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War Crimes Tribunal Update

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NEWS FROM THE INTERNATIONAL WAR CRIMES TRIBUNALS

by Jennifer Hentz*

Both UN International Criminal Tribunals, in Rwanda and the former Yugoslavia, have continued to pursue cases against war crimes suspects. Of special significance is the International Criminal Tribunal for Rwanda's (ICTR) historic decision in *The Prosecutor v. Jean-Paul Akayesu*, which it released on September 2, 1998. This decision was the first time a genocide conviction was made under the terms defined in the 1949 Convention for the Prevention and Punishment of the Crime of Genocide. This case sets another historical precedent in international law, as it was the first to include rape as a crime against humanity and to convict a defendant under this charge.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

As of mid-October 1998, the ICTY publicly indicted 80 suspects, among them 59 Serbs, 18 Croats, and 3 Muslims. Of these, five have died since being indicted, including two who died in custody, and four indictments have been withdrawn, including the indictment of one deceased individual. Three new judges were appointed to the ICTY to work in the new Trial Chamber III. At the request of ICTY Chief Prosecutor Louise Arbour, ICTY President Gabrielle Kirk McDonald sought the assistance of the UN Security Council to bring attention to "the continuing refusal of the Government of the Federal Republic of Yugoslavia . . . to cooperate with the international tribunal." Because it is an organ of the Security Council, President McDonald stated the ICTY is able to turn to the Security Council for enforcement measures and assistance necessary to support ICTY efforts.

Progress on Arrests and Detentions

Thirty-three indictees have thus far been arrested by NATO Stabilization Force (SFOR) troops or confirmed dead. Milorad Krnojelac was detained by SFOR troops on June 15, 1998, in Foca, Bosnia, and then transferred to The Hague. He is charged with seven counts of crimes against humanity, six counts of grave breaches of the Geneva Con-



The International Criminal Tribunal in The Hague.

ventions, and five counts of violations of the laws or customs of war for his role as commander of the KP-Dom, the primary detention camp for Muslim and non-Serb civilian men from Foca and surrounding villages. He is charged on the basis of his responsibility as a superior for the acts of his subordinates, and his personal responsibility.

SFOR forces arrested two persons on July 22, 1998, believing them to be ICTY indictees Nenad Banović and Predrag Banović, and transferred them to The Hague. The arrested persons, however, were falsely identified and were not indicted for any crimes. The Tribunal attributes these errors to efforts on behalf of the Republika Srpska to avoid its obligations under international law to co-operate with the tribunal by issuing false identification papers to persons under their control. Both persons were released after their true identities were discovered on July 23, 1998.

On the night of June 28, 1998, Slavko Dokmanović hung himself in the UN detention center in The Hague. On August 1, 1998, Milan Kovačević passed

away in his cell in The Hague. The ICTY ordered an internal inquiry into the circumstances of these deaths, which found no evidence of negligence in either case. Following the investigation, 26 of the remaining detained persons issued an open letter to the international community assuring the public that the quality of the facilities was acceptable and the detention forces were addressing any unresolved issues.

On August 8, 1998, Slobodan Miljković died in Kragujevac, Serbia from multiple gunshot wounds that he received during a bar fight. Miljković was indicted on July 21, 1995, for his alleged involvement in an April 1992 campaign of terror by Serb military forces against Bosnian Croat and Muslim residents of the Bosanski Šamac

area. The indictment identified Miljković, also known as Lugar, as the deputy commander of "The Grey Wolves," a paramilitary unit from Serbia.

Status of Current Proceedings

Tihomir Blaškić

On May 6, 1998, Trial Chamber I approved the Prosecution's request that the Chamber order additional protective measures for three Prosecution witnesses, who work for a humanitarian group. In its decision, the Chamber permitted the Prosecutor to withhold disclosure of the witnesses' statements to the Defense until seven days before their testimony. The Prosecution was scheduled to rest on July 29, 1998, after presenting over 100 witnesses. The Defense was scheduled to begin presentation of its case on August 24, 1998.

