THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Alan Tieger

International Center for Ethics, Justice, and Public Life

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Interviewee: Alan Tieger | Location: The Hague, The Netherlands

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Q1: Alan, we thought we'd start at the beginning. You were in the United States Justice Department in the Civil Rights Division. I saw that there were several attorneys from the Civil Rights Division that came here. Obviously, there was a connection in terms of the type of cases you had, and yet this must have been quite a transition to come here in 1994. We thought we'd ask you what that transition was like for you. What do you remember about it?

Alan Tieger: Sure. First of all, the fact that so many of the former Criminal section people have ended up here, and probably more than you may already have learned about, reflects the overlap between the nature of the cases and the mission that attracts certain people to both institutions.

In the [Justice Department] section we were in, we prosecuted primarily cases involving racial violence or police brutality, official misconduct. When you think about it, the cases we deal with here are in their own way a convergence of official misconduct and racial or ethnic violence and enmity.

It's probably no surprise we got so many people, and there was a story somewhere, in *The American Lawyer* or some magazine of that type, about the first two of us to come here.

That was Mark Harmon and myself. I got here through the Department of Justice, which was trying to jumpstart the process by identifying lawyers whom it would send to the institution at

the very commencement. I was selected and ran into my old and dear friend Mark Harmon at a Starbucks on 14th Street or something. We hadn't seen each other for a while because Mark had gone on to a different section. I told him that I was to depart for The Hague and that struck a very deep response in him. A few months later, he was here as well, and was followed by a host of others, some of them you know.

I noted that in one of the questions I was sent, it was framed as, "How did you adapt to the tribunal?" What I thought to myself was, "It's the other way around. We didn't adapt to the tribunal; at that point, the tribunal adapted to us." We created the tribunal and we largely created it in the images that we understood to be the models of due process and appropriate procedure. We came to learn, over time, that there are many ways to skin a cat, or at least more than one. And that the sense that some of us arrived with, that what we had learned as part of the adversarial system represented the apotheosis of due process and fairness, may instead just be another way of approaching the problem of how to create a criminal justice system that works, and that other ways may be more suitable.

Indeed, what we learned over time, I think, is that neither the adversarial system nor the civil law system was created to deal with cases of this scale. Both had their flaws when it became necessary to somehow accommodate the demands of cases of this type. It was a while before we figured all that out, and meanwhile we set about, first of all, trying to figure out what it was we needed.

And that began with infrastructure. When I arrived – I have a picture here somewhere, but I don't know where offhand, of what it looked like on the day or week I arrived – essentially it was a handful of metal partitions. Lots of wires coming down from the ceiling, which were intended to

be part of the computer system, and little more. Just the simple infrastructure had to be created, and then, a step at a time, we had to figure out what an institution of this type was comprised of.

Some of those things are obvious, but, by way of example, it happened to fall to me to draft the first arrest warrant. It had to be done; it was just a matter of time. We were looking at that, how do we do that, where do we look, what must it resemble? Something like that could legitimately spark a many-month research project into the underlying purpose and the potential problems associated with the efficiency of various models of warrants. But instead, we were in the position where these things had to get done and we tried as well as we could, under the circumstances, to adapt the instruments with which we were familiar to the task at hand.

But as I say, at that time, most or many of the then key members of the Office of the Prosecutor (OTP) came from adversarial systems. Of course, the US had a particular impact in that it sent quite a number of professionals whom the government considered were, by virtue of their experience, in a real position to contribute. Those of us from the adversarial system, of course, trying to use our best judgment and our best experiences, relied on what we'd learned in that system. In addition, the rules that had been drafted certainly seemed much more familiar to those of us from, particularly, the federal criminal justice system in the US than they did to our civil law colleagues.

Q1: Now, Richard Goldstone wouldn't have come in as Prosecutor until after you were here?

Tieger: Right. So we had a Deputy Prosecutor. I no longer remember the timing, whether or not I arrived before or after the Venezuelan candidate had temporarily accepted the post. I think before, but I don't necessarily recall.

Q1: He never came here...?

Tieger: No. That was a quickly aborted effort to get a Prosecutor on board. So it was some time before Judge Goldstone came on board, and meanwhile Graham Blewitt as the Deputy Prosecutor was running the show.

Q2: What's an example of a way in which you and the Office of the Prosecutor were able to come together with colleagues, or other people you were working with, across common law and civil law systems to synthesize or work together?

