



## **Statement of the Chief Prosecutor of the Special Investigative Task Force 29 July 2014**

### **Background**

In September 2011, the Special Investigative Task Force – the SITF – was set up by the European Union to conduct a full-scale criminal investigation into the allegations contained in the report of Council of Europe Rapporteur Dick Marty. I was appointed as Chief Prosecutor, leading the SITF, and took up my post the following month, in October 2011.

Over the past two and a half years, the SITF has conducted an intense, detailed investigation into the allegations in the Marty Report. This investigation has involved interviews of hundreds of witnesses in countries throughout Europe and elsewhere. It has involved the review of thousands of pages of documents compiled by numerous organizations and individuals that were engaged in Kosovo during and after the period of our investigative focus.

This has been an extremely challenging exercise for the SITF. We have been looking at events that occurred some fifteen years ago and for which little or no physical evidence exists. Many witnesses whom we believe had information that would have been relevant to the investigation have since died or become so infirm that they are not in a position to provide testimony. Likewise, a number of other potential witnesses identified by SITF have not been interviewed because their current whereabouts could not be ascertained. Finally, we have faced challenges due to a climate of intimidation that seeks to undermine any investigations of individuals associated with the former Kosovo Liberation Army – the KLA.

### **General Findings**

Despite these difficulties, I am convinced that SITF has conducted the most comprehensive investigation ever done of crimes perpetrated in the period after the war ended in Kosovo in June 1999. As a result of this investigation, we believe that SITF will be in a position to file an indictment against certain senior officials of the former Kosovo Liberation Army. These individuals bear responsibility for a campaign of persecution that was directed at the ethnic Serb, Roma, and other minority populations of Kosovo and toward fellow Kosovo Albanians whom they

labeled either to be collaborators with the Serbs or, more commonly, to have simply been political opponents of the KLA leadership.

Information compiled by SITF indicates that certain elements of the KLA intentionally targeted the minority populations with acts of persecution that included unlawful killings, abductions, enforced disappearances, illegal detentions in camps in Kosovo and Albania, sexual violence, other forms of inhumane treatment, forced displacements of individuals from their homes and communities, and desecration and destruction of churches and other religious sites. This effectively resulted in the ethnic cleansing of large portions of the Serb and Roma populations from those areas in Kosovo south of the Ibar River, with the exception of a few scattered minority enclaves. Additionally, we have found that certain elements of the KLA engaged in a sustained campaign of violence and intimidation through 1998 and 1999 directed at Kosovo Albanian political opponents, which also included acts of extrajudicial killings, illegal detentions, and inhumane treatment.

We believe that the evidence is compelling that these crimes were not the acts of rogue individuals acting on their own accord, but rather that they were conducted in an organized fashion and were sanctioned by certain individuals in the top levels of the KLA leadership. The widespread or systematic nature of these crimes in the period after the war ended in June 1999 justifies a prosecution for crimes against humanity. Accordingly, we anticipate that such charges can be filed in this matter against several senior officials of the former KLA, and that an indictment would also likely include charges for war crimes, and certain violations of domestic Kosovo law, including murder.

Some other domestic offenses – including torture – cannot be prosecuted because those crimes have prescribed due to the expiration of the 15-year statute of limitations. With no court in place at this time, and thus with an inability to file an indictment, we were not in a position to interrupt the running of the prescriptive period. That said, I do not believe that this will have a detrimental effect on this case, particularly since many of these criminal acts can likely be charged in the context of international humanitarian law violations for which there is no statute of limitations.

In regard to the crimes I described above, obviously our focus – as an investigative and prosecutorial body – was to seek and compile evidence of criminal wrongdoing. While it was not our primary responsibility, we have nevertheless also felt a strong obligation to do everything we could to learn the fate of those people who disappeared in 1998 and 1999 and whose whereabouts are still unknown. Unfortunately, at this point, we have developed little additional information that would lead us to the locations of bodies or that would otherwise shed light on the whereabouts of those who disappeared. The pursuit of this information will, needless to say, remain a very high priority for SITF not only for our investigative purposes but also because of the compelling humanitarian interest in providing long

overdue answers to families, of all ethnicities, whose loved ones disappeared during this period.

