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International justice I ■ By Richard Goldstone

Justice now, and for posterity

As the debate continues over the creation of a permanent International Criminal Court, critics should be mindful of the fact that a permanent international tribunal will not only serve justice in the present, it can also contribute to preventing conflicts over historical injustices in the future.

Sixty years ago, U.S. Supreme Court Justice Robert Jackson issued indictments against 24 Germans for their role in the deaths of millions of Europeans. As chief prosecutor for the Nuremberg Tribunal, Justice Jackson was the first to prosecute "crimes against humanity." His indictments led to the conviction of 12 Nazi war criminals, nine of whom were executed.

In 1994, when the UN Security Council appointed me chief prosecutor for the ad hoc war crimes tribunal for the former Yugoslavia, I was frequently asked about the relevance of Nuremberg as a precedent for international criminal justice. At the time, I used to answer that there was very little.

Jackson was prosecuting leaders of a defeated nation, all of whom were already in custody save one. In the former Yugoslavia, the war was still raging. The chief suspect, Slobodan Milosevic, was a sitting head of state. Virtually all the evidence was based on eyewitness testimony. Government records, if they existed, were in the hands of the state.

However, as I began my work in The Hague, I came to realize that Jackson and I did share one thing in common. As prosecutors, we were not only building cases against individuals suspected of war crimes, we were also securing the historical record.

In the summer of 1995 I received a call from a television journalist who was in tears. She had inter-

viewed a man who had participated in the massacre in Srebrenica. He admitted to having shot at least 71 Muslim men and boys in the back of the head. He also drew a map with remarkable accuracy showing exactly where the mass grave was located.

The reporter took the map to the U.S. Embassy in Belgrade, but then she did a rather unfortunate thing. She called her London office and told them about the interview. The call was tapped by the secret police in Belgrade. At the airport, the video of the interview was confiscated. She feared the police would murder the witness.

I immediately secured an order requesting Serbia to hand over the witness. Not only was he not killed, he was eventually delivered to the court in The Hague. With the evidence he provided, as well as satellite photographs, we were able to locate the graves and prosecute him for a war crime. The same evidence provided the basis for some of the charges against Milosevic.

This evidence not only allowed us to bring suspected war criminals to justice, it also established the historical record. Initially, there had been denials on the part of the Serbs that a massacre had taken place at Srebrenica. But the forensic evidence proved otherwise.

I had a similar experience as chief prosecutor for the Rwanda tribunal. Initially, I was visited by serious historians and professors from universities, particularly from Belgium and France, who told me that the stories of genocide were untrue. The U.S. State Department also wanted to avoid the word genocide.

By assembling evidence, in particular hundreds of first-hand accounts by survivors of the massacres, we established the fact of genocide, that more than 800,000 men, women and children had been systematically murdered in a period of less than a hundred days. We established historical truth.

In this respect, Nuremberg, The Hague and Arusha share a common legacy. At Nuremberg, the evidence Justice Jackson assembled was so overwhelming that the historical fact of the Nazi crimes against humanity has never been seriously questioned. Genocide was established not only as a legal fact but also as a part of historical record.

In the absence of such hard evidence, public lies take hold and eventually harden into historical myth. They fuel ethnic and regional tensions hundreds of years later, frequently with tragic results.

A permanent International Criminal Court plays an important role not only in serving justice in the immediate present, but in laying the groundwork for preventing future conflicts. Good evidence

makes for good justice. It also makes for credible history. And, let's hope, a more peaceful future.

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