Tieger: That only took place over time. My recollection is that there wasn't a major, initial attempt at synthesis. That's what I was trying to convey before; there was instead an unspoken and unrecognized assumption that what you knew about the law and had learned about the law from your own particular system, in fact, reflected the best that the law had to offer.

Q2: I see. Yeah.

Tieger: I wouldn't be surprised at all if you encountered civil law or colleagues from a civil law background who felt that their views were ignored or marginalized or disregarded during that time. Or who themselves just perceived this as essentially an adversarial system institution and tried to adapt accordingly, without tweaking it according to the system and procedures that they had learned.

Q1: You must have been working with investigators almost immediately. Was that part of what you were doing in those very early years?

Tieger: I mentioned Bob Reid to you, and I recall proudly that at one of those metal partitions that constituted two desks, I sat on one side of the partition and Bob sat on the other. There were two computers in front of us and we worked that way. Bob was an investigator who had done war crimes cases in Australia. So we were working closely together from the outset. In fact, I arrived at the very end of May 1994 and by September we were doing missions. Even prior to that time, we had conducted some local interviews with witnesses or victims who were in The Netherlands.

Q1: What was the experience like of working with those investigations compared to what you had been doing in the United States? Or what stands out about them?

Tieger: First, I suspect that you will hear different things from different people: a) because of their own background, and b) because of the nature of the work they were doing in the tribunal.

My experience involved a relatively smooth transition and not a great deal of difference. The criminal section of the Civil Rights Division in [the Department of] Justice handles particularly high profile cases, and initiates them typically with a Grand Jury investigation. And that investigation is generally led by the attorneys with the assistance of either the FBI, or local police, or a task force consisting of both, and that's what I was accustomed to; leading investigations in the field but working closely with a team comprised of both investigators and the lawyers. And with our initial investigations at the tribunal, that's largely how it worked.

I mentioned launching investigations in September 1994. Those particular investigations with which I was involved had to do with northwest Bosnia, and particularly Prijedor.

I can no longer recall what the hierarchy was. Clearly there was a separation between the investigative side and the lawyers. Lawyers were legal advisors to the team, and the team was led by an investigator. That's the way it was constructed, but because of some intensive joint efforts, my recollection is that that didn't lead to any frictions, at least with respect to those particular investigations.

Instead we worked pretty much collaboratively together to identify the mission objectives, the significance of the evidence we had acquired, the next steps necessary, and so on. I know that's

not the story of the institution across the board, and eventually there was considerable tension between the investigative side and the lawyers about the direction of the investigations.

How many resources should be devoted to particular aspects of the war? How should the investigation be approached? What should be done with the evidence when it is returned to The Hague? How much analysis? Anyway – imagine yourself running an investigation or being seized of an investigation in some capacity, and wanting to see it perfected in the way that you thought best. You can see that there is always the potential of seeing it in different ways, and the question of who controls.

In fact, one of the standard aspects of recalling Carla Del Ponte's contributions to the institution is a shift in the investigative paradigm. That is, to the extent that the investigative commanders controlled the direction and pace of the investigations, she shifted that and put it in charge of the lawyers. That became especially important as the cases became more sophisticated as we moved up the ladder of responsibility, and we started looking at leadership figures. Then the legal issues of accountability and linkage became much more nuanced and significant and much more amenable to a kind of – or much more required a kind of legal analysis.

Certainly, by the time Del Ponte made that decision, there was at least some consensus about the need to do so. As I mentioned earlier, for those of us from other systems, I believe it would've seemed pretty clear from the outset.

Q1: The arrest warrant you mentioned earlier, I assume that was for Tadić?

Tieger: Not necessarily. It could also have been for the *Dragan Nicolić* case, which was actually the first case indicted, or simply in anticipation of a then-unknown future need.

Q1: That's right. Part of your work at the outset was arrest warrants, and investigations were going on that you would have been helping to coordinate. What else was going on day to day for you here? There were wires from the ceiling, but what else?

Tieger: It's a little difficult for me to recall now that period of time, the few months that elapsed between my arrival and the time we actually got going on investigations. I do remember that it was a particularly beautiful, an unusually beautiful summer in The Hague with almost two months of uninterrupted sunshine [laughter]. Very unusual.

Q1: Very unusual.

