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NEWS FROM THE INTERNATIONAL WAR CRIMES TRIBUNALS

by Brian D. Tittlemore*

1997 was witness to many fascinating political and legal developments for the UN International Criminal Tribunals for the Former Yugoslavia and Rwanda. Both Tribunals experienced some progress in the arrest and detention of war crimes suspects. The Yugoslav Tribunal issued its judgment and sentencing in the first full international war crimes trial since World War II. The Rwanda Tribunal is poised to try several of the top leaders involved in the 1994 genocide, including Rwanda's former interim Prime Minister Jean Kambanda. Much work remains to be done, however, including executing the outstanding international arrest warrants against top Yugoslav Tribunal indictees Radovan Karadžić, former president of the Bosnian Serb administration in Pale, and Ratko Mladić, former Commander of the army of the Bosnian Serb administration.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

As of October 1997, 78 suspects have been publicly indicted by the ICTY, comprised of 58 Serbs, 17 Croats, and 3 Muslims. Of these, two have died and 20 are in custody in The Hague. The remaining indictees are still at large, primarily in the region of the former Yugoslavia.

Progress on Arrests and Detentions

Thirteen of the 20 defendants currently in ICTY custody were extradited, arrested, or have surrendered since April 1997, marking a positive change in climate in the Tribunal's progress. As Chief Prosecutor Louise Arbour remarked in October 1997, "We are a growing concern in a way that wasn't apparent last year." These developments also revealed the use of secret indictments by the ICTY, and confirmed the ability of the Stabilization Force (SFOR) troops, and of the Tribunal itself, to execute arrest warrants.

On April 28, 1997, Zlatko Aleksovski, a Bosnian Croat charged in relation to the mistreatment of prisoners at a camp he commanded in the Lašva Valley in Central Bosnia early in 1993, was extradited to the Tribunal by Croatia, following numerous delays by the Croatian Government and under increasing pres-

sure from the international community. Aleksovski pleaded not guilty to the charges against him at his initial appearance on April 29, 1997. His trial has not yet started.

Milan Kovačević, President of the Executive Board of the municipality of Prijedor in 1992, and Simo Drljaca, a member of the municipality of Prijedor Crisis Staff in 1992, were jointly charged with genocide in a secret indictment issued by the Tribunal in 1997. The indictment relates to treatment of the non-Serb population of detention camps in the Prijedor region of Central Bosnia in 1992. A secret arrest warrant was also issued for the two men, and in July 1997, SFOR forces in Bosnia executed the warrant, in the course of which Drljaca was shot and killed while resisting arrest, and Kovačević was taken into custody. Kovačević subsequently pleaded not guilty to the charges against him at his initial appearance on July 30, 1997.

Slavko Dokmanović, the Serb president of the Vukovar Municipality from 1990 to mid-1991, was also charged secretly in April 1996, under the "Vukovar Hospital" indictment, in relation to the torture and execution of approximately 260 non-Serb individuals in Vukovar in 1991. On June 27, 1997, Dokmanović was arrested by ICTY Prosecution investigators and members of the UN Transitional Authority in Eastern Slovenia in Bosnia. He pleaded not guilty to the charges on July 4, 1997. Dokmanović also submitted a preliminary motion challenging the legality of his arrest, claiming that his arrest amounted to a kidnaping. An oral hearing on the motion was held before the Trial Chamber on September 8, 1997, and a decision is pending.

Finally, on October 6, 1997, Dario Kordić, war-time vice-president of the Croat para-state in Bosnia Hercegovina, and nine other Croatian Defendants charged under the Kordić & Others Indictment (Pero Skoplak, Mario Čerkez, Ivan Šantić) and the Kupreškić & Others Indictment (Marinko Katava, Dragan Papić, Drago Josipović, Vladimir Šantić, Zoran and Mirjan Kupreškić) were surrendered by Croatia to the Tribunal. All of the Defendants are charged in relation to abuses and murders perpetrated against the Muslim population of the Lašva Valley region

by the Croatian Defense Council (HVO) between May 1992 and May 1993.

Status of Current Proceedings

As of writing, the Tribunal has sentenced one Defendant, Dražen Erdemović, on a guilty plea, and convicted and sentenced another, Dušan Tadić, after completing the first full trial before the ICTY. Two additional trials, one involving the defendants jointly-charged under the so-called "Čelebići" indictment, and the other against Croat General Tihomir Blaškić, have commenced and are on-going.

