

## JUSTICE AND WAR CRIMES

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The brutality and barbarity of these crimes are vividly illustrated by one particular incident that sticks in my mind. It occurred in the central Bosnian village of Ahmići in April 1993 and involved a group of neighbours who, until the outbreak of war, had lived in harmony, often sharing backyard barbecues. Spurred on by orchestrated Serb and Croat propaganda urging citizens to kill their non-Serb or non-Croat neighbours, a Bosnian Croat entered his Bosniak neighbour's home. There, the husband was tied to a chair and severely beaten, while the Croat – with Bosnian Croat police participating – raped his wife and two daughters, finally cutting their throats. The Bosniak husband and father was forced to watch these atrocities. The Bosnian Croats then left, leaving the husband to struggle with the images of his murdered family for the rest of his life.

This epitomised for me the very thin veneer of human decency masking the evil that can lurk beneath the surface and which, when scratched, causes some humans to commit wicked acts.

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In addition to the staffing obstacles presented by New York, an event occurred in 1994 that clearly demonstrated the barriers put up by the UN bureaucracy. The incident amounted to nothing less than an act of pure bastardry on the part of Legal Affairs. For whatever reason – although I suspect the underlying aim was to force my resignation – without my knowledge Legal Affairs issued a directive to suspend my salary. As a result, for several months I received no remuneration. This was at a time when my family was still in Australia and were reliant on my financial support. I made inquiries in New York and was fobbed off with bureaucratic excuses, none of which made any sense. I was forced to borrow funds from my colleagues to forward to my family so they could survive.

I uncovered the source of the problem when I visited New York in June 1994. I obtained access to my personnel file and was horrified to see a directive from Legal Affairs to 'WITHOLD BLEWITT'S PAY', or words to that effect. I expressed shock to the UN staff member showing me the file, and he replied that this 'did not look right'. He suggested I leave it with him. Thankfully, shortly afterwards my salary payments resumed and I also received back pay.

During a visit to New York in December 1994, Prosecutor Goldstone and I attended a meeting with UN Legal Affairs. We entered the office together and met Ralph Zacklin, the Director. I first met Zacklin, a fifty seven-year-old British lawyer who had joined the UN in 1973, when I was transiting New York in February 1994 on my way to take up my duties in The Hague.

I believed I enjoyed a good relationship with Zacklin. Sadly, as a result of this meeting, this belief evaporated and was never restored. He completely ignored me and my friendly greeting; it was as if I was not present. Nothing had been conveyed to me either by him or anyone else, to indicate that something was amiss. Later, I was led to believe Zacklin had an issue with the way I was running the OTP, as in his view I was breaking or ignoring proper procedures. I suspected the real reason was he perceived Legal Affairs was losing authority over the process in The Hague. Even

although Legal Affairs was the UN body responsible for the ICTY, the Tribunal (and the OTP, in particular) was forging ahead in the performance of its mandate from the Security Council. Zacklin thought either I or the OTP was 'out of control'.

In early 1995, Goldstone, having returned from New York, informed me of his discussion with Zacklin. This prompted me to write to Zacklin on 7 March 1995, as follows:

*Judge Goldstone has informed me that during his most recent visit to New York he had a conversation with you during which you indicated that the Office of the Prosecutor has caused UN rules and procedures to be ignored and that the Tribunal's Administration was being instructed or encouraged to break those rules by the Office of the Prosecutor. I understand also that you were critical of me, in particular, in this regard.*

*I was absolutely astounded to hear these allegations. In some way they may explain your attitude towards me when I was in New York for the ACABQ hearings. Let there be no mistake that I totally refute the allegations; they are simply not true. I am unaware of your sources of information, but I wonder at the motives behind those who have led you to draw such strong conclusions. I have great difficulty in believing that such motives are not malicious.*

*It is more than possible that some of the actions taken to get the Office of the Prosecutor staffed and operational may have been contrary to some of the UN rules, but any such breaches would have occurred in ignorance and in good faith. If you have any specific allegations of any such breaches, I would be more than happy to answer them. At the very least I would have expected such an opportunity rather than being tried and convicted in absentia.*

*I am afraid that I cannot allow your allegations to go unanswered because they are without substance.*

I did not receive a response.

