

HEINONLINE

Citation: 18 Minn. J. Int'l L. 425 2009



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Tue Nov 3 13:08:57 2015

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/cc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=1944-0294](https://www.copyright.com/cc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=1944-0294)

Rule of Law Symposium

Searching for the Meaning of the Rule of Law: Finding Extraordinary People

Mark S. Ellis*

Exactly what constitutes the rule of law has been much debated in recent years, paralleling a growing interest in whether or not the rule of law may be a key unifying principle for all nations. That this symposium edition of the *Minnesota Journal of International Law* focuses directly on the meaning of this concept is testimony to its importance and promising future. We have all read the definitions—free elections, free media, presumption of innocence, an independent judiciary, proportional punishment, etc. But, while laudable and accurate, these descriptions and definitions still ring shallow for me because they fail to capture the essence of the rule of law—the human spirit.

When I look back to my early years with the American Bar Association's Central European and Eurasian Legal Initiative (CEELI) project, I think of the many people I met and worked with in the former Soviet Bloc countries. These were lawyers, judges, professors, and civic leaders who had sacrificed enormously during the communist era and were struggling to create new societies based on the rule of law. It was through their eyes and experiences that I came to learn the true meaning of the rule of law. Unlike most of us, they understood what is meant by the rule of law because they had lived without it for most of their lives.

* Mark Ellis was Executive Director of the American Bar Association CEELI project from 1990–2000. He is currently Executive Director of the International Bar Association, London. This article was written in response to Mr. Ellis' participation in the *Minnesota Journal of Law's* Rule of Law Symposium on November 14, 2008.

I still carry with me a quotation that I copied years ago, while visiting the Guinness Brewery in Dublin, Ireland. The following is inscribed on the front wall:

It's hard to define.
It's about ordinary days
and extraordinary days,
ordinary people
and extraordinary people,
it's whatever you make it.

These words resonated with me and are a constant reminder of the courageous and principled people with whom I worked during my time at CEELI—people who inspired and enlightened me, and always challenged me to reach higher.

Among the many programs that CEELI initiated in the region during its first ten years—from constitution drafting to law school reform to commercial legislative enactments—it was the work to build independent judiciaries that captured, more than anything else, the essence of the reform process.

The judiciary's importance became overwhelmingly clear on a trip I made to Sarajevo during the Bosnian war. There are, for all of us, searing experiences that touch our lives. For me, meeting six extraordinary judges on a trip to Sarajevo in February 1995 was one of those experiences.¹

When I landed at the burned-out Sarajevo airport in the midst of a winter storm, the surreal scene was overwhelming. Hundreds of U.N. troops scurried about, oblivious to my arrival. The airport itself was no more than a bombed-out barricade of sandbags, barbed wire, trenches, machine guns, and soldiers. Everywhere I looked there was gruesome evidence of the Sarajevo siege—the longest since the Siege of Leningrad in World War II. Stunningly, I also watched as children played in the charred ruins of a once beautiful city, seemingly oblivious to the chaos surrounding them, and certainly unaware of the scars that would forever mark their lives.

I met the judges almost by accident. The creation of a Constitutional Court was part of the Dayton Peace Accords² hammered out in the United States, and was viewed as key to

1. The six judges were Omer Ibrahimagic, Mirko Boskovic, Drasko Vuleta, Katerina Mandic, Milan Bajic, and Muamer Hercegljija.

2. The Dayton Accords refer to the General Framework Agreement for Peace in Bosnia-Herzegovina. The Accords were agreed upon at the Wright-Patterson Air Force Base near Dayton, Ohio in November 1995; they were signed in Paris on December 14, 1995. The Dayton Accords formally ended the war in Bosnia.

rebuilding Bosnia. Yet, to many, it was an afterthought. Reigning politicians appointed six judges from the pre-war state of Yugoslavia and asked them to serve on the new Court.³ The Court, however, was an institution in name only. It was not operational, had never met in session, and had yet to hear a case. Still, I asked to meet with the six judges. Our meeting was profound and unforgettable.

The six judges shuffled into the room. They ranged in age from 60 to 70. There were two Serbs, two Croats, and two ethnic Muslims. In a country plagued by instability and the wounds of ethnic cleansing and genocide, I was mesmerized by the fact that members of the country's three dominant ethnic groups were sitting across the table from me.⁴

When they spoke, they sounded as lost as I felt. Listening to their stories, I searched for whatever common threads might be woven through their lives. They were not well known, nor did they know each other. But they were bound by a shared belief in justice—a belief that law has the power to summon righteousness away from wrongdoing.

Sadly, I saw another common bond—they shared the anguish of having lost everything during the war, including family members. Two of them, one Serb and one Muslim, had lost their young sons—both killed by stray shells while playing in their front yards. The pain of their loss echoed in their words and pierced their hollow eyes.

These six judges were eager to meet the U.S. experts who had drafted Bosnia's new Constitution. Before beginning work on the Court, they wanted to learn directly of the framers' intent. Logistically, it was impossible to fly the various U.S. experts to Sarajevo in the middle of the war; the judges would have to leave Sarajevo and travel to the United States.

It would be a treacherous journey. With the nation still

3. The new Constitutional Court was to include nine members: six from Bosnia and three from other nations. The six Bosnian justices included two Muslims, two Croats, and two "others," which meant Serbs. The justices were appointed by Federation President Kresmir Zubak, a Croat, with approval from Vice-President Ejub Ganic, a Muslim. The selections were confirmed by a majority of the House of Peoples of the Federation Parliament. The three international judges nominated by the International Court of Justice (ICJ) were Bola A. Ajibola from Nigeria, Abdullah Fikri El-Khani from Syria, and Francois Ernest Robert Rigaux from Belgium. They were to serve five years.

