



SALZBURG SEMINAR

**INSTITUTE FOR HISTORICAL
JUSTICE AND RECONCILIATION**



ON HISTORY AND RECONCILIATION

REMARKS BY

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CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION

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Remarks on Historical Justice and Reconciliation

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I think we can agree that most, if not all, major conflicts in the world, and particularly in the 20th Century are rooted in historical conflicts and injustices. These historical events are frequently manipulated to serve the tyrannical designs of despotic leaders. These histories do not approximate



the truth, but are distorted to support a particular agenda. What I'm about to do in the time allocated to me, is to give some personal examples that I've come across in the last 15 or so years in my own career, in the former Yugoslavia, in Rwanda, and in South Africa.

Let me start with the former Yugoslavia. For centuries, the Balkans have suffered violence. It is perhaps violence between brothers and sisters, rather than between strangers. In the former Yugoslavia, in the Balkans, the people come from the same ethnic background, they are all Slav. What separates them is religion, and that's an historical quirk. Bosnia-Herzegovina borders on the western side of what was the Ottoman Empire—and that resulted in large numbers of Islamic converts to please the colonial masters of the Ottoman Empire. Croatia was influenced by Austria which is mainly a Christian country. Serbia had close ties to Russia - and

it is mainly Russian Orthodox. The Serbs use Cyrillic script, but they all share the same language. I first visited the three major capitals of the states of the former Yugoslavia in my then new capacity as chief prosecutor of the war crimes tribunal set up by United Nations Security Council in 1993. I arrived there in 1994. It had taken 15 months for the Security Council to agree on a chief prosecutor. I was approached only because I had the support of our then newly inaugurated president, Nelson Mandela, after the Security Council had vetoed eight nominees of the Secretary General. A French judge suggested that they consider a South African who had the support of President Mandela. Nobody in July of 1994 would have thought of vetoing somebody with his support—and that is really the main reason for my appointment. I had never prosecuted, I knew nothing about the Balkans and I knew nothing about humanitarian law. So I was the most inappropriate choice! But President Mandela decided that I should do it. I can assure you that if Nelson Mandela wants someone to do something, they do it. He also had my wife on his side - she thought that it was a good idea and that was a powerful combination. I really had no choice.

So I arrived in the Balkans knowing very little about the region. I decided that one of the first things I should do was to visit the capitals. I didn't visit President Milosevic or President Tudjman because there were wide-spread allegations of their involvement in war crimes. It was important for me to go there, and I asked my assistants to arrange my meetings with relevant administrators in the three capitals of Belgrade, Zagreb, and Sarajevo—at the level of minister of justice and the minister of foreign affairs. My first meeting in Belgrade, was with the minister of justice—and he agreed it would be a half hour meeting. The first 45 minutes of this half hour meeting were taken up with the minister giving me his version of the history of the Balkans. And he portrayed a history of the Serbs as victims. He started his history in 1389, with the battle of Kosovo, when the Serbs suffered their huge defeat. He gave me a fairly accurate but completely partial history of the Balkans from 1389. He only talked about the Serbs as victims and not the perpetrators of any war crimes. I listened politely. He went on

to state that his government would have nothing to do with the war crimes tribunal and would not assist us in any way. In his view, the tribunal was nothing more than an American instrument to be used against the Serb people. He asked: "Well why has a war crimes tribunal been set up for the former Yugoslavia? They didn't do it for Cambodia; they didn't do it for the many serious war crimes in other parts of Asia, Africa. They didn't do it for Saddam Hussein, though he committed the genocide in 1991 against the Kurds. Why us?" He added: "It's an act of discrimination." And I said to him: "Minister, if this is the first and the last international war crime persecution, then you are absolutely right. It's partial and it is discriminating against Serbs. But if it is the first of many to come, then you can't put blame on the international community, you have to start somewhere, and why not here." Anyway, we didn't get on particularly well.

I moved from there to Zagreb. And there I got similar treatment. They didn't start in 1389, they started much later, but they gave me their partial history of their victimization. And then I went to Sarajevo. I received another partial history of the victimization of the Muslim population of Bosnia, at the hands of both the Serbs and Croats. And of course that was much closer to the truth because they were the victims, more often than not. They were the victims of crimes committed against them for centuries as a minority in the area, by the Serbs and the Croats.

Let me give you one example of fabricated denials. Many of you will recall that in July of 1995 there was the terrible massacre of over 8,000 Muslim men and boys in Srebrenica. This was a UN protected enclave; protected by a fairly small Dutch battalion representing the UN. And the Bosnian-Serb army attacked this enclave in violation of the UN Security Council resolution. They separated the Bosnian men and boys from the women and then bused them off to a field not far from there. In groups of about twenty, with their hands tied behind their backs they were killed by a single bullet to the back of their head and buried in mass graves.