Tieger: Maybe that ameliorated any stress we might otherwise have felt from the fact that there weren't really cases specifically to work on at that point. I also remember [laughs] when I was here, after I had been here a short time, Graham Blewitt took the handful of us who had recently arrived to see the evidence collection. I'm not sure what I really thought we were going to go see, but basically he took us into his office and he opened a cabinet and there was the Commission of Experts report, and that was essentially it. So we were trying to learn that backdrop, working on

a call to develop instruments for dealing with governments, and obtaining materials and documentation from governments, and how we would do that.

There were also some people working on the evidence collection and retention unit along the lines of, "Well let's construct something so we can figure out what to do with the stuff when we get it, what are the policies for obtaining it." So all of that kind of physical and conceptual infrastructure work was underway.

My memories of that time really begin in earnest when we started on our investigative work. Our first mission was, I'm almost certain it was in Scandinavia, pursuing a line of investigation that had been developed to some extent by the Commission of Experts. Once there, we were involved in classical investigative work: tracking down witnesses, taking statements, analyzing those statements and deconstructing them. We were tracking down this, I will call it a "mystery."

Filling in the gaps between the limited evidence we had and what we began to understand had happened took an enormous effort. Therein was a big part of what prompts passion in your investigations. The next step and the next discovery are always just ahead.

The more you investigate, the more issues there seem to be to address. Because the more you understand about the areas we were investigating, about the crimes that took place there, about the people who participated in that either as perpetrators or victims, about the relationships before and after the conflict started, about the nature of the forces that were engaged in the crimes, on and on and on and on, the more there is to look at and that was extraordinarily fascinating. And within all that, once the first case began, then there were very specific mysteries that had to be addressed.

It's one thing to conduct that kind of investigation domestically, which may involve asking your investigator to bring in specific witnesses from the scene or going out to physical or geographic areas which are familiar and talking to witnesses on a larger scale. This was part of the work I was fortunate to deal with at the Department of Justice, which took me across the country doing that, a feature that added to the normal kind of investigative thrill or passion. The opportunity to see things come to life in physical areas that I wasn't familiar with often added a dimension to my understanding of what had happened.

Here we were doing that on a broad scale, except for the fact that we couldn't actually go to the region for a long time. There was this deepening kind of quest, arising from the knowledge that no matter how thoroughly you attempted to understand the area where that happened, you were always going to be missing some level of understanding until we got to the scene.

I remember lecturing people in connection with the cases we did at the Department of Justice and telling people you have to go to the scene. You just cannot imagine what you don't know until you do, and what you will learn when you do. We were facing precisely that big obstacle.

Q2: When were you actually able to get on the ground? You said it was a while before you were able to do that, so when was that?

Tieger: Immediately after the Dayton Agreement, so our first mission was either January or February 1996, and that was into Bosnian Serb held territory. You will talk to other people who, for example, were in Sarajevo, because they were investigating different cases, so they had

access to crime sites. But we didn't have access to Bosnian Serb held territory until post Dayton. In fact, we went in with a copy of the Dayton Accords to be able to ensure that we would get as much cooperation as we considered the agreement entitled us to. The first place we went into was Prijedor.

Q1: Which is where Omarska –

Tieger: Yes, Omarska, Keraterm and Trnopolje camps. Prijedor at that time was the eeriest place I had ever been. It sounds clichéd, but you'll hear from someone like Bob [Reid], when you get a chance to talk to him, something similar. We all felt that, in the way people avoided us, how people dealt with us, how they answered questions, how the local police dealt with us, as well as the things we saw.

I really believe that even if we had arrived at the place without any information about what had happened during the course of the war, just come to it with without any understanding whatsoever, I tend to believe we still would've been looking at each other and saying what's going on? What happened here?

Q1: That was of course leading up to the *Tadić* trial. We were hoping you would take us through how it was to do this first trial, since you were part of that prosecution team on that trial.

Alan: Where to begin? Of course there are two aspects of it.

First there's the investigative aspect, which, as you know, doesn't end simply when the trial begins, but was very significant.

Once the case became focused on Tadić, the investigation issues became also more narrowly defined and focused. There's a bit of a misconception, now that you have voiced it, but you may hear elsewhere about the selection of the *Tadić* case. I think the impression is that he got arrested and then the tribunal acted quickly to assemble some kind of indictment against him. In fact, we had identified him before that night. I know because I wrote the prosecutive memo on that. We were simply analyzing the evidence that we had collected about Prijedor and, for various reasons, he was regarded as one of the two or three most significant figures against whom there was sufficient evidence, we considered, to warrant an indictment.

