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NEWS FROM THE INTERNATIONAL WAR CRIMES TRIBUNALS

by Ewen Allison*

Important developments continue at the UN International Criminal Tribunals for Rwanda and the former Yugoslavia. Despite the continued freedom of Radovan Karadžić and Ratko Mladić, many suspects are in custody. Several suspects have surrendered, and SFOR troops have executed several arrests. Nine cases are pending before the ICTY, three at the ICTR.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

As of February 1998, 78 suspects have been publicly indicted by the ICTY, among them 58 Serbs, 17 Croats, and 3 Muslims. Of these, two have died and 25 are in custody. Other indictees remain at large.

Progress on Arrests and Detentions

Since October 1997, three indictees have been arrested by SFOR troops and four have surrendered. At writing, a fifth is expected to surrender.

SFOR troops detained Vlatko Kupreskić and Anto Furundzija on December 18, 1997. Dutch special forces used tear gas and stun grenades in the raid, during which Kupreskić fired an automatic gun and was himself wounded in the arm, leg, and shoulder. Furundzija was arrested unharmed that night. Kupreskić, Furundzija, and several others were indicted for murders and abuses committed in the Lasva Valley area in 1993. Furundzija, the Bosnian Croat commander of the "Jokers" unit based in Vitez, was arrested under a sealed indictment charging him with failure to stop the rape and ill-treatment of a prisoner. He pleaded not guilty on December 20, 1997. Kupreskić pleaded not guilty on January 16, 1998. He is charged with firing on a Muslim family trying to escape from the village of Ahmici. Croatia turned nine co-defendants over to the Tribunal on October 6, 1997.

Goran Jelisić, arrested by SFOR troops on January 22, 1998, had been indicted on July 21, 1995, along with Ranko Cesić in the "Brcko indictment." The Prosecutor charged that "Serb forces forcibly expelled Croat and Muslim residents from their homes, and with the assistance of local Serb authorities held them at collection centres where many were killed, beaten and otherwise mistreated." Jelisić, who calls himself "Serb Adolf," allegedly commanded the Luka camp during May 1992, and is accused of systematically killing Muslims and committing other

headed Bosanski Samac's prisoner exchange commission beginning April 17, 1992, was a deputy in the Fourth Detachment. Simon Zarić is a former military reserve officer. Kunarać commanded a special volunteer unit. They face charges of grave breaches, violations of the laws or customs of war, and crimes against humanity, notably the deportation and transfer of hundreds of Bosnian women and children.

At writing, Zoran Zigić is expected to surrender to the Tribunal. Zigić, a former camp guard, is charged under two indictments for grave breaches and crimes against humanity for his willful killings and tortures of prisoners at the Omarska and Keraterm prison camps.

Status of Current Proceedings

Dražen Erdemović

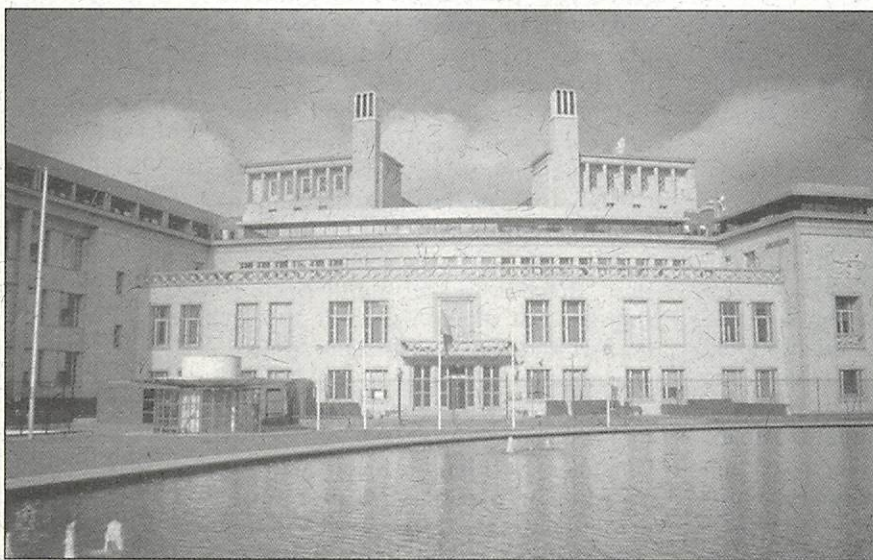
Dražen Erdemović, the Tribunal's first convict, was sentenced on March 5, 1998, to five years imprisonment, including the two years he has already served. He had previously

been sentenced to 10 years in prison after pleading guilty to the charge of crimes against humanity. In October 1997, the Appeals Chamber offered him the option of pleading guilty to a war crimes charge, which might carry a lighter sentence. Erdemović accepted the lesser charge on January 14, 1998. Defense and Prosecution had agreed in January to a seven-year sentence. Erdemović will serve his sentence in either Finland or Italy.

