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I find myself in the strange position of agreeing with both [Professor Rubin and Professor Ferencz]. Some of you may wonder why? Well, I certainly agree with Professor Ferencz's sentiments. At the same time, unfortunately, I also see some of the points that have been made by Professor Rubin regarding the flaws in the draft.

I think that, upon greater reflection, they will probably discover that they do agree with each other on more points than they disagree. The conclusion I've reached is that the statute that has been drafted is inadequate. I think at least in large part intentionally so, to fulfill the sentiments that Professor Ferencz has expressed.

I find it difficult to talk about the International War Crimes Tribunal without starting with the following very basic perspective. The International War Crimes Tribunal has been created by a political process. It has not been created by some legal process that has come from Mt. Olympus. It has not come from the Talmud, from the Bible or from the Koran. It has come from the flawed hallways of the United Nations, or more accurately so, maybe the flawed hallways of the power structures in London, Paris, Moscow, Washington or wherever.

Therefore, I have to focus on this question from a political perspective and I have to, of course, focus in particular on the War Crimes Tribunal created for the Former Yugoslavia and leave aside, in large part, the issue of a War Crimes Tribunal for the international community as a whole.

Now, there are very good reasons for the creation of an International War Crimes Tribunal, and on the basis of these reasons the Republic of Bosnia Herzegovina has strongly supported the creation of an International War Crimes Tribunal, despite the fact that Bosnia has its own courts and its own legal system

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†† The following is a transcription of the comments made by Ambassador Sacirbey at the symposium held at Pace University School of Law on October 23, 1993.

to prosecute war criminals. Some of these reasons are very consistent with the reasons that were raised by Professor Ferencz and I fully agree with the sentiment.

Let me just mention some of the reasons. The first is a concern for refugees, that they can return to their homes. We have in excess of two million refugees, out of a country of four million plus, in Herzegovina who are now living outside of their homes. Many of them are living outside of their homes for fear of further crimes being committed against them. If we, in fact, do not identify and prosecute those criminals who have caused them to flee in the first place, we can never hope for these refugees to go back.

Second, I do agree that there is a certain value to bringing people to justice as a way to deter future crimes. Of course, the best way to deter future crime is to capture the criminal and put him behind bars. We kind of skipped that step.

The third reason you bring war criminals to justice is because you want to have the victim feel that there is someone out there who is going to do justice, who is going to do right. If a victim feels that crimes will go unpunished, then the victim, in fact, will undertake justice into his or her own hands. This is the concept of revenge, and of course we know that the concept of revenge can lead to further crimes in a state of lawlessness. So, we must have an organized system to bring about justice and to make sure that the victim feels that, in fact, justice is being done.

Finally, in order for reconciliation to take place it is essential to identify and prosecute the guilty. Not those guilty of rebellion, not those guilty of taking a gun in their hand and shooting at another soldier. It is essential to identify those guilty of what all of us will agree are war crimes. But because when we identify and prosecute the guilty, we also exonerate the innocent.

I suspect that in the minds of many of you - not all - the word "Serb" is synonymous with the word "Nazi". I do not believe that that should be the case.

The Serbs are a proud people, a people who have many things to be thankful for, and as a nation they do not deserve to be identified with the crimes of certain leaders or certain individuals.

Therefore, for peace in the Balkans, it is necessary to identify Serbia and Serbs as people of peace, as people who in fact do respect the same values that we do. The only way that we can do that is by picking out those amongst them who are responsible for crimes. In this sense I do not just identify Serbs, I identify Croats and I identify Bosnian Muslims.

Unfortunately, I find though that the whole concept of the International War Crimes Tribunal in Bosnia Herzegovina and Former Yugoslavia has been usurped for objectives that I don't think have much to do with nobility or legality.

First and foremost, I think the International War Crimes Tribunal concept has been put before the Security Council, and therefore before the public, the world public, as a way to substitute for real action to confront and stop the crimes. By constantly telling the world media that the war criminals will be brought to justice, the most powerful in the Security Council have tried to avoid the responsibility of bringing them to justice and putting the crimes to a stop today.

As I mentioned, the first step in dealing with any crime is to stop it, not to set up a legal system by which you prosecute it.

The second reason I think for creating the International War Crimes Tribunal, that is, the reason of certain powers, is to perpetuate the misconception that what we're dealing with in Bosnia is a civil war, that we're dealing with an ethnic war. You see, this works in two ways. First, the creation of an International War Crimes Tribunal leaves many with the impression that there are no courts, that there is no legal system in the Balkans. Well, of course that's not true. But, in fact, many would like us to continue to carry this image of a lawless society.