Now I agree that, in hindsight, a figure like Tadić is not one of those most responsible in the same way as the significant leadership figures who have been prosecuted here within the meaning of the prosecution's mandate. But at that time, it was first of all a different landscape. It's difficult to say precisely who is most responsible, and I'm sure you'll hear in [UNCLEAR] debates -- who is it? Is it the leader figure, who sets it in motion and gives the orders? Or is it actually the people on the ground, who are really doing that? Part of the answer is that it can't happen without both. So any investigative and prosecution strategy that didn't include both might be legitimately questioned.

Secondly, another misconception about Tadić was that he was simply a local criminal and that there was a bit of an anomaly: the tribunal was doing all of the small fry cases and working its

way up to doing the cases that really meant something. It was held to be an opportunistic prosecution by the institution at a time when it didn't have anything else to do.

But, for example, in the cross-examination of Tadić, ultimately toward the end of the case, it focused on, among other things, a letter that he had written to SDS [Serb Democratic Party] Republic level officials, in which he was seeking assistance based on his contribution to the cause, and reciting some of his contributions and views in support of his pitch. Even in that case he was linked to the overall effort – and you track through going in either direction how all of this had happened in a pretty illuminating way. So the notion that the first case didn't really have its place in the overall construct of prosecutions that would address the horrors of what happened in Bosnia is really –

Q1: – a misconception.

Tieger: Yeah. There are a variety of ways, including that one, in which it has its enduring illuminating aspects.

Q1: So you say the investigation was in Prijedor and those camps because you knew of those, and that was leading you to identify people like Tadić?

Tieger: One of the commissioners in the Commission of Experts, Hanne Sophie Greve, had the idea that while what they were doing was useful, they needed to really bear down more on the concrete and find out what happened on the ground.

And so basically, out of her own pocket, she funded an investigation based on her awareness that many of the victims had become refugees gathered around the world, but when they entered new countries, they were debriefed by the authorities and very often by police authorities, who were basically taking statements. So she thought if she got some assistance from those governments, she could assemble a pretty good collection of statements taken around the world by law enforcement professionals under pretty rigorous conditions, and from that identify much more clearly what had happened in Prijedor. She did that and assembled hundreds and hundreds of statements.

That's what we had available to us to begin with. The Prijedor investigation had been jump-started, and that's what we were looking at initially. That allowed us to identify some of the significant perpetrators before they were otherwise independently on the radar screen.

It debunks the idea that there were merely opportunistic selections that were pursued because it was convenient.

Q1: That is an interesting part. In terms of the trial, we're interested in your reflections and thoughts about what it was like. Here, this is the first trial that was going on at the ICTY, and you're a part of it on the prosecution team, right?

Tieger: Yeah.

Q1: What do you remember about going into court at the beginning of the case or how it unfolded in court?

Tieger: First of all, everything was a giant deal at that time for a variety of reasons. Initially, the media presented tremendous interest in this. Out on that lawn, there were two huge circus tents for the first day of trial, which housed about 400 journalists.

Q1: Oh, my gosh.

Tieger: It was gigantic. In addition, Court TV had decided they wanted to cover it. They had huge, whole-page ads – "Sometimes it takes the entire world to prosecute one man" – with pictures of Tadić. It was this giant thing.

We felt, probably with reason, that the credibility of the institution rested on the perceptions of how this case was handled and whether, in fact, a credible trial proceeding could be conducted. So it was not an ordinary event at all. And then on top of that, there was no institutional practice to fall back on, so everything was new.

Some of the examples would include our Rules of Procedure and Evidence, which purposefully didn't include prohibition on the use of hearsay. It was because, I believe, that in cases of this significance, we so badly wanted to get the truth. We wanted to be as efficient as possible, so we didn't preclude the judges from hearing what they might need to hear. We trusted them to make the decisions, and we didn't want to spend time in procedural wrangles, we just wanted to move forward, which seemed pretty well-intentioned.