Dražen Erdemović

Bosnian Serb Army soldier, Dražen Erdemović, pleaded guilty before the Tribunal to a single crime against humanity, and was sentenced by ICTY Trial Chamber I on November 29, 1996, to ten-years imprisonment. Erdemović subsequently appealed his sentence to the Appeals Chamber, where it was argued in May 1997. On October 7, 1997, the Appeals Chamber ruled that Erdemović did not make an informed decision when he entered his guilty plea in 1996, and gave him the options of pleading guilty to a war crime, pleading guilty again to a crime against humanity but with the possibility of mitigating circumstances, or entering a plea of not guilty. Should Erdemović choose to plead guilty to a war crime rather than a crime against humanity, it may result in a lower penalty for Erdemović, for, as was recognized by the Trial Chamber in its Sentencing Judgment in Tadić, "a crime against humanity is, all else being equal, generally considered to be a more serious offense than an ordinary war crime."

Dušan Tadić

On May 7, 1997, Dušan Tadić was found guilty of eleven counts of violations of the laws or customs of war and crimes against humanity following the first full trial before the ICTY. Subsequently, on July 14, 1997, Tadić was sentenced by Trial Chamber II to 20 years imprisonment, comprised of various sentences on each count against him, to be served concurrently. The Trial Chamber emphasized as a significant factor in his sentencing "the willingness of Dusko Tadić to perpetrate the crimes . . . and his awareness of, and enthusiastic sup-

continued on page 10

Tribunals, continued from page 8

port for, the attack on the non-Serb population." Tadić has since appealed both his final judgment, on May 23, 1997, and his sentence, in August 1997. On June 6, 1997, the Prosecution also appealed Tadić's final judgment, in part on the basis that the majority of the Trial Chamber erred in finding that the conflict in Bosnia-Herzegovina was not international in nature. Hearings on the appeals are not expected to take place until later in 1997 or early in 1998.

Tihomir Blaškić

The trial of Tihomir Blaškić, appointed General and Commander of the Croatian Defense Council (HVO) in August 1994, began on June 24, 1997, before Trial Chamber I, comprised of Judges Jorda (presiding), Riad, and Shahabuddeen. This was preceded by a series of preliminary motions that led in part to an amendment of the indictment by the Prosecution to provide more detail on charges against Blaškić. The charges against Blaškić relate to Blaškić's command of Bosnian Croat troops in the Lašva Valley in Central Bosnia during 1992 and 1993, where troops razed villages and massacred inhabitants in the valley. Accordingly, the doctrine of command responsibility will play a crucial role in determining Blaškić's criminal responsibility for grave breaches, violations of the laws or customs of war, and crimes against humanity alleged against him. The Defense is expected to argue that the forces under Blaškić were an undisciplined force of peasant volunteers, and that Blaškić was otherwise ignorant or incapable of intervening in the atrocities committed by the troops under his command.

Since June, the Prosecution has called various witnesses before Trial Chamber I, including British Colonel Geoffery Thomas, member of the British Battalion of UNPROFOR stationed in Vitez, who witnessed the HVO's attack on the Muslim part of Vitez during a five-day period in April 1993. His testimony was documented through photographs and video footage taken by British troops.

Concurrent with the Blaškić trial, litigation continued over the *subpoenas duces tecum* issued by Trial Chamber Judge Gabrielle Kirk MacDonald in the Blaškić proceeding to Bosnia Herzegovina and Ante Jelavić, and to Republic of Croatia and Croatian Defense Minister Gojko Šušak. The three-mem-

ber panel of Trial Chamber II issued its decision on the validity of the subpoenas on July 18, 1997. The Trial Chamber concluded that the Tribunal has the expressed and implied jurisdiction to issue binding orders, including subpoenas for relevant and potentially admissible evidence, against states and high government officials of states, and confirmed Judge MacDonald's subpoenas. The panel found further that states may not claim a blanket national security immunity or exception in refusing to comply with such orders. The Trial Chamber's decision was subsequently appealed to the Appeals Chamber on July 25, 1997, and the appeal hearing was argued on September 22 and 23, 1997. The Appeals Chamber issued its decision on October 29, 1997, in which it unanimously quashed the subpoena addressed to Croatia and its Defense Minister on the basis that a *subpoena duces tecum* refers only and exclusively to binding orders addressed by the International Tribunal, under threat of penalty, to individuals in their private capacity, and not to a state or a state official acting in his or her official capacity. The Tribunal further invited the Prosecutor to submit a request for a binding order against Croatia alone.