Dragoljub Kunarać

In an effort to enforce Kunarać's right to an expeditious trial, Trial Chamber II appointed Judge Mumba as the pre-trial judge on June 18, 1998. At the

continued on next page

War Crimes Update, continued
from previous page

ICTY, pre-trial judges conduct proceedings after the initial appearance hearings and until the beginning of the trial, making full Chamber hearings unnecessary. Judge Mumba will rule on pre-trial motions, ensure that delays are avoided, and report to the other members of the Chamber, which continues to control the trial.

On July 14, 1998, the Prosecutor filed a motion to amend Kunarać's original indictment based on "new evidence about additional sexual assaults allegedly committed by the accused or soldiers under his command . . ." The amended indictment severs Kunarać's case from those of his original seven co-defendants. As amended, the complaint against Kunarać alleges that he was involved in four additional sexual offenses, restructuring the original four counts into 21 counts (nine counts of crimes against humanity and 12 counts of violations of the laws or customs of war).

Defense counsel filed a pre-trial motion on October 6, 1998, that proposed changes to be made in the charges against Kunarać.

Milan Simić, Miroslav Tadić, Simo Zarić, and Stevan Todorovic

On August 25, 1998, the amended charges against Milan Simić, Miroslav Tadić, and Simo Zarić were confirmed. These changes severed their cases from those of the three other Defendants, including Stevan Todorovic, with whom they were originally charged, increased the number of incidents in which they were allegedly involved from seven to 17, and reformulated the counts brought against them. Under the new indictment, Milan Simić is charged with five crimes against humanity, two violations of the laws and customs of war, and four grave breaches of the Geneva Conventions. Miroslav Tadić is charged with two crimes against humanity and one grave breach of the Geneva Conventions. Simo Zarić is now charged with two crimes against humanity and one grave breach of the Geneva Conventions.

All three pled not guilty to the original charges brought against them. On September 3, 1998, the Defendants appeared before the tribunal to enter new pleas of not guilty in response to the amended charges. Trial Chamber I has not yet decided anything in this case.

Stevan Todorovic was detained and transported to The Hague on September 27, 1998. He is charged with 15 counts and will appear in Trial Chamber I on an undetermined date.

Čelebići

The trial against the four Defendants (Delalić, Mucić, Delić, and Landžo) was completed on August 31, 1998. Trial Chamber I closed the trial hearings on October 15, 1998, and has not yet issued its decision.

Milan Kovačević

On August 1, 1998, Milan Kovačević died in his cell at the UN Detention Unit in The Hague. After an internal inquiry, the ICTY concluded that he died from a ruptured abdominal aortic aneurysm and there was no negligence on the part of the doctor on duty or the Detention Unit staff.

Kovačević was indicted on March 13, 1997, for his role in the establishment and conduct of the Omarska, Keraterm, and Trnopolje camps. His trial began on July 6, 1998, for genocide, complicity to commit genocide, four counts of crimes against humanity, four counts of violations of the laws and customs of war, and five counts of grave breaches of the Geneva Conventions. He pled not guilty.

Anto Furundzija

The trial of Anto Furundzija began on June 8, 1998, and ended on June 22, 1998. On July 9, 1998, the Defense filed a motion requesting that Trial Chamber II strike the testimony of a witness, Witness A, based on allegations of prosecutorial misconduct. The motion also requested a new trial, in the event of a conviction. On July 14, 1998, Trial Chamber II re-opened the proceedings, and, on October 1, it scheduled resumption of the proceedings for November 9, 1998. In its decision on the July 9 motion, the trial chamber found that the Prosecution had failed to comply with disclosure requirements. The judges ruled that the Prosecution's failure to disclose documents pertaining to the psychological and/or psychiatric state of the witness to the Defense before the beginning of the trial "prejudiced the accused's rights." The proceedings will be re-opened for the Defense "to further cross-examine Witness A" and to "call or re-call any Prosecution or Defense witnesses" relevant to the case when the case resumes on November 9, 1998.

Slavko Dokmanović

While awaiting the verdict in his trial, which was scheduled to be handed down on July 7, 1998, Slavko Dokmanović hanged himself in his cell at The Hague on the night of June 28, 1998. Dutch authorities conducted an inquest, and ICTY President McDonald ordered an inquiry into the death.