When reports of the massacre began to circulate, the spokesman of the Bosnian-Serb

army put out an absolutely adamant denial, saying this was propaganda and again blaming some Western nations for it and, in particular, the United States of America. Some months later, I received a call from a tearful video journalist. She said she'd done a very stupid thing. She told me that she and a colleague had received a call, from a man called Erdemovic, who offered to speak to them. He claimed to have participated in the massacre in Srebrenica. They went to interview him in Serbia. Although born in Croatia, he had fought in the Serb army of Slobodan Milosovic. At the time of the massacre he was a member of the Bosnian-Serb army. He allowed the journalists to record his confession on video. He stated that he had been a member of one of the firing squads. He said he lost count of how many he had shot after about 70. He claimed to have acted under extreme duress. His commanding officer told him that if he did not act as ordered to do, he could join these men and be shot with them. In that event, said his commander, that won't be the end of it. "We know where your wife and children live, and they won't survive either." Erdemovic said that he had no option but to succumb to the pressure and participate in one of the firing squads. Eventually, for personal reasons, he decided to go public. Apart from giving his story to the journalists, he also drew a map with remarkable accuracy showing exactly where the mass grave was situated. These reporters took the map fortunately to the United States embassy in Belgrade. The reporter then did a rather silly thing. She called her London office, told them where she was, that she was coming on a flight that evening from Belgrade with a video containing the confession of Erdemovic. The call was tapped by the secret police in Belgrade who waited for her at Belgrade airport. She was arrested and the video was confiscated. She was then allowed to join her flight. But the video was lost. She was terrified at the prospect of the police watching the video and murdering Erdemovic. She felt responsible.

I decided the best thing I could do was to go public. I called a press conference in The Hague, told them what I've just told you. And I announced that I had an order from one of the judges requesting Serbia to hand over Erdemovic as a suspect and a witness to war crimes

committed at Srebrenica. I did not think that Erdemovic would be handed over. I thought that publicity was the best way to protect the life of Erdemovic. If the media spotlight was put on him, it would be unlikely that he would be murdered by the Serbs. In fact the Serb Government agreed to his transfer to The Hague. At that particular time the Americans were offering all sorts of goodies to Milosevic. Ambassador Richard Holbrooke had been on one of his shuttle negotiations. The fact that Erdemovic was not a Serb made it considerably easier for Milosovic to hand him over. We got him to The Hague and he was put on trial. He was given a nine year sentence, which was reduced ultimately to seven years and he served that sentence.

But the importance of this to historical justice was that the Serbs again denied his version. They said there was no mass grave there at all; they never shot or killed any of these Muslim men; this was propaganda and they said if you find that grave, if it's there, it will contain the dead bodies of earlier wars. In any event we were able to find this mass grave from the information contained on Erdemovic's map and with the help of satellite photographs furnished to us by the United States. The mass grave was exhumed by Physicians for Human Rights, a wonderful nonprofit organization which operates out of Boston in the United States. They proved forensically that the bodies that they pulled out had been killed in about July 1995. All of the bodies were of men and boys who had been shot with their hands tied behind their back. Now that put an end to the false denial. That incident is no longer denied by the Serbs or by the Bosnian Serbs.

I turn to Rwanda. The Rwanda tribunal was set up by the United Nations in November 1994. The Security Council decided that as chief prosecutor of the Yugoslavia tribunal, I should also be the chief prosecutor of the Rwanda tribunal. And no sooner was the appointment made than people came to visit me--historians, serious historians, professors from universities, particularly in Belgium and from France to tell me that these stories of genocide were untrue. They insisted that the killings were the consequence of old tribal differences between the Hutu and the Tutsi peoples. It was dismissed in that sort of way. The United States State Department

didn't like the word genocide because they thought might create international obligations in terms of the Genocide Convention. In some of the African countries too, it was denied that genocide was committed. Well after the investigation and after the indictment of some tens of leaders of that genocide, the evidence of hundreds of witnesses, those denials have also gone. What one doesn't read or hear anywhere in the world today, whether in Rwanda, in its neighboring countries, Africa, and in Europe, one no longer hears denials that this was a carefully, efficiently planned and executed genocide in which over 800,000 people were murdered. They were murdered in the unbelievably short time of about 100 days. So again, the legacy of the criminal tribunal for Rwanda has been to bury forever these fabricated denials.

In South Africa during its apartheid years and before, the white minority rulers relied on fabrications, on denials of human rights violations, of murders, of tortures. Generally speaking, the white minority population believed those denials. People weren't murdered in police cells in Johannesburg; they slipped on bars of soap and fell and unfortunately cracked their heads and died in consequence of that sort of accident. Some of the people who were killed were killed by police acting in self defense because they were violently attacking the police. There's a wonderful, very readable book by my good friend George Bizos, a leading human rights lawyer and the Mandela family lawyer for many many years. He appeared in many of the inquests during the apartheid years. He's written a book, covering about 11 of them, in which white government supporting judges came to the conclusion that the evidence didn't prove that any officials were responsible for the deaths of people. And the wonderful title of his book is: *No One to Blame?* When one reads one after the other, one is amazed by the gullibility of people who want to believe the fabrications. It makes them feel comfortable to believe the fabricated denials.