Čelebići

The second on-going trial before the ICTY is the joint trial against three Bosnian Muslims, Zejnil Delalić, Hazim Delić, and Esad Landžo, and one Bosnian Croat, Zdravko Mucić, all of whom are alleged to be responsible for abuses perpetrated against Serb detainees at the Čelebići detention camp in the Konjic municipality in Central Bosnia in 1992. The Čelebići trial commenced on March 10, 1997, and has since experienced numerous delays resulting from both evidentiary disputes and administrative complications. Numerous witnesses testified on behalf of the Prosecution and have provided evidence with regard to abuses and murders committed at the hands of, or under the authority of the Defendants, and as to the degree of control that certain of the Defendants exercised in the detention facility.

There have been numerous disputes over evidence during the course of the trial, including an objection by the Defense to the admissibility of statements given by the accused Mucić in two interviews immediately following his arrest on March 18, 1996, first to Austrian police and second to office of the

prosecutors (OTP) investigators. The Tribunal ultimately held in June 1997 that the Austrian law pursuant to which Mucić gave his statement did not comply with the Rights of Suspects During Interrogations under the ICTY Rules, and therefore that the statement given to Austrian police was inadmissible.

Administrative Issues

On May 20, 1997, the UN General Assembly elected six new judges to the ICTY to be sworn in on November 17, 1997, in The Hague. The new judges are:

Judge Richard George May
United Kingdom

Judge Florence Mumba
Zambia

Judge Mohamed Shahabuddeen
Guyana

Judge Almiro Rodrigues
Portugal

Judge Wang Tieya
China

Judge Rafael Nieto Navia
Colombia

Earlier this year, the British Government donated approximately 330,000£ to ICTY to construct a second courtroom for the Tribunal, which is expected to be completed by the end of the year.

In addition, in May 1997, Finland and the ICTY signed the second agreement on sentencing enforcement, in which Finland agreed to execute sentences for the ICTY, save those for leading war criminals who may require exceptionally high security incarceration.

The Tribunal's investigative work has continued, but it remains seriously underfunded. An OTP forensic team began exhumation of a mass grave near Brcko at the end of July 1997, and anticipate investigations at other locations, subject to available funding.

International Criminal Tribunal for Rwanda (ICTR)

Of the 26 individuals indicted by the ICTR as of October 1997, 21 are in custody, including five suspects recently indicted following their apprehension in Kenya.

Additional Suspects in Custody

As with the ICTY, the last six months have seen some progress in apprehending additional ICTR suspects.

continued on next page

Tribunals, continued from previous page



Photo courtesy of CNN file

Jean Kambanda, former Prime Minister of Rwanda's Hutu government during the 1994 massacre, arrested in July and indicted on October 17, 1997 on charges of genocide and crimes against humanity.

On May 1, 1997, a Swiss Court ruled that ICTR indictee Alfred Musema could be transferred to the ICTR. Musema, former manager of a tea business in Gisovu in the western Kibuye district of Rwanda, was arrested by Swiss officials in February 1995, and is charged with genocide and crimes against humanity.

Since June 1997, nine additional ICTR suspects have been arrested and transported to the ICTR. All were arrested in Kenya, and five of the nine were initially detained under the ICTR Rules pending completion of investigations by the Prosecution, and were subsequently indicted in October 1997.

Seven suspects were arrested in Nairobi, Kenya, on July 18, 1997, pursuant to the so-called operation NAKI (for Nairobi-Kigali). Two of the suspects had already been indicted by the ICTR. Pauline Nyiramasuhuko, the former Minister of Family and Social Affairs in the government of Rwanda's late President Juvenal Habyarimana, pleaded not guilty to charges of genocide and violations of the laws or customs of war on September 3, 1997. Her son Arsene Shalome Ntanobari, pleaded not guilty on October 17, 1997. Both Defendants are alleged to have directed massacres that occurred in the city of Butare during the 1994 genocide.