But then I can tell you how it played out over a long period of time. Then it actually seemed to have a bit of a counterproductive effect, because it turns out that when you do have a hearsay rule, in a developed system, you also have a concrete set of exceptions that have, over a long period of time, identified categories of material that are technically hearsay, but that are deemed sufficiently reliable to be heard. That's all a shorthand for lawyers in court, "Objection, hearsay." "No, this falls under the – "

Q1: Except otherwise –

Tieger: Exactly right, everybody knows. They pierce through the discussion and result in a decision in accordance with these concrete rules. Here, we actually started doing some of that from scratch. And what you found was that people would be citing those rules. Some would say "Objection, hearsay, that is not reliable", and others would say "Yeah, but in the adversarial system …", and then they would explain exactly how that works. It's actually a little bit more cumbersome.

Eventually, some kind of practice of the case developed, so that tended over time to be settled. But that's a reflection of the fact that, again, from the very outset, everybody had to find their footing: the lawyers, the judges, the registry people, everybody. The Office of the Prosecutor had to decide how it would structure the case. It was nevertheless still a fairly large case even though it didn't bear any resemblance to the size of the cases we ultimately had.

It wasn't the case that there was one single incident to go to, in a sense that would necessarily give rise to the obvious approach of bringing the focus immediately to the single pivotal moment, and then stepping back to find the backdrop to it. For a variety of reasons, we devised an approach that would move the judges into in a funnel fashion. That would allow them to have the same understanding of events that we had as they moved from one to another. Rather than focusing them on a specific crime, then stepping back and talking about the conditions that had led to the formation of opposing forces in Prijedor, or on the formation of the forces that were engaged in attacks on the civilian population and to the ethnic tensions that give rise to that, we decided to go at it from the beginning and address those questions, which proved to be something of a controversial decision, because it proved vastly too boring for Court TV [laughter].

After two or three days of expert historical testimony about Yugoslavia and how the dissolution of Yugoslavia began, they're really tearing their hair out. I apparently had the distinction of mentioning Tadić's name in court for the first time. That was just in a redirect examination. In fact, as I recall it, it was Judge Greve who testified as an expert witness in the case, a member of the Commission of Experts whom I have mentioned before. So she had talked about the shelling of Muslim areas. Then she was asked a question on cross that suggested that the shelling had not been focused on Muslim homes or something of that nature.

I asked her in redirect whether or not in fact there were a limited number of structures in this largely Muslim area that had not been destroyed by the shelling. I asked her if one of those wasn't the Serbian Orthodox Church and another one wasn't the home and cafe of Dusko Tadić. That was enough to send Court TV into spasms of happiness, just to hear the guy's name.

Q1: From a legal strategy point of view, it made a lot of sense to you to start to do this funnel approach, so that that same background that was going to be necessary for all the charges was being laid out first. Was that the picture?

Tieger: It certainly made sense at the time. I'm not sure it was the only way to do it, by any means. I'm not necessarily sure that's the way I would repeat it at this point. But in part this is because, over the years, I've become much more a fan of as much point first as possible, and rendering things as immediate as they can be made. While there's a natural tendency to approach it in that kind of methodical and progressive manner, you can mix and match a little bit.

Secondly, to the extent you do that, there are always ways. There are always easier ways, in hindsight, to synthesize the points you wanted to make than you did at the time. At a minimum, if we had to do it over and I had a say in that do over, I'd try to make the historical stuff as punchy as possible, and pare away at anything that could arguably be considered extraneous.

Whenever you hear criticism like that, it's fine to dismiss it as simply being the product of people not as familiar with the issues of the cases as you've been. But when people are talking about

that, it's worth listening and seeing if, in fact, those suggestions can be satisfied while still meeting your own goals.

Q1: Putting Court TV aside, because, of course, we all know these trials are not meant for entertainment. That's not the goal. We'd not be overly worried about Court TV. One thing that gets raised with international criminal tribunals all the time, and certainly would've been with the ICTY, is the idea that it's creating some kind of a historical record.

That can be at odds with having a focused trial. I'm just wondering what your thoughts were at that time and maybe today about whether that's a significant part of these tribunals or not.

Tieger: First of all, at that point, the tribunal was burdened with enormous expectations about its objectives. Of course, we know that its objectives were considered to include reconciliation and creating a historical record. If you read the discussion that led to the establishment of the tribunal, certainly member states considered both of those to be important and legitimate objectives.

