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Justice For All

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Sir Geoffrey's and mine professional cooperation started some 15 years ago and it was linked to the trial of Slobodan Milošević – the Serbian war time leader who in 1999 was the first sitting president ever indicted for the war crimes and crimes against humanity at an international court. Milošević lost the power in 2000, was arrested in 2001 and after some three months spent in a Serbian jail he was transferred to the Hague. His trial started on 12 February 2002, a record time measured from the indictment date to the start of the proceedings, compared to any other trial held at the Yugoslavia tribunal or any other international court – save for Saddam Hussien's trial if we allow that it was a proper trial at all.

Sir Geoffrey was appointed Principle Trial Attorney for the Prosecution two months before trial was to start. It was a daunting task given the extent of the temporal and geographical scope of the indictments but also because Sir Geoffrey had inherited three investigative teams - each dealing with one geographic area – and struggling to forge a functional cooperation. A chronic unwillingness to share information and infighting about important strategic issues - were just examples of the nature and intensity of management problems Sir Geoffrey encountered. He had no time to lose and under enormous time pressure he did succeed to unite not maybe the team - three indictments - to be tried in one trial - so called JOINDER.

On 12 February 2002, with camera lenses of the regional, national and world media magnifying meaning of every word uttered in the courtroom, Sir Geoffrey opened the trial. He started modestly – aware of traps of a potential over-prosecution. He used to tell the us – the member of his team «if we understate our position - the only place we can go is up. If we overstate – the only place to go - is down.

Throughout the trial, he remained true to this principle. In his opening speech at the beginning of the Croatian and Bosnian part of the case, Sir Geoffrey: (T 10187:03-10187:13):

“There may be a temptation to characterise this accused simply as the sole architect, and that temptation may have to be resisted until the precise outlines of his role are etched by evidence, because plans can emerge without a single originator. Such plans can be joined, and there can be those who choose to lead such plans, once they join them, being criminally opportunistic and coming



to be seen as, and indeed to be, central to the plan itself. And this may be a reality of this Accused's personal history, he being a man to whom others committed to the plan looked for leadership that he was able to provide”

He took the same approach to evidence. Although, observing of the rules of adversarial legal system adopted by international courts - he insisted that we observe the disclosure procedures – stressing – that he was not interested in conviction but in a judgment that would stand the test of time. He also challenged the rules – or the interpretations of the rules. Especially when it came to the rules on protections of evidence as requested by states – not just by Serbia but others as well. He also fought against the right given to Milošević to represent himself – citing his fragile physical state made worse by workload that would be overwhelming for everyone to deal with. Sir Geoffrey argued in many legal documents that the administration of justice should be reduced to the right of an accused to a fair trial. He stressed the right of victims to see the trial finished with a judgement when argued that the judges should impose a professional lawyer to do the job or to continue the trial on the days when Milosevic was to unwell to be in the courtroom.

In March 2006 when Milošević died in his prison and Sir Geoffrey's ears – or rather predictions – that Milosevic will not be able to bring his trial to a conclusion by being his own lawyer - became reality. Lawyers and judges often lose interest once a trial finished without a judgment – a conviction or acquittal. Sir Geoffrey was not one of them.

He was one of very few lawyers I have worked with who understood and accepted that mass atrocities trials are like no other criminal trials. He showed it when working with us non-lawyers. He engaged with us in political and historical explanation of ideologies that were at heart of criminality of the plan. That made him even more aware and convinced that finished or unfinished trials of mass atrocities trials will – regardless of their outcome - serve as a historical record for future generations. Not all his fellow lawyers or judges - for that matter – shared or share his opinion. But some did. Late Judge Antonio Cassese wrote already in 1998 in an official ICTY document that:

Through our proceedings we strive to establish as judicial fact the full details of the madness that transpired in the former Yugoslavia. In the years and decades to come, no one will be able to deny the depths to which their brother and sister human beings sank. And by recording the capacity for the evil in all of us, it is hoped to recognise warning signs in the future and to act with sufficient speed and determination to prevent such bloodshed.

So when the Milošević trial ended, Sir Geoffrey remained engaged in the professional and public debate about the importance of the unfinished trial of Milošević but also about more general issues concerning the future of international criminal justice. Or rather - is there any future of this type of justice.



In this on-going discussion, Sir Geoffrey remains true to his legal principles and he refuses to engage in any attempt for a post-mortem conviction. He also warned on many occasions against the attempts to simplify the complex processes by demonizing individuals indicted of mass atrocities:

There's no point demonising Milošević as the 'Butcher of the Balkans'...He held no extreme philosophical positions and simply hung on to power once it had been offered to him and he had enjoyed its taste. He operated in part through government machinery, which allowed him to remain remote from the crimes being committed by Serb militias – the usual privilege of power. But he also operated secret bilateral relationships that hid from view some, maybe much, of what he did.¹

Yes, by the time Milošević died, Sir Geoffrey had already engaged in writing the closing arguments. But not before he became Gresham professor did he show his first drafts to the outside world. His first draft was kept confidential from the rest of the team. So it should not be surprising that his Gresham lecture on the Milošević trial attracted a huge viewing interested audience. Many details and concepts he shared this very hall with his devoted audience, are now published as a chapter in this book, accessible to his fellow professionals and other interested readers.

But not unimportant is to underline that this lawyer who had a courage to leave the secure confinement of his legal profession, and take a risk to engage in debate on political, historical, and social impact of mass atrocities trial, will almost certainly expand this chapter to a full book. So much more is left to be said and debated. Let's hope that this book is the first of more to come.

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¹ Geoffrey Nice 'Del Ponte's Deal', London Review of Books, 13 December 2010. Available at: <http://www.lrb.co.uk/v32/n24/geoffrey-nice/del-pontes-deal>.