The remaining five suspects had not been indicted at the time of their arrests, but were held provisionally pending completion of the Prosecutor's investigations. These include Jean Kambanda, Rwanda's former Prime Minister of the interim government during the 1994

massacre, Hassan Ngeze, former editor of the magazine *Kangura* who is suspected of having incited ethnic hatred, and Sylvain Nsabimana, former prefect in the southwestern municipality of Butare, who is alleged to have failed to intervene to stop the mass killings in Butare in 1994. Also arrested and detained were Major Aloys Ntabakuze, former head of a paramilitary commando unit in Rwanda, and Colonel Gratien Kabiligi, whose troops are said to have taken part in the massacre.

Further, on July 23, 1997, Georges Ruggiu, a Belgian national and broadcaster with *Radio Mille Collines* in Rwanda, was arrested by Kenyan police in Mombasa on the Kenyan coast. Ruggiu is the only non-Rwandan to be taken into custody by the Tribunal so far, and was also held provisionally pending completion of the Prosecution's investigation.

On October 15, 1997, Ruggiu was indicted by the ICTR, and on October 17, 1997, the Tribunal indicted Defendants Kambanda, Kabiligi, Ntabakuze, and Nsabimana, all on charges of genocide and crimes against humanity.

Finally, ICTR indictee Samuel Manishimwe, former commander in the Rwandan town of Cyangugu, was arrested in Kenya on August 13, 1997, bringing to 21 the total number of suspects in the Tribunal's custody.

Status of Current Proceedings

As of October 1997, three trials have commenced and are on-going before the ICTR. No trials have been concluded before the ICTR, and no final judgments or sentences have yet been issued by the Tribunal.

Jean-Paul Akayesu

Earlier in 1997, numerous witnesses testified in the first trial to commence before the Tribunal, that of Jean-Paul Akayesu, the former Hutu Mayor of Taba, Rwanda. Witnesses included Prosecution expert Allison des Forges, a human rights activist and historian who gave evidence respecting the background to the conflict in Rwanda. On June 17, 1997, however, the trial was adjourned until October 28, 1997, to allow the Prosecution more time to investigate and charge crimes related to the rape and sexual torture of women during the genocide. Since the adjournment, the indictment against Akayesu has been amended to charge rape and other acts of sexual violence as crimes against humanity (specifically rape and inhumane acts) and violations of Arti-

cle 3 common to the 1949 Geneva Conventions and Article 4(2)(e) of Additional Protocol II.

In a related development, Chief Prosecutor Louise Arbour indicated, following a meeting in October 1997 in Arusha on sexual violence perpetrated during the 1994 genocide, that sexual offenses would be added to the charges against defendants already facing trial before the ICTR, and would be included in future indictments. This decision was preceded by the issuance of a report prepared by Human Rights Watch and the Federation Internationale des Ligues des Droits de L'Homme, entitled "Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath", documenting the perpetration of gender-related violence during the Rwanda conflict and calling on the ICTR to investigate and prosecute rape and other gender-related crimes.

Clement Kayishema and Obed Ruzindana

Clement Kayishema, former prefect of Kibuye in western Rwanda, and Obed Ruzindana, a former businessman, are being jointly tried for charges of genocide and crimes against humanity, in connection with massacres that occurred in Kibuye province in 1994. Their trial had been adjourned several times, but resumed at the end of September 1997 in a second courtroom that was recently constructed and opened for the Tribunal. Several witnesses have testified regarding Kayishema's role in the genocide, which included testimony claiming that he wrote circulars to commune leaders urging them to get rid of members of the Tutsi population.

Georges Rutaganda

Several witnesses have given evidence on behalf of the Prosecution in the trial of Georges Rutaganda, former businessman and vice-president of Rwanda's *Interahamwe* militia, on charges including genocide and crimes against humanity. These include witness "E" who testified in June 1997 that the Defendant supervised the disposal of bodies on April 8, 1997, two days after the assassination of President Juvenal Habyarimana. The trial continued on September 30, 1997, after a three-month recess, with a new defense counsel, Tiphaine Dickson of Canada, replacing previous counsel Luc de Temmerman of Belgium. Witnesses called on

continued on page 20

Tribunals, continued from page 11

September 30 included military officials with the United Nations Assistance Mission in Rwanda.

