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STATEMENT

PROSECUTOR

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Panel Discussion of War Crimes Prosecutors: Reasons for a Slow Down, and the Possibility of Speeding up Investigations Zagreb, Croatia 9 October 2018

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I am grateful to the Serb National Council, Documenta and the SENSE Transitional Justice Center for organizing this conference and inviting me to participate.

I am particularly pleased to have the opportunity to participate in this panel discussion with my fellow chief prosecutors. We don't have enough opportunities for all of us to get together, so I am happy to have this one.

The topic today – why is war crimes justice slowing down and what we can do to get back on the right path – is something I regularly discuss with my colleagues.

I am currently preparing my next report to the UN Security Council, and will be speaking later today and tomorrow with the Minister of Justice and the State Attorney. In a few weeks, I will be in Belgrade, and then Sarajevo.

As I will discuss with my interlocutors, there can be no question that right now, war crimes justice and reconciliation in the region are heading in the wrong direction.

In every country in the region, there is a large backlog of war crimes cases, and more justice is still urgently needed. Yet, with the exception of Bosnia and Herzegovina, there are fewer and fewer war crimes trials each year.



The glorification of war criminals and denial of crimes are now dominant in the public sphere. Even a few years ago, it would have been unimaginable for government ministers to talk about war criminals as heroes. But this is now sadly a regular occurrence.

Victims throughout the region are being insulted and ignored. Indisputable crimes are being taken out of history books. Almost every day it seems there is yet another provocation designed to abuse victims.

Why is this happening?

Or, to put it more provocatively, how can justice and reconciliation be heading in the wrong direction when European Union integration continues to move forward?

Croatia is now a member of the EU. Serbia and Montenegro are busy negotiating accession chapters. Bosnia and Herzegovina completed its questionnaire, and the expectation is that it will take important steps forward in the near future.

Yet it can't be said that war crimes justice and the rule of law are stronger than they were two, three or five years ago. Reconciliation seems to be even further away. To many observers, this looks like a paradox.

Clearly, the EU accession process should be a catalyst for change and progress in the region, but when it comes to dealing with the recent past, this has unfortunately not been the case recently.

My Office has been reporting to the UN Security Council for the last fifteen years. In my first few years as Chief Prosecutor, the dominant issues were cooperation and conditionality.

Whether in arresting fugitives or obtaining evidence, my Office needed the cooperation of the countries of the region. The EU made it absolutely clear that providing this cooperation was a condition for countries to progress in the EU accession process. This made sense. After all, the rule of law is a core EU value, and it would have been inconsistent to move forward on EU accession if a country was violating its international legal obligations to cooperate.

So conditionality aligned local political interests with war crimes justice and ensured that governments would provide the necessary support and cooperation for accountability to succeed.

Yet since the arrest of our last fugitive, conditionality, and unfortunately war crimes justice, seemed to move down the agenda. It was almost as if with Karadžić and Mladić arrested, many thought the issue of war crimes was over.

Of course, the issue is not over. While the ICTY was able to complete its work, national courts now have full responsibility to continue securing accountability. My colleagues here still have to process thousands of war crimes cases.



Coincidentally, or not, at the same time that war crimes justice moved down the agenda, political hostility to the accountability process increased across the region. Or, maybe the better way to put it is that politicians started saying things they had been more hesitant to say before.

And to my mind, this is a key explanation for recent trends. Throughout the region, war crimes justice, reconciliation and the rule of law are facing more political opposition and pressure than before.

Governments are blatantly politically interfering in the justice process. Officials are more and more open in attempting to influence prosecutors and judges. While governments adopt national war crimes strategies, they often remain only on paper, without real commitment or follow through.

The impact of this political climate is evident. Fewer prosecutions launched each year. Regional judicial cooperation in war crimes justice has almost come to a standstill. Fugitives and suspects are effectively obtaining safe haven by crossing a border.

So, what can be done?

The ICTY's experience has taught us an important lesson. If the international community wants justice to succeed, it has to use incentives to influence local political actors. When the European Union sends a clear message, we've seen that much can be achieved.

That means putting war crimes justice and the rule of law at the top of the agenda. And being absolutely clear about what is expected. And ensuring that it is in the interests of local leaders to uphold EU values.

Otherwise, we will continue to see governments doing the minimum that is possible, rather than the maximum that is necessary.

At the same time, as prosecutors we also have our own responsibilities.

It is for us prosecutors to constantly demonstrate that we are independent and impartial, guided only by the law and the facts. And that requires showing that we will bring to justice all those responsible for war crimes, whatever their official status, position or ethnicity.

All of here share a profound commitment to this basic principle. But we can do more to make it a reality, including by prosecuting high-ranking suspects from one's own community.

As prosecutors, we can also do much more to strengthen regional judicial cooperation in war crimes cases. As we know, almost every case has a regional dimension, with victims often in one country and perpetrators in another.

Regional judicial cooperation today faces many challenges. But I also believe that the solutions are largely in our hands.

When the region's war crimes prosecutors first got together a decade ago to address judicial cooperation, we found pragmatic solutions to surmount the barriers in front of us. We can build on that



spirit of pragmatic cooperation again. After all, what unites us as prosecutors is far greater than anything that divides us.

And we can find also pragmatic solutions to many of the other challenges that face us. We just need to remember that the purpose of the law is to achieve justice and punish those responsible for crimes, not to promote impunity.

Finally, in that spirit, we can provide each other with more mutual support. We are dealing with international crimes under international law, so we shouldn't hesitate to benefit from each other's experiences and lessons learned. If we find cases that cross borders, we should work as partners and colleagues, not as strangers.

As an example of this, I can assure you that my Office is fully committed to providing all the assistance that we can to our partners. My colleagues here have underlined that they will only be able to meet their responsibilities if my Office continues and strengthens its support.

For that reason, my Office has developed plans to make available a range of additional assistance. We will continue hosting liaison prosecutors and training young lawyers from the region in our Office. We will strengthen our existing RFA program by making it possible for colleagues to request case-specific evidentiary and legal assistance. We will also prepare more Category II case files so that prosecutors in the region are able to build on our prosecutions and bring additional perpetrators to justice. And we will create an online legal forum so that prosecutors can get expert legal advice from my Office and share legal developments with each other.

In these and other efforts, continuing support from the international community will be vital. My Office would like to work with our colleagues and donors to ensure that prosecutors in the region have the tools and resources they need to succeed. Thankfully, we have already seen the European Commission and others pledge more funding and support to accountability and reconciliation, recognizing that investments in the rule of law will pay enormous dividends.

So, by way of conclusion, I have no doubt that we can get war crimes justice back on the right track. While the challenges are significant, the solutions are readily apparent. Most of all, we can trust in the rule of law as a core European value. I am firmly convinced that by adhering to the rule of law and achieving more justice for more victims, we can help to overcome the legacy of the recent past and promote reconciliation.

Thank you for your attention.”
