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Introductory and final comments

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Introductory and Final Comments

by

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Seminar Chairman

Introductory comments

In 1992 I met Richard Goldstone, the chairman of the committee of the same name which, after Nelson Mandela's release from prison in South Africa, was tasked with trying to prevent outbursts of violence as much as possible. He invited me to join an international panel which was to focus mainly on developing regulations aimed at more peaceful mass demonstrations.

Shortly before Judge Goldstone's appointment as chief prosecutor in the Yugoslavia Tribunal, we had a discussion at my home in Tilburg on the problems facing the tribunal in respect of the tracing of suspected war criminals, more specifically in relation to the circumstances in which the Nuremberg tribunals had to operate. A significant difference came to light during the discussion, namely that this time the allies did not have the territory fully under control, and that in this case it would therefore be extremely difficult to actually apply the prevailing international criminal law.

We also discussed the great difficulty lying in the fact that this new form of international criminal procedure may well have a public prosecutor, a court of law and a prison, but it has no police force. There is also the fact that the prosecutor, and consequently the tribunal, are highly dependent on either the local police authorities/forces or the armed forces/police forces deployed locally

¹ These comments are a compilation of the remarks made by Seminar Chairman Prof. Dr. C.J.C.F. Fijnaut, Professor of Comparative Law at Tilburg University, at the opening and closing of the Seminar.

under the UN flag. Since that discussion I, too – within the available possibilities and constraints – have become interested in the problems of police operations in (former) war zones. One of these problems is, of course, the problem which occupies centre stage today, namely the arrest of suspected war criminals.

If we refer to cases such as those of Dokmanovic and Todorovic, the complexity of the issue of arresting such suspects becomes readily apparent. Firstly, there are major political and institutional issues. Secondly, there are legal problems in the area of the rights of the accused. Thirdly, there are operational difficulties in relation both to the effectiveness of operations and the security of the units involved. Furthermore, in concrete arrest operations it is extremely difficult to uphold, in a well considered manner, all of the legitimate interests which hide behind these issues, problems and difficulties.

However, on this auspicious occasion it is not my place to give a lecture on this and other important issues – the organisers have invited important speakers to do so.

Final comments

A seminar never has the objective to arrive at practical solutions to concrete problems. Its objective is rather to identify the important aspects of a given subject and to exchange points of view on those aspects. Only thus insight into the subject can be deepened and improved insight is, of course, a condition for the development of suitable, practical answers to questions raised.

A great many issues were raised in today's lectures. I would first of all refer to the great difficulty which lies in the fact that the Tribunal in The Hague is dependent on the cooperation in every possible way of national and international bodies for the fulfilment of its task, and how this has a complicating effect on those who have to perform dangerous tasks in a hostile environment such as the former Yugoslavia, for instance the arrest of suspected war criminals. The statistics presented this morning concerning their arrest leave no doubts in this regard; in the first few years little or nothing happened. As a consequence it is understandable that special measures were required in order to prevent the Tribunal from reaching an impasse, for instance the introduction of secret charges and the deployment of units which have far-reaching powers of investigation in certain territories.

A second issue which I feel is important, is the legal framework within which UN units operate in the arrest of (suspected) war criminals. The questions which arise in this context are countless! Can they only take action if there are charges? To what extent can their actions be called into question at the Tribunal? What are the consequences of actions which, for whatever reason, get out of hand and

result, for example, in the death(s) of the suspect(s) in question? There are no ready-made answers to such questions. Yet I feel it is extremely important, when answering them, to involve the - by now rather extensive - procedure of the European Court of Human Rights in respect of the deployment of arrest units, both with regard to antiterrorism and in the context of countering organised crime.

Thirdly, I have become personally enthralled by the discussion that the police task in areas such as the former Yugoslavia is not a one-dimensional matter either. In these very areas it is clearly essential to deploy qualified police organisations which are able to tackle the entire range of police work, ranging from peaceful observation close to the local population, up to and including - indeed - the arrest of armed and dangerous suspects and the suppression of violent protests. In this regard it virtually goes without saying that the discussion on police forces which have to operate in (former) war zones under the UN flag is also becoming increasingly important. Because, after all, what qualifications are we then talking about? Both regarding the internal structure of the organisations involved and their external effect, namely the effect on the environment in which they are to operate, whereby the capacity to coordinate their activities with military formations is of course not the least important.

Today we have had the pleasure of listening to speakers who are more familiar than anyone with issues such as those raised during the seminar. I would therefore like to thank them very much indeed for their contributions and for making the day a success. We are also very grateful to the chairpersons of the working groups and, of course, the participants; without them this seminar would have been for nothing. We are pleased that so many of you accepted the invitation!