I recall we were extremely idealistic at the time – I hope we still are to some extent – and took very seriously those expectations of the international community. Of course, these were extremely legitimate objectives; whether or not they are suitable for the criminal justice process is really the question.

With respect to the issue of historical record, I consider that to be something of a false issue by now, because now we've been in the leadership cases for a long period of time. There's no way to

avoid an extremely meaningful historical record. I'm more than satisfied that the leadership cases we've conducted have established a record of what happened that is richly textured, deeply nuanced, and extraordinarily valuable historically, not because that was our objective, but because that's what's required to prove these cases.

Q2: You left the ICTY in 1997 and then you came back in 2001. How do you view the evolution of the tribunal from the time that you left to the time that you came back? Obviously, now you've been back for 14 years, but I wonder if you can reflect on the changes that you've witnessed over time.

Tieger: It reminded me a little bit of coming to Los Angeles in the early '90s after I hadn't been there for 15 or 20 years, something like that. Sitting in someone's office and looking over the city and thinking "Wow, this is now a really muscular city, a really vibrant place, it's not just a large suburb."

I had a little bit of that sense when I came back here. I remember when we were doing the *Tadić* case, I had a sense of fighting an important battle, a holding action, until the other forces could be mustered to do all the stuff that we wanted to do. Sure enough, when I came back in 2001, it felt like a different institution, a fully-empowered, really muscular institution with all kinds of cases and all kinds of work with a huge infrastructure moving in a lot of directions and lots of potential. It was a powerful force.

I also remember, for example, that right around the time when the Security Council decided that the tribunal should start developing a completion strategy, that shifted how we approached our investigations and essentially stopped them over a period of time. At that point, I thought that we were really in a position to take out many, if not most, of the mid-level perpetrators. By mid-level, I mean people who were in leadership positions and responsible for what happened in specific geographic areas around Bosnia. Not the key people at the highest level, responsible for everything, but those responsible for what happened in their own geographic area.

Interestingly, that would've been a process of judicial or criminal justice lustration that might've had a genuine significant impact on Bosnia, where you continue to read about complaints from victims that they're walking down the street, and seeing the people responsible for so many terrible things. Those people remain in positions of political influence. So it was a very powerful institution that we were working with. I won't talk about the relative efficiency, because that's for other people to judge, but we were active on a lot of fronts. It was an impressive time when I came back. Shortly afterwards, of course, some extremely significant cases, like *Slobodan Milošević*, came in.

It was a time of almost unimaginable progress, compared to the question marks that existed when the institution started, and even at the time I had left. Madeleine Albright came in at the *Biljana Plavšić* sentencing hearing and related an interesting anecdote. It was essentially how her recollection was that when the tribunal was formed, there were at least any number of representatives from various countries who thought, "Well okay, fine, we know nothing will happen. They will never have an institution for them. And if they do, they won't get a prosecutor. And if they do, they won't really be able to conduct investigations. And if they do, they won't get indictments." And on and on and on.

By the time Albright testified, when significant leadership figures were not only in custody but had been successfully prosecuted, she considered the path the tribunal had followed to be a rebuke to those who hadn't thought that it could happen. That was much more the sense of the institution when I returned.

Q2: We're getting towards the end of our hour.

Q1: I'm always afraid of that. [laughter] Just maybe a couple more questions. You were involved in the first case and you're involved in the last case. I'm wondering on the types of changes or challenges. What types of challenges were you seeing over time? They must have changed.

Tieger: First of all, the quick answer is yes, they did change, but that's a long period in between those two. Some of the challenges might not be obvious – I mean clearly we've talked already about the difference between establishing all the rudiments of a new institution, trying to make sure you get that right, or establishing your investigative strategy, which is a very long-term process.

It's like those guys who shoot at long distances, just a tiny microscopic shift at the outset has a huge impact way down the line. We felt that risk as well. Sometimes we were on target and

sometimes we weren't, even though the difference between the choices at the time may not have seemed apparent. It's only in hindsight that you realize that was a significant decision being made, but nobody quite appreciated it at that time. Maybe it couldn't have been appreciated at the time because only later developments made it significant.

At the outset we had a solidarity of purpose and mission that served the institution pretty well for the most part, and in some respects might have hampered it. I'm not entirely certain it survived intact. Now, the extent to which this solidarity assisted the institution was pretty obvious, in the sense that most people felt something historic and important happening and desperately wanted to contribute to it in the most positive way possible. They thought that we are all in it together.