Dušan Tadić

Appeals of the judgement and sentence in Dušan Tadić's case continue. In May 1997, he was found guilty and received a 20-year sentence. In June, the Prosecution appealed the Trial Chamber's finding that the Bosnian conflict was not international in nature. On February 2, the Appeals Chamber

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The International Criminal Tribunal in The Hague.

atrocities. He is charged with genocide, crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war.

Milan Simić and Miroslav Tadić surrendered on February 14, 1998. Simo Zarić surrendered on February 24, and Dragoljub Kunarać surrendered separately on March 4. On February 17, Simić and Tadić pleaded not guilty. Simić, Tadić, Zarić, Kunarać, and two others remaining at large were indicted on July 21, 1995, for their alleged involvement in the 1992 "campaign of terror" against the Bosnian Croat and Muslim population of Bosanski Samac, as well as atrocities against detainees at several camps. Simić chaired the Executive Board of the Bosanski Samac Assembly from April 1992 on and served in the Fourth Detachment, a Serb territorial defense unit. Miroslav Tadić, formerly a teacher and café owner who

Photo courtesy of Rochus Pronk

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ordered the Republika Srpska to inform defense counsel of the location of several witnesses and to facilitate unimpeded interviews of them from March 2 to April 2, as well as to allow access and copies of certain documents by March 2.

Čelebići

The Čelebići trial concerns three Bosnian Muslims and a Bosnian Croat charged with abuses at the Čelebići detention camp in the Konjic municipality of central Bosnia in 1992. On November 20, 1997, the Office of the Prosecutor asked for leave to drop two counts from the indictment against Hazim Delić, citing refusal of a witness to testify. The counts were a grave breach charge and a war crimes charge, both involving the beating of a prisoner of war for belonging to an enemy unit.

Trial Chamber II considered two evidentiary issues raised in relation to a letter allegedly sent to Witness P by "Pavo" Mucić and admitted into evidence on November 6, 1997. The issues concerned whether the letter is admissible and whether the defendant should be compelled to submit a handwriting sample. The Chamber was not convinced that the defendant had actually written the letter, but ruled that it met the Tribunal's relevance and reliability criteria. The Chamber rejected a prosecution request for a handwriting sample from Mucić. A sample would authenticate the letter, which would then amount to admission to the acts it discusses, and therefore admission to acts alleged in the indictment.

Defense challenged admission of documents seized from Mucić's apartment in Vienna, including two passports and a military ID card from the Croatia Defense Council (HVO). The seizure may have entailed minor breaches of Austrian law on searches and seizures. The Tribunal's Rule 95 allows exclusion of evidence whose "admission is antithetical to, and would seriously damage, the integrity of the proceedings." On February 9, 1998, Trial Chamber II admitted the documents despite "clearly established . . . irregularities in the search of Mr. Mucić's apartment." The Chamber concluded that not admitting the evidence "would constitute a dangerous obstacle to the administration of justice."

Tihomir Blaskić

On January 19, Trial Chamber I rejected a Defense challenge that admitting documents written by persons who did not appear as witnesses violated his right to examination of witnesses against him. The Chamber found nothing in the rules that supported exclusion on these grounds. It also noted in dicta that the need to ensure a fair trial might outweigh the probative value of the evidence, in which case the evidence could be excluded.

Zlatko Aleksovski

The trial of Zlatko Aleksovski began on January 6, 1998. Formerly commander of the Kaonik prison camp near the Lasvah Valley town of Busovaca, Aleksovski was charged in the Kordić and Others indictment for his abuses of prisoners at the Kaonik detention facility. He pleaded not guilty.