On July 15, 1998, Trial Chamber II terminated the proceedings against Dokmanović. The final report of the inquiry into his death was issued on July 21, 1998. The inquiry did not find evidence of violence in Dokmanović's cell or on his body suggesting a criminal act, and determined that all Detention Unit security rules had been observed. A Working Group to study the issue of suicides in prison will be established.

Zlatko Aleksovski

The Prosecution finished its presentation after calling 36 witnesses to testify, and the Defense began presenting its case on May 20, 1998.

International Criminal Tribunal For Rwanda (ICTR)

As of mid-October 1998, the ICTR publicly indicted 35 suspects. Of these, 31 were arrested under ICTR authority.

Progress on Arrests and Detentions

Since April 1998, seven indictees have been arrested. Five suspects were arrested in June 1998: Emmanuel Bagambiki, former prefect of Cyangugu, was arrested in Togo on June 5; Mathieu Ngirompatse, former director general of the Ministry of Foreign Affairs and president of the former ruling party, MRND (*Mouvement Républicain National pour la Démocratie et le Développement*), was arrested in Mali on June 11; Edouard Karemera, former minister of the interior in the interim government of Rwanda during the genocide and former vice-president of MRND, was arrested in Togo on June 5; Joseph Nzirorera, former president of the National Assembly and Secretary-General of the MRND, was arrested in Benin on June 5; and Omar Serushago, a businessman and local leader of the *Interhamwe* militia in the Gisenyi prefecture, was arrested in Côte d'Ivoire on June 10. All were transferred to the Tribunal Detention Facility in Arusha, Tanzania, on July 10, 1998.

Major Bernard Ntuyahaga voluntarily surrendered himself to the Tribunal

continued on page 16

War Crimes Update, continued from page 8

on July 10, 1998. Major Ntuyahaga was the Officer in Charge of Logistics at the Kigali military camp from January 1994 to April 1994. He is charged with genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions and the Additional Protocol II. He is suspected of having transported ten Belgium soldiers who were members of the UN Assistance Mission in Rwanda (UNAMIR) to the Kigali military camp, where they were killed on April 7, 1994. The Office of the Prosecutor believes that Major Ntuyahaga was present at the deaths of these UN soldiers and failed to take any action to stop their executions. Major Ntuyahaga is the first suspect to voluntarily surrender to the ICTR.

Juvenal Kajelijeli, former bourgemestre of Mukingo, was arrested and detained in the Republic of Benin on June 5, 1998, pursuant to a request by the Prosecutor of the Tribunal. He was transferred to the Arusha Detention Center in September 1998.

Status of Current Proceedings

Jean-Paul Akayesu

The ICTR released a landmark decision on September 2, 1998, finding Akayesu, the former mayor of Taba, guilty of genocide and crimes against humanity, including extermination, murder, torture, rape, and inhumane acts. He was unanimously found guilty on nine charges of genocide, direct and public incitement to commit genocide, and crimes against humanity. He was judged not guilty on six counts of complicity in genocide and violations of Article 3 Common to the Geneva Conventions (murder and cruel treatment) and Article 4(2)(e) of the Additional Protocol II (outrage upon personal dignity, in particular, rape, degrading and humiliating treatment, and indecent assault).

In their decision, the judges explained that the extreme nature of the crime of genocide outweighs Akayesu's initial attempts to prevent the killing in Taba. The presiding judge, Laity Kama, stated that "[t]he Chamber is of the opinion that Akayesu chose to participate in the genocide."

Trial Chamber I's decision solidified the Genocide Conventions' position as customary international law. The Chamber defined the requirements for a genocide conviction carefully, finding that there need not be the extermination of a group or a permanent or irreparable harm. The Chamber referred to the decisions of the International

Court of Justice, the International Criminal Tribunal for the former Yugoslavia, and the Eichmann case before the Israeli courts to define the parameters of the crime of genocide.

In addition, the Chamber defined rape as a crime against humanity. Acknowledging that there is no common definition of rape in international law, the Chamber created a definition that can become precedent for future cases. The definition explained that rape is "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, including rape, is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact." To be a crime against humanity, an act of rape must be committed: (a) as part of a "widespread or systematic attack;" (b) against a civilian population; and (c) on "certain discriminatory grounds, namely, national, ethnic, political, racial, or religious grounds."