4. Prior to the start of the war in 1992, Bosnia-Herzegovina was the most multinational republic of the former Yugoslavia. Its population was 44% Muslim, 31% Serb, 17% Croat and 8% "other."

divided, people were routinely injured or killed attempting to leave Sarajevo. I questioned the plan—it was simply too dangerous. The judges met and reported back that they had unanimously decided to go forward with the trip.⁵ The decision was made.

Several weeks later, the judges embarked on their journey. It was just after midnight on a cloudy, ink-black night—a night in which the darkness, intensified by the mandatory blackout, made even the roads disappear. There was no one about and no sound to be heard, apart from sporadic gunfire that punctured the uneasy cease-fire. A cold drizzle of rain turned everything to mud. Skeletons of burned-out cars and buses cluttered the streets like so many overgrown weeds. The crumbling facades of the city's skyline were cold testimony to the ravages of war.

There was only one way to leave Sarajevo and avoid the Serbian army's front line—through a tunnel, 872 yards long, which the Bosnians had dug under the runways of the destroyed Sarajevo airport—the same airport that beckoned the hopes and dreams of thousands of athletes at the 1984 Winter Olympics. The tunnel's entrance was a frequent target for random but deadly shooting by the Serbian army—attempting to gain access to it was extraordinarily hazardous. Countless people died while trying to leave Sarajevo.

Despite these hazards, the judges pushed on. After entering the tunnel, they faced a one-way corridor, no wider than arm's length and too narrow to turn back. They inched their way forward, each one shouldering his/her own luggage. The passageway was so small in some sections that the judges could not stand; half crouched, they bent forward as if hobbling on imaginary canes.

As cold rain collected in the tunnel, the water level reached their ankles and numbed their feet. With nothing to see or trust in the darkness, they felt their way along the tunnel's muddy walls.

Their journey was an exercise in concentration—step by step.

At 4:00 in the morning, nearly nine hours after leaving their homes, the judges emerged from the darkness. They were exhausted and demoralized. Still, the worst was yet to come.

They had to cross Mt. Igman, one of the most notorious mountain ridges in the region. They were then put on a

5. One judge remained in Sarajevo for personal reasons.

military vehicle, treated more like cargo than passengers, and rode through the night, at times without lights in order to avoid sniper fire.

Finally, they reached the coast of Croatia. Their harrowing trip had taken over thirty hours; under normal circumstances it would have been less than four.

When they finally arrived in Washington, D.C., the judges solemnly went about learning as much as they could in the short period of their visit. I smiled on that first day of the workshop when I realized just how different this group was. Most visitors I dealt with from the former Soviet Bloc had more interest in going shopping. But the Bosnian judges stayed in the CEELI conference room from early morning until late at night asking the American drafters penetrating questions about their Constitution.

This went on for ten days with barely a break—and then it was over. I thought how easy it would have been—and understandable—for them to stay and seek refuge in our country. But they did not. They gathered their meager belongings and boarded a plane back to Europe and repeated the same journey back home—over the mountains, past the snipers, into the darkness, through the tunnel, through the terror.

For the next two months, the six judges worked to draft the Court's procedural rules. We also argued for a swearing-in ceremony. There was little enthusiasm for this, but the judges persisted. And again something remarkable happened. Interest in the ceremony grew.

Bosnia's only television station decided to broadcast the swearing-in ceremony across the nation. We had secured the use of a majestic old building in the architectural style of the Austro-Hungarian empire—one of the few buildings not destroyed in the war.

Inside the main reception hall were hundreds of people—lawyers, judges, students, foreign ambassadors, and key members of the Bosnian Government. When the seats were gone, people stood ten deep in the back of the room.

At the appointed time, the great French doors at the front of the hallway were opened and the clerk announced in French, "*la Cour*" (the Court). The judges entered the room to audible gasps—a reaction to the unfamiliar sight of them wearing

elegant black judicial robes, an uncommon sight in the Balkans.⁶

I then watched in astonishment as a hush descended and the audience rose slowly to its feet—it started in the first row and created a ripple effect—row after row silently rising, until everyone was on his or her feet.

When the last person stood, I looked to my left at the Bosnians assembled beside me, young and old, tears running down their faces. They had found hope—it was fragile and uncertain, but through the acts of these six judges, an entire nation saw through the madness, the hatred, and the destruction, and glimpsed a better future.

So when I remember those early CEELI days and the role that individuals played in transforming their countries, I think back to the Guinness Brewery and to those words etched on a brick wall—ordinary people doing extraordinary things.

And now when I hear the term “rule of law” bandied about, I do not think of carefully crafted definitions. I think of those six judges and the many other extraordinary people whom I met and worked with during my time at CEELI. I think of the losses they suffered, the challenges they faced, the dignity with which they carried themselves. I think back to what these people hoped for and achieved as members of the legal profession. And most important, I think of how they circumvented systems torn apart by injustice, political strife, and repression to become true mavericks, ensuring that their new nations would be predicated on the same principle that they so bravely embodied—the indomitable strength of the human spirit.

6. When the judges visited the U.S. Supreme Court, they were impressed by the robes and thought they conferred dignity to the Court. CEELI decided to give them each a robe as a gift.