The importance of the Truth and Reconciliation Commission in South Africa, and also of some criminal trials has been to put an end to the fabrications. Again, the evidence of tens of thousands of victims has created a credible history. That history is now being taught in South

African schools and universities. In that way the terrible crimes that were committed in the execution of the apartheid policy have been laid bare.

So one sees here that without truth being established those denials would have continued. In the three regions I've talked about, the truth is an important foundation on which to move forward into the future and to try to bring about reconciliation and peace. The policy of the present South African government is to implement affirmative action policies. It is the wealthy white South Africans, generally speaking, and I am generalizing, who now have to pay for these programs - upgrading squalid black settlements, tarring roads, and providing water, housing and recreation facilities. I suggest that it has been made much easier, by this history and by demonstrating to the white minority what in fact was done by them or for them and certainly in their name. So, establishing the truth has had a beneficial effect.

So to come to the present Institute for Justice and Reconciliation, I was delighted that I was approached by Tim Ryback to become involved in this new organization. It is not yet two years old. It was only founded in February of 2004. It arose out of a book by Elazar Barkan, called *The Guilt of Nations*. It deals with the difficulties in identifying victims and assigning blame in the aftermath of crimes against humanity. And the book received a rave review in *The Economist*. That review and the book came to the attention of Sigrid and Lisbet Rausing who are the founders of the Rausing Trust, a wealthy foundation headquartered in the UK. In conversations with Professor Barkan both were very enthusiastic and thought that something more should come out of it. Their support provided the seed money to help begin an institute to look into historical justice, not as part of the peace process, not as a part necessarily of a post war situation, but on more of an academic basis. It seemed to me to be an outstanding idea. The first person I discussed this with was my fellow South African countryman and close friend, Dr. Alex Boraine, who had been the deputy chairperson of the South African Truth and Reconciliation Commission. In recent years primarily with the encouragement and financial support from the Ford Foundation he set up International Centre for Transitional Justice in New

York. This is now a substantial organization assisting and advising numerous governments interested in establishing truth and reconciliation commissions. I didn't want this new institute in any way to duplicate what he was doing. Dr. Boraine was excited about it and didn't hesitate when I invited him to join our advisory board. The price I happily paid was to join his board. In its first year, the IHJR has received approaches from about a dozen governments and major organizations to become involved in their countries.

Let me conclude by saying that the idea is to build bricks with which peace can one day possibly be built. We are looking at the most difficult regions, including the Middle East, Turkey and Uganda. If we can get historians to agree on versions of disputed history that are important that would be an enduring contribution. Even if there's agreement to disagree, that's better than having a fabrication or a partial version. So that is the idea of the IHJR.

In conclusion, allow me to acknowledge the role of Mark Ellis, the executive director of the International Bar Association. When I mentioned the IHJR to him, he became interested and he has now joined the advisory board. It was at Mark's suggestion that this showcase session was arranged.



SALZBURG SEMINAR

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The Institute for Historical Justice and Reconciliation (IHJR) is a project of the Salzburg Seminar that promotes reconciliation in societies divided by historical conflicts and human rights abuses. Working with educational and public policy communities, the IHJR organizes and sponsors historical dialogues in pursuit of accountability, acknowledgement, and the resolution of historical disputes that inflame and aggravate contemporary conflict, thereby promoting tolerance and reconciliation. The IHJR aims to turn historical dialogue into a fundamental tool of political reconciliation.

Co-Directors:

Elazar Barkan is professor of history and cultural studies at Claremont Graduate University in Los Angeles, California.

Timothy Ryback is vice president and director of the Salzburg Seminar.

IHJR Advisory Committee

Richard Goldstone, Chairman

Co-chairman of the International Bar Association's Task Force on International Terrorism; and former justice of the Constitutional Court of South Africa. Former chief prosecutor of the United Nations International Criminal Tribunals for Rwanda and the former Yugoslavia.

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Chairman of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel; Coordinator for the Non-aligned Movement on Peacekeeping, and Permanent Representative to the United Nations from Jordan.

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President of the International Center for Transitional Justice, New York; former executive director for the Institute for Democratic Alternatives in South Africa; and vice chair of the Truth and Reconciliation Commission of South Africa.

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Director of the Centre for Ethnic Studies in Colombo, Sri Lanka, and United Nations Special Rapporteur on Violence. Member of the Global Faculty, New York University School of Law.

Mark Ellis

Executive director of the International Bar Association; and former executive director of the Central and East European Law Initiative. Served as legal advisor to the Independent International Commission on Kosovo.

Kerry Kennedy

Human rights defender, and founder of the Robert F. Kennedy Center for Human Rights in Washington, DC

Hisashi Owada

Judge, The International Court of Justice; and president, Japan Institute of International Affairs. Former Permanent Representative of Japan to the United Nations.

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President of the Inter-American Institute of Human Rights, Costa Rica. Former ambassador of Costa Rica to the United States and chair of the International Commission of Inquiry on East Timor.

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