All in all, our investigative findings should come as no surprise to anyone, as they are consistent with what was reported as far back as 1999 by the OSCE in its report "As Seen As Told, Volume II," and by Human Rights Watch in its report "Abuses Against Serbs and Roma in the New Kosovo." This is the first time, however, that the allegations in those reports, and now those in the Marty Report as well, have been subjected to prosecutorial review in the context of a Kosovo-wide criminal investigation. While any case brought by SITF would obviously not replicate those reports in full, the underlying theme presented in those reports of a campaign of persecution led by certain senior individuals in the KLA leadership is consistent with our investigative findings at this point.

### **Organ Harvesting and Trafficking**

While the Marty Report addressed this broader set of allegations, discussing the disappearances, detentions and killing of ethnic minorities and of Kosovo Albanian political opponents, the part of the report that garnered the most attention – because of its sensational nature – related to the allegations of murders for the purpose of harvesting and trafficking human organs. As I said, our findings were largely consistent with those in the Marty Report, and that also applies to the allegations on this issue. In order to prosecute such offenses, however, it requires a level of evidence that we have not yet secured. Like Dick Marty, during the course of his investigation, we have encountered significant challenges in obtaining such evidence. This is not to say that this evidence will not come together, and we certainly continue to vigorously pursue it. So, by no means, have we dismissed the validity of these allegations. While I do not yet feel that there is a strong enough evidentiary basis to conclude that indictments can be brought as to this aspect of the case, I do feel a particular obligation to address this issue specifically in light of the attention that has been focused on it.

I can say at this point, that there are compelling indications that this practice did occur on a very limited scale and that a small number of individuals were killed for the purpose of extracting and trafficking their organs. This conclusion is consistent with what was stated in the Marty Report, namely that a "handful" of individuals were subjected to this crime. The use of the word "handful" by Senator Marty was intentional and it was meant literally. There is no indication at this point that this practice was more widespread than that and certainly no indication that a significant portion of the ethnic minorities who went missing or were killed were victims of this practice. Statements that have been made by some implying that hundreds of people were killed for the purpose of organ trafficking are totally unsupported by the information we have and that Dick Marty had. If even one person was subjected to such a horrific practice, and we believe a small number were, that is a terrible tragedy and the fact that it occurred on a limited scale does not diminish the savagery of such a crime. But, it likewise serves no purpose to

exaggerate the numbers, and to create undue pain and anxiety for the families who do not know the fate of their loved ones, leading them to imagine this added dimension of horror.

## **Judicial Process**

In regard to the those crimes for which SITF has prosecutable evidence, the filing of an indictment will not occur until the specialist court designated to hear these cases is established – hopefully early next year. Between now and then, additional evidence may be brought to the fore and that would obviously affect the form of the indictment that is filed. So, this is an unusual – in fact, an unprecedented – situation in international justice where a special prosecutor’s office has been set up with full investigative authorities and with a mandate to issue indictments, but where no viable court exists in which those indictments can be filed. So, the statement of findings that I am making today will only serve as a placeholder until the more authoritative indictment can be issued.

In terms of the process, there was recognition from the outset of the EU taking on this matter that certain extraordinary measures were necessary to conduct and ensure the integrity of an investigation of this nature. This led to the establishment of SITF as an autonomous investigative unit, situated outside Kosovo, in Brussels. The same considerations that factored into the establishment of SITF as a stand-alone investigative and prosecutorial office have also factored into the creation of a tribunal with certain safeguards that would provide the only means for a fair and secure trial in this matter.

