

**Sixth Regional forum on Transitional Justice
Organised by the Coalition for RECOM**

**Novi Sad,
Saturday, 20 March 2010**

Opening speech

Ladies and gentlemen,

It is for me a pleasure and honor to open this Regional forum on transitional justice.

Indeed, I am grateful for this opportunity to share with you some of my thoughts on this crucial topic. It is high on the agenda of the European Union policy, because every efforts in this area can contribute to lasting peace and reconciliation in the Western Balkans ; and because it is not possible to build a common european future without a capacity to face the past: we should not forget that the EU itself was based on the need to reconcile France and Germany after three wars in less than one century.

That is why the capacity to tackle the issue of War Crimes is part of the integration process. Facing the truth is and remains one of the key conditions for the deepening of the relations of the EU with the countries of the region.

This overall approach is a multi-faceted one. I can distinguish four of them.

1. We require "full cooperation" of the Balkans states with the ICTY

2. We expect an efficient treatment of War Crimes cases by the domestic judiciary

3. We back the need for regional cooperation

4. We support non-judicial initiatives to achieve a shared truth on the tragic events that unfolded in the Western Balkans.

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1. Let me tackle the first point I have just mentioned. As you all know, the European Union insists on the “full cooperation” of countries of the region with the ICTY.

This is and remains a constant policy, as those suspected to be responsible should not escape justice, whatever time it takes.

There are very visible examples of this efficient policy, which has allowed that only two persons from a total of 161 indicted by the ICTY in the region remain fugitives up to now.

This policy a lot of media attention. I will just mention two I know particularly well:

1 Serbia, to begin with. The start of the ratification by the EU Member States of the Stabilisation and Association Agreement clearly depends on the assessment of Serbian co-operation with the ICTY, based on Mr. Brammertz report. This ratification has been successively postponed since 2008, because, if 44 suspects were already arrested by Serbia, two fugitives remain at large. Commissioner Fuele repeated this week that continuous and serious efforts have to be made for their search, arrest and transfer to The Hague. Expectations are high. We trust PM Cvetcović, when he declares that is issue is not any more a political issue, but a technical one.

2 My second example deals with Croatia. The entire negotiation process with Zagreb was frozen between March and October 2005, until former prosecutor CdP would state that full cooperation was achieved; and indeed Ante Gotovina was arrested in December “outside Croatia”. Let me carify one point: the cooperation with ICTY is not a “stop and go” process, but a continuous one. Today, the chapter of negotiations dealing with Judiciary and Fundamental Rights, the chapter 23, is open, but it will be closed only when and if continuous cooperation is provided.

2. EU conditionality relating to full cooperation with the ICTY is one side of the coin. But local prosecution is equally important, as my second will show it to you.

Why is it so important ? The fact is that the Hague Tribunal has to concentrate on high level cases involved in the atrocities. But for the sake of the victims and the fight against impunity, it is also crucial that justice be done from the top to the bottom of the chain of command. All perpetrators have to be made accountable for their acts and subsequently punished. There must be a continuous effort to judge and sentence them, even after the closure of the ICTY and the accession of the countries of the region to the European Union. Attention must not be relaxed: in Croatia, some 700 so-called 'events' are still uninvestigated. In Bosnia and Herzegovina, 16.000 people have lodged complaints. Their demands cannot remain unanswered. **That is why it is vital for the domestic judiciaries to build up the capacity to deal with war crimes.**

Of course, it is not an easy task.

Of course, it requires strong and independent institutions. It requires police and judicial staff with significant expertise and, above all, clear political will and institutional support in all countries of the region.

The accession process has proven already to be the most powerful impetus for reforms in various key sectors – like justice, police and public administration. A substantial part of the accession chapter dealing with Judiciary and Fundamental Rights is dedicated to War Crimes. I refer here again to the chapter 23. Progress or absence of progress in this field is monitored very closely: benchmarks are set for the opening and for the closing of the chapter. These include criteria related, for instance, to the protection of witnesses, the treatment of *in absentia* cases, adequate defence, the application of amnesty law, or the execution of sentences. And those topics are not just seen *in abstracto*, but with key examples stemming from the monitoring of real cases.

The EU does not only set conditions or benchmarks. **We support also efficient capacity building activities.** These are urgently needed, as progress in the region has been made, but remains insufficient. Three types of projects can be distinguished.

1 The most successful one is peer-to-peer training between representatives of local and regional structures on the one side, and of the international community on the other. In this spirit, I was happy to sign with the ICTY last year the project allowing

the secondment of Serbian, Bosnian and Croatian prosecutors to The Hague. It gives them the opportunity to exchange information and have access to the database of the ICTY. Young professionals are also trained, so as to staff national prosecutors' offices and courts with qualified and promising people.

2 Secondly, the conference on the ICTY's legacy that took place a month ago in The Hague gave us the opportunity to reflect on this: the expected completion of the Tribunal's mandate and the further transfer of cases and evidence from the ICTY to the local judiciaries will put additional demanding tasks on the prosecutorial services in the region. That is why the EU is currently putting in place a programme under its "instrument for stability". It will be implemented by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Actions will encompass targeted training, development of electronic legal tools and translation of transcripts of ICTY proceedings in local languages.