In Bosnia Herzegovina we have Jews, Muslims, Serbs and Croats living together for 600 years and when a Muslim killed a Muslim or a Serb killed a Muslim or a Catholic killed a Serb we have always had a legal system by which these crimes were brought to justice. The reason, in fact, to have an International War Crimes Tribunal goes beyond the geography, the mentality, the culture of the legal system of the Balkans of the Former Yugoslavia in Bosnia Herzegovina. It goes to the fact that the International War Crimes Tribunal was desired because it had

certain greater powers than the national court of Bosnia Herzegovina or the national courts of Croatia, or Serbian Montenegro.

You see, the idea was that by establishing an International War Crimes Tribunal we would in fact have a concept of extradition on an international level. That, in fact, we would be able to bring people to trial in absentia. That, in fact, we would have an international community that would use all of its resources, including its military resources to identify criminals and bring them to justice. Unfortunately, the present system that is being designed lacks all of those elements and that's why I'm concerned at the sentiments expressed. The sentiments expressed by Professor Ferencz are not going to be fulfilled because under the Nuremberg system there was a will and there was a way to accomplish those goals.

I'd also like to point out that on this International War Crimes Tribunal there's not one judge from the Former Yugoslavia. I think this is in part designed to create the impression that you're dealing with a very backward area, that the people of the Balkans are somehow beyond the norm of civilized behavior. Therefore, you can't even have a Serb, a Croat or a Muslem, an Albanian judging fellow Balkans. It's very unfortunate.

Number two, there's not one Muslem on the Court. Eleven judges have been elected. Not one Muslem when more than 80% of the victims are Muslem. There are only two women. This war and these crimes do have a precedent in history in terms of their cruelty toward women. When it was time to find a prosecutor, the prosecutor who had spent the most time collecting evidence, an American citizen, naturalized from Egypt, 30 years living in this country, teaching in a Catholic University called DePaul, very secular man — he was deemed to be not qualified for two reasons for the job as prosecutor. One, that he was too involved. He had in fact gathered too much evidence and had been too loud in calling for a real war crimes tribunal. And number two, as mentioned behind the closed doors of the Security Council's Consultation room, at least two of the European powers mentioned that somehow he was not fit because he was ethnically Moslem.

Unfortunately, what I'm coming down to is that the entire concept behind the International War Crimes Tribunal is political expediency. And I'm concerned that the way that the War

Crimes Tribunal will carry out its responsibility will be, in fact, consistent with the political interests of certain powers and that is, bring the small fry, prosecute them. But, ignore the fact that people who have been identified as war-criminals, Mr. Kadijevic, Mr. Blodovic and Mr. Milosevic, ignore the fact that they have been invited to the negotiating table by the representatives of the EIC in the United Nations, Mr. Thorall and Mr. Stuldiwell. By the way, these people have been identified as war criminals by Amnesty International, by Helsinki Watch and of course, the U.S. State Department.

This inconsistency is something that the Western World doesn't want to recognize. But, of course, it's consistent with the entire sellout of Bosnia and the principles of the Western World toward Bosnia. Again, it's unfortunate and in fact, the Court of Justice, in my opinion, is very likely to be used as a forum for political expediency.

Well, let me give you the surprise. Nonetheless, I support the concept and I have supported the creation of a War Crimes Tribunal. Because I do, in fact, share Professor Ferencz's vision that if we establish even a flawed system that this system ultimately, that the world ultimately, will not be able to resist to bring to justice and try, at least to some extent, to correct the crimes that have been committed.

The International Court of Justice at the Hague is a court that's dominated once again by the western powers. Nonetheless that court has already ruled that under the Genocide Convention¹ there is sufficient basis to believe that the crime of genocide has been committed against the Bosnian people, and in particular Bosnian Herzegovinan. It has called for measures to stop that crime.²

Obviously that's a very big step forward due to the fact that the political leaders of the countries, of many of the countries represented at that Inter-national Court of Justice, have failed to take the necessary steps to execute the Court's order. Therefore we hope that once the system is in place, no matter how flawed it may appear to us, that the good will and the commit-

¹ Convention on the Prevention and Punishment of the Crime of Genocide, adopted Dec. 9, 1948, 78 U.N.T.S. 277 (Jan. 12, 1951).

² This case is currently on the docket of the International Court of Justice and there is currently no citation.

ment of individuals and countries to common ideals and to the concept of justice will prevail.