As the saying goes, 'the proof of the pudding is in the eating'. Confirmation that Legal Affairs was attempting to sabotage the OTP was provided shortly after Prosecutor Arbour took office. Following her visit to New York in October 1996 (while I was on leave in Australia), the OTP's External Affairs Officer briefed OTP staff about Arbour's mission. One of the matters he reported was that Legal Affairs had 'given up on its notion of trying to control the Tribunal'. Instead, Legal Affairs would now 'assist' the Tribunal. After that there were no apparent problems between the OTP and Legal Affairs.

## Sealed Indictments and Arrest Warrants

The Drljača indictment, which led to the breaking of the ICTY arrest logjam, has been mentioned in earlier chapters. This section provides some background. It is worth repeating that the circumstances pertaining to this indictment were, in my opinion, the most significant in the life of the Tribunal. Ultimately, they led to the apprehension or surrender of all persons indicted by the ICTY. In the absence of these events there is a distinct possibility the Tribunal would have faltered, fatally.

On Monday 10 March 1997, I received a call from an OTP investigator who was on a mission with fellow team members in Bosnia and Herzegovina. The team was undertaking investigations into crimes committed by the Bosnian Serbs in Prijedor.

The investigator, Tomas Ackheim, provided a remarkable piece of information. He had been informed by the local British SFOR Commander in Prijedor that the local Bosnian Serb Chief of Police, Simo Drljača, was creating havoc for NATO forces in the area. Drljača was said to be an obstacle to NATO completing its mission in the area and a source of danger to SFOR troops. He often drove around Prijedor fully armed, firing his weapon in the direction of the British troops, repeatedly taunting them. Despite his official position, he was not co-operating with NATO forces and was a real thorn in their side.



Tomas Ackheim (right) with the author.

Up to that point in time, NATO demonstrated no willingness or intention to apprehend any of the Tribunal's fugitives. This was about to change!

The British Commander informed Ackheim, probably out of frustration, that 'if the Tribunal could indict Drljača by Friday this week, SFOR will arrest him. He is being encountered by SFOR on a daily basis during the course of our duties'. These were the 'conditions' set by NATO before they were prepared to arrest any fugitive. Despite many earlier 'encounters' with other fugitives, no action was ever taken by NATO to apprehend them. At least not up until that point!

The OTP was already aware of Drljača's existence, and his involvement in war crimes. Indeed, during a briefing three years earlier with the Commission of Experts, lead Prijedor investigator, Judge Hanne Sophie Greve, had advised me about Drljača and his involvement in crimes falling within the jurisdiction of the Tribunal.

When the OTP commenced its own investigation into crimes committed in Prijedor, Drljača was one of the main suspects. Our initial focus involving Prijedor, however, related to the Omarska and Keraterm detention camps. This resulted in indictments being confirmed in February and July 1995. It was always our intention to bring further indictments in respect of the Prijedor war crimes, including Drljača; however, the Srebrenica genocide delayed those indictments.

The bottom line was we were in a perfect position to act immediately on Ackheim's information.

I contacted Arbour, who was in Africa performing ICTR duties. She agreed with my recommendation to act on this information without delay. 'If possible,' she said, 'we should meet the deadline suggested by the Prijedor SFOR Commander, namely to have an arrest warrant by Friday this week.' I replied that this was an obvious case for the indictment to be kept secret and for a sealed arrest warrant to be delivered to NATO, and that this would provide a strategic opportunity for the arrest of Drljača. In her absence, Arbour gave approval for me to prepare and sign the indictment, adding, 'We should ask the confirming Judge to keep the indictment and arrest warrant sealed.'

I immediately asked the investigation team in The Hague to prepare a draft indictment and an evidence package relating to Drljača, informing them the

indictment should be ready for my signature as soon as possible and by week's end at the latest.

The team delivered. Not only was an indictment prepared in respect of Drljača, it also included two co-accused, Milan Kovačević and Milomir Stakić. The team included a count of genocide in the indictment and presented a cogent argument that such a charge could be established, at least to the Rule 47 prima facie standard. (The inclusion of the genocide charge caused some division within the OTP, particularly with some of the US secondees, including Terree Bowers.) I signed the indictment and, together with the evidence package, delivered it to the Registrar for presentation to a Judge of the Tribunal for urgent confirmation.