On January 23, Trial Chamber I *bis* rejected a January 6, 1998, motion for provisional release of Aleksovski. Trial Chamber affirmed its 1996 decision in a similar motion by Zejnil Delalic. Specifically, the Defense had to prove that "there are exceptional circumstances, that the accused will appear for trial, and that if released the accused will not pose a danger to any victim, witness or other person. In addition, the host country must be heard." The Chamber was not convinced that the 577 days he had spent in preventive detention were excessive in view of the crimes alleged, that the defendant's physical condition was serious enough to justify release, that the effects on his family were unusual, or that his behavior in prison needed to be seriously taken into account.

Slavko Dokmanović (Vukovar Hospital)

The trial of Slavko Dokmanović began on January 19, 1998. Dokmanović, Mile Mrksić, Miroslav Radić and Veselin Slijvančanin are charged with atrocities involving hospital patients and others in Vukovar, Croatia in the fall of 1991, including seizure of 300 persons and killing most of them at a farm in Ovcara.

In September 1997, Slavko Dokmanović unsuccessfully challenged the legality of his arrest. On November 4, 1997, his defense announced the intention to appeal this ruling.

Noting the right of Dokmanović to "be tried without undue delay," Trial Chamber II decided on November 28,

1997, to try him separately from the other defendants.

Formerly the mayor of Vukovar, Dokmanović is accused of not intervening in the beating and killing of about 200 persons. He denies the charges and his defense team claims to have 97 witnesses who will testify that he was not in Vukovar at the time of the events in question.

Also on November 28, 1997, Trial Chamber II granted leave to amend the indictment against the defendants. The changes reflected facts discovered in recent investigations made after the indictment and left the nature of the charges untouched. The indictment against Slavko Dokmanović, however, was changed to indicate that his role was to aid and abet various atrocities by the JNA and Serb paramilitary troops.

On December 19, 1997, Trial Chamber II issued two orders to Yugoslavia. The first was to serve documents on Dokmanović's co-defendants, Mile Mrksić, Miroslav Radić and Veselin Slijvančanin, including a notice of their rights and information on how evidence in the Dokmanović case might be used. The second order was to publish the notice in a wide-circulation paper in the FRY. The Chamber also urged the co-defendants to surrender voluntarily and stand trial with Dokmanović.

Dokmanović's trial opened on January 6, 1998, with testimony aimed at establishing Dokmanović's position of authority and determining events leading up to the time of the evacuation of patients.

Milan Kovačević

On January 16, 1998, Trial Chamber II refused a defense motion for the release of Milan Kovačević, former president of the Prijedor Executive Board, who stands indicted for genocide. He had requested release due to a heart condition which could not be adequately treated at the U.N. detention facility or nearby hospitals.

The Tribunal also refused, on February 27, 1998, a prosecution motion to add 14 counts to the indictment of Kovačević. The Tribunal stated that it was "far too late to amend the indictment," and will deliver a full opinion later.

Releases and Withdrawals of Indictments

The Office of the Prosecutor sought dismissal of two counts in the indictment of Hazim Delić. The relevant wit-

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ness refused to testify to the December 1, 1992, beating of Miroslav Bozic. Delić, then commander of the Čelebići camp, was charged under a command responsibility theory for a grave breach of the Geneva Conventions and a violation of the laws or customs of war.

On December 19, 1997, judges of the Tribunal granted a motion by the Prosecutor to order the release of three defendants Marinko Katava (named in the Kupreskić & Others indictment), Ivan Santić, and Pero Skopljak (both named in the Kordić and Others indictment). All three were accused of abuses and murders in the Laava Valley and voluntarily surrendered on October 6, 1997. Chief Prosecutor Louise Arbour noted an obligation to withdraw charges should the Prosecutor become "satisfied that any one of the charges cannot be proven 'beyond reasonable doubt'." Moreover, "[i]n the end, the interests of justice, professional ethics and fairness to the accused, particularly in the case of accused in detention, are paramount."

Also on December 18, 1997, the Chief Prosecutor asked for leave to withdraw the indictment of Stipo Alilovi, named in the indictment "Kupreskić & Others" for murders and abuses committed in Lasva Valley. Alilovi died on October 25, 1995.

On the 14th and 27th of November 1997, six defendants in the Kupreskić & Others case moved Trial Chamber II for provisional release. The Chamber refused on December 15, 1997, finding that being a "family person" did not count as an "exceptional circumstance," voluntary surrender and subordinate positions did not guarantee the defendants' future appearance, and that having statements by certain witnesses "create[d] an enhanced risk of interference with the course of justice."

