

Once the first inevitable difficulties had been overcome, it was hoped that the International Court of the Hague would achieve results without much difficulties. On the contrary, few cases were concluded, in spite of the efforts made by the institution.

One gets the impression that something is wrong, putting a halt to the good intentions and neutralizing most of the good formulas that had been devised. True committed support by the international community is lacking, because of the eternal contradictions and jealousies of the individual States, the divergent perspectives which are always so hard to reconcile. It is not only a question of the Court not being preconstituted, which limits its charisma and reduces its juridical power, nor is it the fault of the disadvantages created by an immense number of episodes and subjects that have to be followed (this circumstance in itself should rather lead to an even higher number of concrete inquiries). The issue implies other profiles that are both intrinsic to the case and successive to it. The destiny of the whole institution itself is at risk, the hopes placed in it, the prospects for its future. Everything is actually linked to this elementary but problematic axiom with two sides: in order to function, a judicial organ must be in a position to examine the cases that are within its competence and to pass the judgements which bring them to a conclusion.

In this regard there is a first problem, which is in my opinion crucial, even though it is perhaps impossible to solve because of the culture that prevails in the Western world, connected with values which are rooted in firm traditions. I refer to the problem of judgement in absentia, since I am convinced that, as long as we are internationally bound to the noble principle according to which, if the defendant is not present, proceedings cannot be instituted, significantly concrete attempts to prosecute a war criminal will remain an illusion, even as far as concerns the importance of the

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role played by the individuals brought to trial, whether they are many or few: these will usually be minor members of the team, acting on orders from above.

The precedents of Versailles, Nuremberg and Tokyo may be very interesting from the historical and cultural point of view, so long as we bear in mind that these situations are very different to the ones which the Court of the Hague is asked to consider.

One instance consists of a war which has been clearly won by one or more States which are the litigant parties: the losers responsible for the crimes are brought to trial by the victors, who are moreover occupying the losers' territory, and who are therefore free to dispose of the territory and of the main culprits. On the other hand, the Court is not composed by the victors but by third parties who are not involved in the conflict, and it examines criminal episodes which are imputed to this or that force in the lawsuit, and remains outside the territories involved. How could it enter the said territories to execute the convicting sentence, or as a cautionary measure, the orders for provisional arrest?

If everyone were in agreement, including the competent local authorities, strictly-speaking there would be no need for an international court, in the form of a strong jurisdiction which would be, at least in theory, in a position to impose its decision even on reluctant parties. Actually, if the state in question would have authorities in a position to hold a credible trial, if at the end of the conflict a democratic and pacifist government would have been installed, then it would be worthwhile to assign to it the task of judging.

But what if this does not happen? Who will hand over the arrested persons? And, even before that, who will effect precautionary arrest, which is indispensable to ensure, before the execution of the eventual final sentence of conviction, side-stepping the paralyzing question of judgement in absentia? What powers can the general power of attorney and the Court of The Hague count on? And then, even if they did find these powers, there remains the not insignificant risk of unleashing new tensions among the followers of the arrested person, that could even lead to a fresh outbreak of war immediately after peace has been established. The more recent dramatic events in the territories of Serbia and Bosnia, which have left us holding our breath, causing widespread indignation accompanied by a bitter feeling of impotence, are clear evidence of how serious and decisive the problem is.