The assigned Judge examined the material and listed the matter for hearing in Chambers. At the hearing I explained our strategy for keeping the indictment secret and revealed it was our intention to deliver the sealed arrest warrants to NATO. I informed the Judge that at least two of the accused were being encountered by SFOR troops during the course of their duties, thereby meeting the 'NATO test' required to apprehend indicted accused. The Judge confirmed the indictment on Thursday 13 March and ordered that the indictment and arrest warrants remain confidential.

As soon as the warrants were issued, I communicated with NATO (General DZ – Major *General* Drewienkiewicz, and legal adviser, Max Johnson) to advise them of the situation; namely that sealed arrest warrants had been issued and would be served on NATO in the immediate future. This phone call kicked off a period of intense negotiations between our Office and NATO.

Arbour returned from Africa the following day and spoke by phone with General Joulwan, NATO's senior commanding officer in Europe. She emphasised that the arrest of at least two of the indicted accused would fall well within SFOR's current legal mandate, which authorised the apprehension of any fugitive being encountered by SFOR during the course of their duties. Arbour indicated 'these arrests can be performed independently of the current Amber Star arrest initiative'. She said she would wait to hear from NATO. Details of what followed are set out in the previous chapter.

Eventually, on 10 July, four months after the initial call from Ackheim, an operation was undertaken by specialist British military forces. Drljača fired his weapon at the British soldiers during the arrest attempt, wounding one of them, and Drljača was then shot and killed in the exchange of gunfire. One of the co-accused, Kovačević, was arrested without incident in a separate operation the same day. The third co-accused, Stakić, was surrendered four years later by FRY authorities in March 2001.

After the Drljača and Kovačević operations – and notwithstanding the initial fear of dire repercussions – SFOR became more engaged in the arrest of fugitives. At the same time there were a significant number of voluntary surrenders.

Without wishing to labour the point, I actually regard the Drljača indictment, and the events flowing from it, as the most significant turning point in the life of the ICTY.



In a bizarre twist (a source of amusement even now, looking back on it!), after Arbour returned to Africa following these dealings with NATO, Bob Gelbard and about a dozen staff from the US State Department paid an unannounced visit to the Tribunal on 7 April. Gelbard, a tall, balding fifty three-year-old US diplomat had been involved with the Tribunal since 1996. He constantly displayed an air of arrogance and misplaced confidence. Along with OTP staff members Gavin Ruxton (Senior Legal Adviser) and Mary Fisk, Arbour's Special Assistant, I met with Gelbard and his delegation. The purpose of his visit was to deliver a firm message to the OTP. He criticised us for not briefing the US about the Drljača sealed indictment before the arrest warrant being served on NATO. He then delivered a stern 'lecture', while his followers and Embassy staff busily took notes.



Robert (Bob) Gelbard.

I responded by reminding Gelbard that 'the change to our new sealed indictment policy had regularly been foreshadowed by Arbour in the preceding months'. The Drljača indictment was the first OTP indictment issued by Arbour, the last one having been issued by Goldstone in June 1996. I informed Gelbard that 'the Drljača indictment was unique and arose in urgent circumstances. Arbour and I agreed it had nothing to do with the Amber Star initiative. It fell directly within SFOR's existing mandate, which was to detain any accused being encountered by SFOR in the course of their duties'. This was certainly the situation with Drljača.

I confirmed we were still in partnership with the five-nation group in Amber Star. I advised him 'there was no requirement for the OTP to notify him, Amber Star, or the US, before issuing any indictment, sealed or otherwise'.

The meeting became rather heated. When I thanked him for his message and responded with words to the effect of 'we appreciate your assistance, but this was our responsibility not yours. We will continue to do what we believe to be right thing, whether the US likes it or not', he stood and stormed out of my office in a huff, retorting 'if you think SFOR will do this, well good luck'.

I experienced a brief moment of schadenfreude after his entourage hastily gathered their belongings and followed Gelbard from my office, only to be trapped at the security exit door, which prevented their departure. I took my time and ambled slowly to the exit, excusing myself as I moved through the group to open the door with my electronic pass. I subsequently informed Arbour of the meeting and the exchange. Nothing more was ever said about this improper and bullying attempt to interfere with the work of our Office.