Administrative Matters

The composition of the ICTY was changed in November 1997. A new slate of judges was sworn in on November 17. On November 19, Gabrielle Kirk McDonald of the United States was chosen as president and Guyanan judge Mohamed Shahabuddeen was chosen as vice-president. After consultation with the other judges, Judge McDonald constituted the chambers thusly:

Appeals Chamber:

Gabrielle Kirk McDonald
(U.S., President)
Mohamed Shahabuddeen
(Guyana, Vice President)
Lal Chand Vohrah (Malaysia)
Wang Tieya (China)
Rafael Nieto Navia (Colombia)

Trial Chamber I

Claude Jorda
(France, Presiding Judge)
Fouad Abdel-Monem Riad (Egypt)
Almiro Simes Rodriguez
(Portugal)

Trial Chamber II

Antonio Cassese
(Italy, Presiding Judge)
Richard George May
(United Kingdom)
Florence Ndepele Mwachande
Mumba (Zambia)

The UN General Assembly, on December 29, 1997, budgeted US \$68.8 million for the ICTY over the next two years.

Also in December 1997, Canada pledged an "assistance package," worth up to US \$600,000 of which \$200,000 will go toward construction of a third courtroom. The remaining funds will pay for witness protection and exhumation of mass graves. Authorities also offered gratis expert personnel.

Construction on a second courtroom continues. It is expected to be completed in April 1998, and is funded in part by a \$500,000 gift by the United Kingdom.

On January 8, 1998, the U.S. pledged \$1.65 million; and the Netherlands pledged \$1 million for a third courtroom.

Tribunal President Gabrielle Kirk McDonald has asked members of the U.N. Security Council for enough resources to establish a third Trial Chamber. In a speech on February 12, 1997, she also asked for four additional judges, three to form the additional chamber, and a fourth to serve either in the Appeals Chamber or as an alternate.

International Criminal Tribunal for Rwanda

As of February 1998, the ICTR has indicted 35 people on various charges, and expects to indict about 65 others. Twenty-five are in custody. Trials of three accused are in progress and are

expected to be completed by June 1998. New trials have been postponed until then.

Status of Current Proceedings

Jean Paul Akayesu

The last of the prosecution's witnesses, identified only as PP, testified on November 4, 1997. She recounted seeing Hutu militia men gang-rape several women, one of whom was pregnant, and then bludgeon them to death.

The first defense witness testified on November 17, 1997. He was not identified, but it is known that he was transferred with two others from a Rwandan prison to the Arusha detention facility. The three were transferred on November 7, 1997. The witness claimed that Akayesu did everything he could to prevent the killings, but was ultimately powerless to do so.

Other defense witnesses testified in February 1998, able to give only indirect testimony. Still other defense witnesses declined to testify out of fear of retribution.

On February 9, 1998, the ICTR summoned two defense witnesses. They include an un-named man who was Akayesu's superior at the time of the genocide and who remains a high-ranking Rwandan official, and Romeo Dallaire, the Canadian general who commanded the U.N. humanitarian aid mission in Rwanda during the 1994 genocide. Dallaire testified for the defense on February 25, 1998, stating that he had asked for reinforcements and for authority to take action to stop the genocide, particularly to seize an arms cache. However, U.N. officials refused. The defense sought to show that where a U.N. military officer was powerless to stop the genocide, so, too, was Akayesu. Trial Chamber I subpoenaed Dallaire on November 19 pursuant to a defense motion of November 11. Kofi Annan, Secretary-General of the United Nations, waived immunity for Dallaire on January 23.

Trial Chamber I dismissed two defense motions on February 17, 1998. The motions, made on December 30, 1997, and heard on February 13, 1998, asked the court to compel testimony of two other defendants and to order exhumation and examination of three corpses. The Trial Chamber ruled that the motion to subpoena former prime minister Jean Kambanda and former minister of Family and Social Affairs

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Pauline Nyiramasuhuko, both in custody at Arusha on various charges, would run afoul of the individuals' rights against self-incrimination. As to the second motion, the Chamber held that examinations taking place four years after the killings, and after previous exhumations of mass graves, would be ineffectual, especially this late in the trial.

Clement Kayishema and Obed Ruzindana

The trial of Clement Kayishema and Obed Ruzindana continues. Kayishema, former prefect of Kibuye, and Obed, a businessman, are charged with genocide and crimes against humanity in connection with massacres in Kibuye province.