In regards to the court that is envisaged, I want to address a specific concern that has come from some in Kosovo that this is a special court just for the KLA and that it ignores crimes committed by others. The reality is that the ICTY had the jurisdiction to address crimes occurring during the period of armed conflict, so up to the point that the war ended in mid-June 1999. Pursuant to their jurisdictional mandate, ICTY brought a number of prosecutions against senior Serbian officials for crimes against humanity and war crimes during this period, for acts directed at Kosovo Albanian victims. ICTY, however, was prevented from prosecuting crimes in the post-war period – the period which has been the primary focus of our investigation – because their jurisdiction did not allow for prosecutions outside armed conflict. In 2000, ICTY Prosecutor Carla del Ponte actually requested revisions to the statute to allow ICTY to investigate and prosecute crimes during this period, but her request was not acted upon. As a result, crimes committed in Kosovo in the pre-war period and during the war itself have largely been dealt with by ICTY. The majority of these involved Serb perpetrators. What our investigation has done, and what this court will do, is to fill the void left by ICTY’s jurisdictional limitations. The reality is that the primary perpetrators during the post-war period were certain individuals affiliated with the KLA, but this is not singling them out for harsher treatment than others; it is only subjecting them to the same sort of international justice processes that have already been brought in relation to Serb perpetrators.

A number of steps have been taken to establish this specialist court and, while I am disappointed that it is not in place already, I understand that this has been a complex process and has involved navigating through uncharted territory. Moving this through the bureaucracy of the various EU institutions, reaching consensus among the 28 member states, securing a commitment from a host-state and addressing its concerns, and lastly, completing the legal and procedural steps in Kosovo necessary to create this court, has been an incredibly complicated, time consuming process. While most of these steps have been completed, and the Kosovo Government and Assembly have formally committed to establish a court with the necessary safeguards, the statute of the court and certain changes in Kosovo law must be enacted before the court can commence work. These procedural steps can only take place when a new Assembly is constituted in Kosovo pursuant to the recent elections. It is only at the point that the court is set up and judges are in place that SITF could file an indictment in this matter. Until this occurs, the specifics of SITF's findings and the supporting evidence will remain under seal and further details on the investigation will not be made public. In the meantime, SITF will continue its investigative work to buttress its findings and to further strengthen the case. But, I strongly urge the Kosovo Government and Assembly and the EU to move quickly to finalize this process and to have a court in place early next year.

### **Witness Intimidation**

As I indicated a moment ago, SITF has faced significant challenges in the conduct of this investigation, and we recognize that these challenges will continue to be a factor as work progresses. While I feel strongly that evidence will be sufficient to bring an indictment when the procedural vehicles are in place to allow for filing, I must acknowledge that, as with any criminal investigation, things can change and that it is impossible to offer absolute guarantees of specific results. In this regard, the issue that concerns me the most is one that I noted at the outset of my remarks and that is the climate of witness intimidation. As this investigation has progressed, there have been active efforts to undermine it by interfering with witnesses and these efforts are still ongoing. We have taken steps to counter the impact of the witness intimidation and we will continue to do so. We will actively investigate these activities and will prosecute any individuals found to have been involved. There is probably no single thing that poses more of a threat to rule of law in Kosovo and of its progress toward a European future than this pervasive practice. As long as a few powerful people continue to thwart investigations into their own criminality, the people of Kosovo as a whole pay the price as this leaves a dark cloud over the country. Those who engage in violence or the threat of violence against witnesses or those in political positions or the media who attack witnesses for daring to speak out are not the ones defending Kosovo. They are the people betraying Kosovo's future.

## **Chief Prosecutor**

In addition to this statement of investigative findings, I would also like to take this opportunity to announce that my service as Chief Prosecutor of the SITF will conclude on 23 August. When I was asked to take this position in mid-2011, I agreed to serve for a maximum term of three years and to see this process through the primary investigative phase. As both of those benchmarks are now approaching, I think this is the appropriate time for me to depart so as to facilitate the continuity of my successor through the pre-trial and trial phase of this case.