These projects are only part of the solution.

3 A third type of project to which I personally attach great value is the monitoring of War Crimes trials: progress is possible only if relevant analyses of real cases is carried out. This is why

another important aspect is to contribute to the establishment of a strong civil society that will be able to take over some key tasks such as the effective monitoring of the war crimes trials. This is essential, as these trials must remain in conformity with our values of fair justice and impartiality. But this taking over from international monitoring to civil society is in itself a bargain not without challenges and risks. This is why, when the OSCE began to phase-out in Croatia, we implemented a two-year programme amounting to 600.000 Euros, and aiming at building-up the capacity of local NGOs.

These projects have an ultimate goal: to strengthen the judiciary according to European standards and to ensure that certain basic principles are respected. Why? An efficient, accountable and independent judiciary is key to the sustainability of the international community's efforts and to local ownership.

3. It is also crucial to achieve the subject of my third point: nothing can be done in the Western Balkans if there is no regional co-operation and co-ordination.

Many issues are here at stake: extradition, transfer of cases, protection of witnesses, exchange of information and also the execution of sentences. All these aspects of the judicial

procedures relating to War Crimes have a strong regional dimension.

You all know that a vast number of War Crimes are to be considered as regional, since the crime scene can be in one country, the victim in the neighbouring country and the perpetrator in a third one. With sometimes possible dual nationality issues on top of this! The problem is then the following: there are in the region still often constitutional or legal provisions prohibiting extradition of nationals, as well as the transfer of cases facing sentences of more than 10 years. So, many cases remain unprosecuted or unexecuted! State prosecutors are inventive characters and they have in many cases found ways to by-pass these legal obstacles by transferring evidence. This is certainly clever and useful, but remains a second-best solution, and there is still a long way to go to establish more efficient regional cooperation between judiciaries. And it would require more positive actions from all countries in the region. For instance, some bilateral agreements on the execution of sentences provide that a sentence passed in a country can be executed in the perpetrator's country of residence ... but only if this perpetrator agrees! And there is a limited number of people that agree to go for more than 10 years to jail. Fortunately, these provisions are now slowly being revised and extradition of nationals considered. But for that, we

need trust in others' legal systems! And that is why the building-up of the domestic capabilities is, again, so important.

4. I now come to the last of the four facets I was mentioning at the beginning of my presentation. This is one of great interest to the Coalition for RECOM, that has invited me today, because it deals with non-judicial initiatives, crucial also to achieve lasting peace and reconciliation in the region.

This last facet intends to complement the work of the Hague Tribunal and of the national courts.

This last facet recognizes that justice is essential for the victims, and instrumental to fight against the sense of impunity.

But at the same time, it acknowledges the need for a longer-term process to be set in motion, **out of the courts.**

What is it about? It deals with the establishment of jointly accepted facts at regional level, the very same level where the dramatic events unfolded during the last decade. It deals also with the public hearing of all the victims, to ensure that their dignity is upheld.

Why is it so important? Eventually, it prevents historical revisionism and enhance the capacity of people to resist political manipulation of the past. Indeed, recollecting facts and evidence could pave the way to shared grains of truth at the regional-level. At least, it could encourage regional actors to base their interpretations on realities that are mutually faced and acknowledged, that are beyond suspicion. This is not an easy process. 61 years were necessary for a franco-german history textbook to see the light.

NGOs advocate the setting-up of a regional commission. States of the region will have the final say on this matter. The precise mandate and modalities of this 'RECOM' are also to be discussed. This will be your task these following hours. I can say one thing to you: it is important to safeguard the regional dimension of the project. It also essential to examine thoroughly the relationship between this Regional Commission, and the international and domestic legal mechanisms dedicated to War Crimes.

The EU backs this initiative. This is the sense of my presence here this morning. We support, through the European Instrument for democracy and Human Rights Programme (EIDHR), the Humanitarian Law Centre and its regional partners. Together, you are consulting civil society on the right fact-finding and fact-

telling mechanisms. This EU project, worth 1.2 million Euros, pays tribute to you, NGOs playing a valuable role in documenting human rights violations and giving the word to the victims. Ultimately, your effort aims at strengthening the dialogue between civil and political society, and seeks to promote multi-ethnicity in the region, for current and future generations.

This goal lies truly and fully within the scope of the European project: as I said before, the EU's key objective is to help all the countries in the region to come to terms with their past, so that we can construct together a peaceful future.

This is why we follow so closely the current discussions, in the Serbian parliament, about the Declaration on Srebrenica.

This is why we would like also to see it reflecting very accurately the ruling and the words of the International Court of Justice.

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Let me finish by reminding you this reality once again: it is only if the War Crimes issue is correctly tackled, that the EU integration process will end successfully. It is hard to imagine the European Parliament, or national parliaments of the Member States, approving the accession treaty of a country still struggling with its past, or with its neighbours over it. The European Union, built

on principles of justice, mutual understanding and reconciliation, has learned from its own history. It is eager to see its friends from the Western Balkans, follow the same path. It stands at their side to assist them in this demanding and sensitive task.

I thank you for your attention.

I wish you a fruitful working session today and tomorrow.