunal for the former Yugoslavia (ICTY), exchanging information and expertise. It is encouraging that the highest Tribunals officials, including Chief Prosecutor del Ponte, publicly commended the competence and professionalism of the Serbian War Crimes Prosecutor, his deputies and judges.

The Parliament and Government of Serbia, in particular the Ministry of Justice, deserve credit for drafting and adopting the laws and subsequent amendments defining the mandates for specialized war crimes prosecutors, judicial chambers and police units. Serbian institutions have improved the judicial procedures, as well as preparing drafts of laws regulating witness protection. In partnership with the OSCE Mission, these inputs have created an advanced legal setting for efficient war crimes investigations and trials to be conducted in Serbia in line with international standards.

The judiciary has shown great awareness of the need of war crimes proceedings to be as transparent as possible and be made known to the public at large. Daily efforts by the War Crimes Prosecutor's Office and Belgrade District Court to address the media and the public and explain why some events are

investigated and why somebody is accused and tried for war crimes are noticeable. The OSCE Mission, with the generous financial support of the Dutch government, has supported these activities as well as the launching of an information campaign by the Ministry of Human and Minority Rights. This initiative of the Ministry to educate the public about the necessity to bring responsible for war crimes before domestic and international court should encourage many other stake holders to engage in similar activities.

It is encouraging that more and more politicians in Serbia and Montenegro, have come forward to discuss openly the past events and the responsibility for war crimes in clear terms, especially after the Srebrenica anniversary and the release of video footage showing the killing of civilians in June this year. Facing the truth and telling the truth by the politicians are acts of true leadership and statesmanship. Remorse and acknowledgments of the sufferings of other nations can also lead others to show the same respect for Serbian victims.

We must not forget the important contributions to transitional justice processes that non-governmental organisations, led by brave individuals in Serbia, have made. They should be congratulated and thanked for the often unpopular work they have been doing for years – helping victims of the conflicts of all ethnic origins from the former Yugoslavia, publicizing their accounts, searching for and publishing facts and documents, advocating prosecution of war criminals. They present a new image of Serbia abroad, a progressive society with a great civic strength and potential.

The positive developments and progress in creating conditions for war crimes trials show that the state and the Serbian society have the potential to genuinely explore the recent past, punish the perpetrators and accept established facts about crimes committed in the wars. The very complex Ovčara trial, the arrest and prosecution of the former 'Scorpion' members, the recent indictment for the crime in Zvornik, and generally favorable public atmosphere surrounding these cases, all testify to the fact that the judiciary and state institutions are able and willing to act. The OSCE monitors these cases to assess the compliance with international standards of these trials. But we are just at the beginning of the whole process. There will be many challenges, especially concerning popular attitudes.

The mandate and skills of the war crimes prosecutors and judges are expected to be tested in cases that we expect will be tried soon. Among such cases are certainly the crimes which occurred in Kosovo, the victims of which were buried in the Batajnica and other mass graves in Serbia. This will be challenging for the state institutions but questions about how and why these crimes were committed need to be answered.

Appraising the conditions for holding war crimes trials before domestic courts does not mean scrutinizing only the judiciary, but rather has a broader notion of assessing the criminal justice system as a whole, performance of the police, attitudes of the political elite and overall public climate.

The police must fulfill its role established by the law and become fully committed and operational to conduct war crimes investigations, regardless of nationality or hierarchical positions of suspected perpetrators. The police must fully comply with requests by the War Crimes Prosecutor. They will be expected to perform the very difficult and sensitive task of collecting information and evidence, maybe even against former or current colleagues. However, nothing must be hidden from the Prosecutor and judges and nobody – regardless of the positions and past achievements – can be allowed to obstruct investigations and the rendering of justice.

Rule of law can not be achieved if those responsible for the most heinous crimes against innocent civilians or prisoners of war are at large or, even worse, treated as patriots. Hesitance or obstruction of bringing those responsible for the most horrific crimes to justice could be perceived or interpreted as acceptance or even approval of such acts, which then leads exactly to what should be avoided - collective responsibility.

The truth about atrocities committed by "our guys" in "our name" is always painful. Going through such a process is not new, nor is it peculiar to Serbian society. But no real recovery of a society can be expected unless it is ready to face the truth and learn from the past. The political and intellectual elite should be in the forefront of providing the people with facts and information.

The issue of war crimes will not disappear after all the indicted by the ICTY are in the Hague, or after the Tribunal completes its work. All societies need to give justice to victims in order to deter calls for revenge. They need to learn the truth in order to prevent further conflicts and to punish and stigmatize war criminals as all other criminals are punished and stigmatized.

This is not necessary not only because it is a condition to enter the NATO, the European Union, or receive foreign investments. The history and experience of many countries in the world has shown that if legacy of the past is not dealt by the current generation, the unresolved burden will continue to haunt the next one.

The OSCE Mission will continue to offer its assistance so that in partnership, Serbia can fulfill this historical task.