On October 2, 1998, the ICTR sentenced Akayesu to three life sentences for the crime of genocide and an additional 90 years for the other offenses. According to the Fondation Hironnelle, an independent news source, Akayesu's sentence was determined as follows: genocide—life in prison; crimes against humanity (extermination)—life in prison; incitement to genocide charges—life in prison; crimes against humanity (murder)—15 years; crimes against humanity (murder)—15 years; crimes against humanity (murder)—15 years; crimes against humanity (torture)—10 years; crimes against humanity (rape)—15 years; crimes against humanity (other inhumane acts)—10 years; violations of Article 3 of the Geneva Conventions—10 years.

His prison sentence will be carried out in a state designated by the presiding judge in consultation with the court of first instance and the clerk of the court. Until transfer, Akayesu will be held in the Arusha Detention Facility.

Jean Kambanda

On September 4, 1998, Trial Chamber I sentenced former prime minister Jean Kambanda to life imprisonment in a state that the President of the ICTR will choose at a future date. The sentencing followed Kambanda's May 1998 guilty plea to the charges set forth in his indictment. Kambanda was charged with genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity to commit genocide, and crimes against humanity (murder and extermination).

Trial Chamber I sought to verify Kambanda's guilty plea to ensure that it

was voluntary and that Kambanda fully understood its consequences. The Chamber considered mitigating factors, including the fact that Kambanda was very cooperative with the Prosecutor's Office and was willing to continue cooperating by providing testimony in the future trials of other members of the interim government.

On September 7, 1998, counsel for Kambanda filed an appeal to the judgment. The Defense argued that the sentence was excessive because it did not take into account his guilty plea as a mitigating factor.

Clement Kayishema and Obed Ruzindana

On August 18, 1998, Kayishema and Ruzindana's trial resumed after adjourning on July 3, 1998, to assemble more defense witnesses. The Defense claimed that there are 15 important witnesses scattered in refugee camps who must be found and brought to testify. The Witness and Victims Protection Unit requested the Chamber grant adequate time to locate these persons and bring them safely before the Tribunal. On July 2, 1998, Dr. Regis Pouget testified for the Defense about "mob psychology" and the unreliability of eyewitness identification. Pouget stated during cross-examination that he had not personally researched these topics. In addition, he also stated that "mob psychology" could not completely explain past genocides and that additional factors must have contributed to the Rwandan genocide. Kayishema, the last Defense witness, testified in his own defense. On September 1, 1998, he began narrating his personal background in Trial Chamber II, and he concluded his testimony on September 9, 1998. The Prosecutor began cross-examination on September 9, 1998, and concluded on September 15, 1998. The Prosecutor will present final arguments on October 21, 1998, and will be immediately followed by the Defense's final arguments.

Elie Ndayambaje

On July 2, 1998, Trial Chamber II heard a motion from Ndayambaje in which he sought to gain the assignment of new counsel on the grounds that he had lost confidence in his counsel. The Chamber granted Ndayambaje's request, noting that counsel had failed to reply to the accused's motion and was absent from the hearing. New counsel will be assigned.

On September 30, 1998, Ndayambaje's case adjourned. The trial is suspended indefinitely while the Court of Appeals at The Hague rules on the

continued on next page

War Crimes Update, continued from previous page

Prosecution's attempt to join the cases of six government officials from the Butare prefecture, including Ndayambaje. In addition to Ndayambaje, the other officials are Pauline Nyiramasuhuko (former minister of Women's Development and Family Welfare), Arsene Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, and Joseph Kanyabashi. The recess is expected to be lengthy.

Ferdinand Nahimana

On June 26, 1998, Trial Chamber I heard preliminary motions in the case of Ferdinand Nahimana, a former senior officer of *Radio Television Libre des Mille Collines*. Defense counsel Jean-Marie Biju Duval asked the Chamber to suspend proceedings against the accused and order his release, due to defects in the indictment.

Georges Rutaganda

Since Rutaganda's trial began in March 1998, it has been repeatedly

delayed because of his poor health. The trial was postponed on August 11, 1998, because his Defense attorney, Tiphaine Dickson, was ill and one of the judges was absent. In addition, his defense attorney reported difficulty in securing defense witnesses without special protection measures for the witnesses and their families.