As I prepare to finish my work with SITF, I want to acknowledge the tremendous work of the men and women who have been my colleagues in the SITF and to express my appreciation to them. This group of incredible professionals – prosecutors, investigators, legal officers, analysts, and other specialists from 18 EU countries, Canada, and the United States – has worked against daunting odds to conduct this investigation. It is their commitment, their professionalism, and their diligence which have brought us to this point and I am confident that they will continue to pursue this investigation until an indictment can be filed.

I would also be remiss if I did not acknowledge the contributions of other partners. Senior officials in the Government of Kosovo deserve significant credit for their actions that facilitated this investigation – something which was obviously not easy for them to do. From the outset, President Jahjaga has been very supportive, recognizing that a resolution of these issues and a strong commitment to rule of law were in the interest of Kosovo. Likewise, the governments in neighboring states, such as Montenegro and Albania were extremely helpful and responsive to our requests for full cooperation. The Government of Serbia, led by Prime Minister Vučić, and previously by Prime Minister Dačić, has done everything it could to assist us in this process, but has also gone to great lengths to avoid interference in the independence of our process. Our primary operational interlocutor in the Serbian Government has been Chief War Crimes Prosecutor, Vladimir Vukčević, and both he and his office have been incredibly helpful, while also fully respecting our independence.

We have worked as well with organizations of victims, survivors and missing persons and their willingness to assist us after the passage of so much time has been a significant asset to our work. Also, a number of other national governments, various components of international organizations, and non-governmental organizations have all provided information and have made relevant people available for witness interviews. While we have benefited from the information already obtained and for access to potential witnesses, there will be an ongoing need for this cooperation as the investigative and prosecutorial process continues. I want to encourage them, and any other organizations or individuals with relevant information, to find the means to share it with SITF. Additionally, a number of states have offered assistance in regards to witness protection matters. We are grateful

for the commitments that have already been made, but here too there will be a continuing need as the investigation and trial progress.

Finally, the Member States of the European Union, the European External Action Service, and the US Government have provided invaluable support and have ensured that this process has successfully gone forward. As an American diplomat and prosecutor who has led this EU initiative for the last three years, I can say unequivocally that it represents an outstanding example of what can be achieved through US/EU operational cooperation.

## **Conclusion**

In closing, I want to make this important point. Some, in order to protect themselves, have tried to portray this investigation as an attack on Kosovo's fight for freedom or on the KLA as an organization. Many Kosovars joined the KLA with the best of intentions and they rejected the rampant criminality that transpired after the war. Some of them have shown great courage and integrity by coming forward as witnesses and telling what they know about those who took a different path – those in leadership positions who embraced criminality and wanted to use the KLA to further their own personal objectives. So, it should be clear that this investigation and any charges that result from it, are directed at the criminal actions of individuals within distinct groups not at the KLA as a whole.

Nor, is this an attempt to re-write history, as some have tried to present it. I was in Kosovo in 1998 and 1999 and I supervised the subsequent investigation by the ICTY of Serb-perpetrated crimes during that period, co-authoring the initial indictment against Slobodan Milošević and others for the crimes directed against Kosovo Albanian victims. I had a leading role in the exhumations of mass graves that occurred in the summer of 1999, where the bodies of thousands of Kosovo Albanian victims were recovered. I went to numerous crime scenes throughout Kosovo and I spent many hours speaking with victims and with family members of those missing or killed. So, from my own very direct involvement, I understand clearly what happened in Kosovo in the years leading up to the war in 1999 and in the war itself.

No matter what the circumstances are that led to that conflict, though, there is nothing that justifies the intentional targeting of innocent individuals. What happened in the aftermath of the conflict was not about defending Kosovo or fighting for freedom. Rather, this was a brutal attack on significant portions of the civilian population. It was directed at almost all of the Serbs who wanted to stay in Kosovo, many of whom were elderly or infirm; at the Roma and at other ethnic minorities; and it was directed at those Kosovo Albanians who opposed a small group within the KLA having a monopoly on power. In the end, this was solely about certain individuals in the KLA leadership using elements of that organization to perpetrate violence in order to obtain political power and personal wealth for themselves, not about any larger cause. And, it is as individuals that they must bear responsibility for their crimes.