Other Defendants

Several other individuals have been indicted by the ICTR and are in custody, including Joseph Kanyabashi, former burgomaster of the commune Ngoma in Butare in southern Rwanda. Kanyabashi filed a motion on May 26, 1997, arguing that the ICTR had no jurisdiction to try him, in part on the basis that no international conflict existed in Rwanda to warrant the Tribunal's creation, and questioning the impartiality of the judges. On July 3, 1997, Tanzanian judge William Sekule rejected the motion, ruling that the UN Security Council had the authority to

determine whether the conflict in Rwanda constituted a threat to international peace and security warranting the establishment of the ICTR, and that the independence of the ICTR was assured by the integrity and experience of its judges.

Also charged and in custody are Elie Ndayambaje, a former mayor in Rwanda, Ferdinand Nahimana, former Director of *Radio Mille Collines*, Andre Ntagerura, former Rwandan Minister of Transport, Anatole Nsengiyumva, former Lieutenant Colonel in the Rwandan army, and Theoneste Bagosora, former Rwandan Minister of Defense.

Administrative Matters

On September 27, 1997, a second courtroom for the ICTR was opened in Arusha, and is currently accommodating

the joint trial of Clement Kayishema and Obed Ruzindana.

Despite the investigation and report of the UN's Office of Internal Oversight Services at the beginning of 1997 into the functioning of the ICTR, logistical problems have continued to burden the Tribunal. The Tribunal's facilities in Arusha and Kigali are not designed to accommodate the number of Tribunal staff, now estimated at over 400. In July of 1997, the Lawyers Committee for Human Rights issued a report indicating that the ICTR required more financial, political, and moral support, along with such crucial facilities as additional vehicles, computers, and fax machines. ☹

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WCL Bids Farewell to Rochus Pronk

by Brian D. Tittlemore

In June of 1997, Rochus Pronk, Legal Coordinator of the War Crimes Research Office (WCRO), Center for Human Rights and Humanitarian Law, left WCL to assume a new position with the Foreign Ministry in The Netherlands. Rochus, an attorney from Holland, was instrumental in establishing the WCRO, following his graduation from the LL.M. Program at WCL in 1995.

Rochus, an attorney from Holland, attended the LL.M. Program at WCL in 1994 and 1995, and participated in many of WCL's extracurricular activities during his time as an LL.M. student. He was elected vice president of the LL.M. Student Board and was a member of the Editorial Board for the *The Brief*. Rochus' numerous other accomplishments included organizing an informative panel discussion on the International War Crimes Tribunals for the Former Yugoslavia and Rwanda, in which the Tribunals' former Chief Prosecutor Justice Richard Goldstone and U.S. Assistant Secretary of State John Shattuck participated.

Following his graduation from the LL.M. program in 1995, Rochus envisioned establishing an institutionalized research facility to which the Office of the Prosecutor for the International War Crimes Tribunals (OTP) could refer international humanitarian law research projects, for analysis by WCL faculty and students. Through Rochus'



Rochus Pronk at the Seat of the International Criminal Tribunal for the Former Yugoslavia in The Hague.

efforts, and the support of Dean Claudio Grossman, Professors Herman Schwartz, Robert Goldman, and Diane Orentlicher, and the Center's Executive Director, Robert Guitteau, among others, the OTP agreed to submit research projects to the WCRO. The Soros Foundation's Open Society Institute (OSI) granted funding for the Project. Under Rochus' coordination, OSI funding was subsequently renewed and increased for the Project's second year of operation. The WCRO was expanded to include an additional attorney, administrative staff and the capacity to retain expert consultants and provide research assistance to additional inter-

national clients. Rochus' efforts in developing the WCRO have also played a significant role in attracting students from around the world to WCL's J.D. and LL.M. programs, by providing students with a unique opportunity to study international humanitarian law and at the same time to participate in practical humanitarian law projects.

In pursuing his vision of the WCRO, Rochus left WCL with a valuable legacy. During his time here he contributed significantly to the educational and social fabric of WCL, and made many lasting friendships along the way. We will miss his comradeship, and wish him the best of luck in his new career. ☹