

PETER MURPHY: Good morning, Mr. Prosecutor.

My name is Peter Murphy, and yesterday I had the honour of representing the presidents of the International Criminal Bar, Madam Elise Groulx, at your swearing in. Again, on behalf of that bar I offer our congratulations and best wishes, and also my thanks to you for organising such a very open field for debate today.

I speak, of course, as an individual today and one whose main experience in this area comes from having served as defence counsel at the ICTY; therefore, I thank you even more for inviting me in that capacity into your house, so to speak. Surrounded, as I am, by such experts in this field, I feel rather like the poet of whom it was once said that he would be remembered long after Shakespeare, Goethe, and Cervantes had been forgotten, but not until then. And so I will, rather than trespass on such great expertise, make just one point, if I may, which I think lurks just beneath the surface of what we've been discussing about complementarity and independence.

I think nobody could seriously imagine that the Office of the Prosecutor will be swayed by overt political pressure. But when cases are referred or when the Office is requested to make an investigation, underlying that request is always a political agenda of some kind. We all know, to take a cliché, that the difference between freedom fighters and terrorists is simply whether they won or lost, because history gives those names to the freedom fighters and terrorists largely by results.

But it's of enormous importance to your Office not to wait for the verdict of history. You have to be able to determine whether the underlying political agenda does, in fact, meet the reality of the case. Frankly, I don't know how that would be done because it's an enormously difficult task.

History provides us with very few examples. At the Nuremberg tribunals, for example, there was really no room for any second political agenda. It was clear what the political realities of the cases were and we acted accordingly. At the ICTY it became a little more complicated because there, the tribunal came into being largely because of a certain political view of the struggle in the former Yugoslavia which had been taken by the western states; notably, by the United States and the European Union.

When one looks at the conduct of cases by the prosecutor in that court, although the prosecutor's office has been conspicuously independent and full of integrity, one sees that a certain historical political view of that struggle in the former Yugoslavia underlies the whole of its conduct of these cases. And in such cases, as the Tadic case, the Celebici case, we see, for example, that the case for the prosecution was presented along those lines; that certain people were responsible for certain things. And it led to one or two rather strange results, not in terms of perhaps the merits of the case but in the development of the law; where we had some findings relating to, for example, the existence of an international armed conflict within the territory of the former Yugoslavia, and the circumstances in which the Republic of Bosnia-Herzegovina came into existence and was recognised, that certainly seemed to be somewhat at odds with recognised principles, at least traditional principles, of international law.

And these were not because the judges in any way wanted to take too independent a view and develop the law. It was simply because the case was presented to them on the basis that certain political realities were in fact true. They may have been true.

What I suggest, however, Mr. Prosecutor, with all due respect, is that when you use your own power *proprio motu*, or that you respond to a

request, you look very carefully at whether you are being presented on a political basis with some predetermined set of facts which you are invited to accept as being beyond dispute. I think in this way the independence of your Office, in which we all have absolute confidence, will be maintained.

Mr. Prosecutor, thank you very much.