Even, the defense, for example, Michail Wladimiroff, Alphons Orie, and Steven Kay, all deserve credit for dealing with their obligations in the most responsible manner possible. I'm sure Wladimiroff has talked about that. He probably identified ways in which he could have crippled the institution. But then he considered, simply, that this didn't have anything to do with establishing the accountability, or guilt, or innocence of his client, although it might have seen an easy way to cripple the institution, and therefore gain some advantage. I think they were frank that this was in service of a common sense shared by everyone that this was something transcendent, something really important that we needed to bring our best efforts to bear on, so that it would bear fruit.

Over time, that gave way to other attitudes both good and bad. In part, everyone wanted to support this huge step forward in international justice, because the institution was seen as potentially vulnerable, basically embryonic, and delicate. No one wanted to criticize.

Obviously there are always things, especially in a burgeoning institution, that are worthy of criticism and need to be criticized, and need to be improved. Over time, people started to do that. First, gently and constructively, and then sometimes in a more caustic and potentially destructive way. So that changed.

What also changed is some degree was weariness with what we do. That was reflected, to some extent, in the completion strategy, although one obviously cannot blame the Security Council for identifying priorities and suggesting when the investment in the tribunal needed to give way to other necessary investments.

There were also other forms of weariness that led to almost a bit of cynicism that didn't serve the institution well. Plus, it became an institution and almost a way of life. And then the kinds of normal divisiveness that you see in other institutions began to develop, not always to the benefit of the mission. So that also became a challenge.

For example, I mentioned the historical record before. Anybody with an interest in what international criminal justice can do would have to become familiar with these final cases in the institution, because they're quite extraordinary in the intricate exposure of what happened during that time. At the beginning of the institution, we were in a situation where you had to follow the dots like a child's game. If you follow those and put them together, you could see an image that you could recognize, but then ultimately we had a lot of pixels and one can see with great clarity what happened. That means that with any given witness, for example, we were in a much better position to really bear in on the facts. It was really a credit to the development of the institution, and to what it can accomplish. What may be seen as a general exhaustion over what *ad hoc* tribunals do, and therefore a reduced level of attention paid to these cases, has been unfortunate.

One of the challenges that has arisen over time has been to ensure that the success of the tribunal is not lost, because if one follows the tribunal from its inception to what it has ultimately been able to accomplish, it's a very proud record.

Q1: May I ask one more question?

Q2: Yeah. We can end with this one.

Q1: It segues perfectly from what you're saying because the whole trajectory of the ICTY is really amazing. I know when you think about it as this nascent institution, no real precedent other than Nuremberg. You see this development and all the prosecutions and what has been accomplished.

The final question takes that one step further. If you think about this trajectory of international criminal justice, what do you think is next? What is the future?

Tieger: From the earliest stages, I still have an accurate recollection. We hoped that the establishment of this institution, and the demonstration that it could do what it was set up to accomplish, would lead to a more permanent institution. One of the proudest legacies for all of us who participated in the early phases is the International Criminal Court (ICC).

It clearly has to be what's next in a significant way. Now whether or not the lessons of the *ad hoc* tribunals can also suggest variations on that theme, or supportive institutions that bolster the work of the ICC, is another story.

I was just in California recently and talking to a young friend who has his own business, which is one of these businesses that has a philanthropic aspect built in, which is not something I recall being very common many years ago. It is more and more common, and they have ties with other institutions that do the same, some of which are involved in aspects of international humanitarian law and assisting victims of mass atrocities.

What struck me in the conversation with him was how creatively he had come to the decision to form this business and to contribute in this way, and how he was also in a larger community of people who are doing the same thing in other areas, including international humanitarian law. It seems to me that more and more people are thinking about how their expertise in their particular circumstances can give rise to support for the larger big-picture things that criminal justice institutions are trying to do, or that the UN is trying to accomplish in bigger ways.

That kind of more grass roots effort may be the next big thing. In fact I'm certainly both impressed and inspired to hear about it. I would be keeping an eye on the development of the idea that we're not really familiar with it yet, that goes beyond the structural limitations and inflexibility of major institutions to establish delivery systems of justice that go right to more of the individual victims.

Q1: That's a pretty incredible legacy for the tribunals.

Q2: Definitely. Thank you very much for your time today.

Tieger: Of course, my pleasure.