Alphonse Nteziryayo

Alphonse Nteziryayo was arrested in Burkina Faso on April 24, 1998, and transferred to the Arusha Detention Facility on May 21, 1998. Nteziryayo is a former commanding officer of the Military Police and later became prefect of Butare on June 17, 1994. He succeeded Sylvain Nsabimana, with whom he is jointly charged, as prefect. Nteziryayo allegedly ordered and took part in the murder of Tutsis while in this position. Allegedly, he supervised militia training, distributed weapons in communes, and directly and publicly incited the population to massacre the Tutsis in Butare prefecture.

He was indicted by the ICTR for genocide, direct and public incitement to genocide, complicity in genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions and of the Additional Protocol II. His case was joined with five other government officials from Butare prefecture and was adjourned while waiting for the Court of Appeals to rule on the joinder.

Theoneste Basagora

The joint trial of Theoneste Basagora and three other military leaders faces delay because Defense lawyers oppose the joinder of the cases and are protesting a request to change judges.

Administrative Matters

The ICTR was aided by the approval of additional funds by the UN General Assembly in Resolution 1165. ☉

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Adalah, continued from page 12

rights as Jewish-Israelis to vote, establish their own political parties, worship, and express themselves freely. In addition, at least formally, government education, health, and social services are meant to benefit all citizens.

On the other hand, Israel was founded in order to provide a haven for Jews of all nationalities. Based on this premise, many Israeli laws privilege Jewish-Israelis and discriminate against the approximately 1,000,000 citizens of Arab descent. *Adalah* identified 20 laws as discriminatory against Arab-Israelis in its report to the UN Committee on the Elimination of Racial Discrimination (CERD). These laws create a situation in which Arab-Israelis experience *de jure* inequality within their own country. One of these laws is the Law of Return, which allows any person of Jewish descent to immigrate to Israel and acquire citizenship automatically. This policy accomplishes the state's goal of providing a homeland for the Jewish people. The Law of Return causes hardships, however, for many displaced Palestinians who wish to return to the region that was their home prior to the establishment of Israel because they, unlike Jewish people, are not entitled to automatic grants of citizenship. As a result, Palestinians who fled or were expelled from what is now Israeli land

during the 1948 war must now meet a set of criteria to return and be recognized as Israeli citizens. Additionally, the law does not permit family members of Arab-Israelis to reunite with their relatives and immigrate to the country with ease. Instead, it is left to the discretion of the Minister of the Interior to decide who shall be allowed to become a citizen, and the ministry expressed its preference for offering residency status, not citizenship, to non-Jews.

Since its founding in November 1996, *Adalah* staff members have worked at a vigorous pace to challenge these prejudicial laws and are achieving an impressive number of accomplishments. For example, during the first 18 months of its existence, *Adalah* filed four petitions with the Supreme Court regarding government funding for religious institutions, the rights of unrecognized villages, the right of Arab-Israeli children to have school transportation and access to academic enrichment programs, and language rights. The group also filed one petition at the district court level, filed a number of pre-petitions to the Attorney General's office, and presented a report to CERD that countered official state information on the treatment of ethnic and racial minorities in Israel. This was the first such report that an Arab non-governmental organization had produced. During this time, *Adalah* also sent letters to government min-

istries and offices detailing the legal issues involved in discriminatory policies and demanded action by those institutions, established links with numerous non-governmental organizations both in Israel and abroad, participated in several academic conferences, sponsored a legal seminar series, and trained several recent law school graduates. The organization focused its energies, in particular, on the following nine topics: land and housing rights, employment rights, education rights, language rights, cultural rights, religious rights, rights of unrecognized Arab-Israeli villages, women's rights, and the rights of Arab-Israeli institutions to fair government budget allocations.

It remains to be seen whether the status of the residents of Hussaniya and the other unrecognized villages will change any time soon, and it is unclear for how much longer Arab-Israelis will continue to experience the effects of discriminatory Israeli laws and policies. It is certain, however, that *Adalah's* efforts are leading the country further down the path of true democracy, toward a future that treats all citizens as equals regardless of ethnicity, religion, or race. ☉

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