Forensic anthropologist William Haglund gave evidence concerning a mass grave containing at least 454 individuals. The grave, located in Kibuye Prefecture at the Catholic Church and Home of St. John Complex, was excavated between December 1995 and February 1996. Haglund testified that 70 percent were women and children, and that most had died of blunt force trauma to the head. Another witness, identified as "OO" testified that he overheard Kayishema congratulate officers on the massacre of several refugees in the Mubuga Catholic Church in Gishyita. French journalist Patrick de Saint Exupery testified to hearing from an aide to Kayishema that the prefect had ordered completion of the massacre before the June 1994 arrival of French troops. Witness NN stated that Kayishema fired the first shot in a massacre at Kibuye's Gatwaro Stadium and ordered others to do the same.

Gratien Kabiligi

Gratien Kabiligi pleaded not guilty on February 17, 1998, to five counts, including charges of genocide, complicity in genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions of 1949 and Protocol (II) Additional to the Geneva Conventions of 1949. Chief of Military Operations at the time of the 1994 massacres, Kabiligi is said to have been responsible for inciting *Interahamwe* to kill Tutsis, as well as for killing and harming Tutsi civilians. He was indicted jointly with Jean Kambanda, former prime minister, Aloys

Ntabakuze, a former army major, and Sylvain Nsabimana, former prefect of the southern Rwanda town of Butare, on October 17, 1997.

Laurent Semanza

On February 17, 1998, Laurent Semanza pleaded not guilty to seven counts, including charges of genocide, complicity in genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions of 1949 and Protocol (II) Additional to the Geneva Conventions of 1949. He is charged with organizing and participating in the Ruhanga and Musha church massacres in Gikoro Commune, as well as other massacres in Bicumbi Commune. He is also said to have made threatening remarks to Tutsis and chaired meetings on inciting and planning genocide. He was arrested in March of 1996 in Cameroon and turned over to the Tribunal on November 19, 1997.

Hasan Ngeze

Hasan Ngeze pleaded not guilty on November 20, 1997, to two charges of crimes against humanity and one charge of inciting genocide. Formerly the editor-in-chief of the newspaper *Kangura*, he allegedly urged the killing or harming of Tutsis and certain Hutus and distributed hand grenades to members of *Interahamwe* militias in Gakuba 1 district, Gisenyi Prefecture.

Hasan Ngeze attempted suicide on January 24, 1998. He was discovered unconscious at 9:45 a.m. When he recovered, he explained that he had taken a mixture of several chemicals, including his detergent rations. He had spoken with other inmates about his intent to commit suicide.

George Rutaganda

The trial of George Rutaganda, deputy leader of the *Interahamwe* militia, recessed on November 25, 1997 and resumed briefly on March 4, 1998. Looking frail, Rutaganda was examined in court by physicians, who determined that he was running a fever. Judges accordingly adjourned the hearing.

Eliziphan Ntakirutimana

Eliziphan Ntakirutimana was arrested a second time in Texas on February 27, 1997. This arrest follows his release on December 17, 1997, by a federal magistrate in Laredo, Texas. Formerly pastor of the Mugunero Seventh Day Adventist

Church, Ntakirutimana is accused of luring followers into his church, then standing aside while Hutu militia members massacred them. Magistrate judge Marcel Notzon declared that the 1996 extradition law was unconstitutional in that the U.S. Constitution allows extraditions only on the basis of a treaty, not a law. Critics cite a 1936 U.S. Supreme Court case which allows extradition on the basis of *either* a treaty or a law. Critics also note that the U.N. Charter, under whose authority the ICTR was constituted, is the sort of treaty which would allow extradition even under the rule Notzon applied. Agents with the Federal Bureau of Investigation rearrested Ntakirutimana after federal authorities bolstered their case for the arrest.

Administrative Matters

According to ICTR judges and officials, problems which earlier plagued the Tribunal have been largely resolved. They credit the appointment of new managers in April, as well as the hiring of more staff. However, the ICTR still lacks a good legal library and other resources.

On December 29, 1997, the UN General Assembly budgeted \$ 56.7 million for the ICTR over the next two years.

The ICTR has requested that the UN establish a third panel of judges. A third court room will be completed, there will be more office space, and working conditions will improve.

The Tribunal has established a pool of some 300 attorneys from whom indigent accused may choose defense counsel. ☉

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