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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 release of Eliziphan Ntakirutimana from a Texas jail and the continued freedom of Radovan Karadžić and Ratko Mladić, many suspects are in custody. 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 mid-April 1998, 78 suspects have been publicly indicted by the ICTY, among them 58 Serbs, 17 Croats, and 3 Muslims. Of these, one has had the charges against him dropped, two have died, 26 are in custody, including two convicts serving sentences, and one is out on bail. All other indictees remain at large. On May 8, 1998 the Court approved the withdraw of charges against the following 11 indictees accused in the Omarska indictment: Babic, Govedarica, Gruben, Janjic, Kostic, Paspalj, Pavlic, Popovic, Predojevic, Savic, and Saponja. On the same day, the following 4 indictments against those accused in the Keraterm indictment were also withdrawn: Kondic, Lajic, Saponja, and Timarac.

Progress on Arrests and Detentions

Since February 1998, two indictees have been arrested by SFOR troops, one has been transferred from a Banja Luka prison, and one was arrested in Italy in a matter unrelated to charges before the Tribunal.

On April 8, 1998, British SFOR troops in Prijedor arrested Miroslav Kvočka, 41, and Mladen Radic, 45. No one was injured during the arrest. On April 13, 1998, they both pleaded innocent to all charges. Kvočka, deputy commander of the Omarska detention camp, and Radic, a shift commander, are charged with command and direct responsibility for murder, rape, torture, beating civilian prisoners, as well as subjecting them to inhumane, humiliating, and degrading treatment. The Chief Prosecutor has charged the two individually with three counts of crimes against humanity, four counts of violations of the laws or customs of war, and four counts of grave breaches of the Geneva Conventions.

Radic also faces five counts each of crimes against humanity, violations of the Laws or Customs of War and Grave breaches of the Geneva Conventions. The counts all relate to forced sexual intercourse with a woman identified as "A."

Zoran Zigić, another indictee charged with mistreating prisoners at Omarska, as well as sealing 200 prisoners within a

building at Keraterm ceramics factory, surrendered on April 16. He had served the previous five years as part of a 15-year murder sentence at a prison in Banja Luka.

Status of Proceedings Zlatko Aleksovski

The Prosecution in the case of Zlatko Aleksovski presented the last of its evidence and rested its case which began on January 6, 1998. Formerly commander of the Kaonik prison camp near the Lasva Valley town of Busovaca, Aleksovski was charged in the Kordić and Others indictment for his abuses of prisoners at the Kaonik detention facility, including the use of prisoners as human shields.

Tihomir Blaskić

Tihomir Blaskić's trial continues. On March 20, 1998, Paddy Ashdown, leader of the United Kingdom's Liberal Democratic Party, testified for the prosecution. Ashdown stated that he was with Croatian President Franjo Tudjman at a London banquet in 1995, when he asked Tudjman what Tudjman's vision for Bosnia was for the next 10 years. In response, Tudjman drew a map on a menu, featuring a large S through Bosnian territory, Serbian territory lying on one side and Croatian territory

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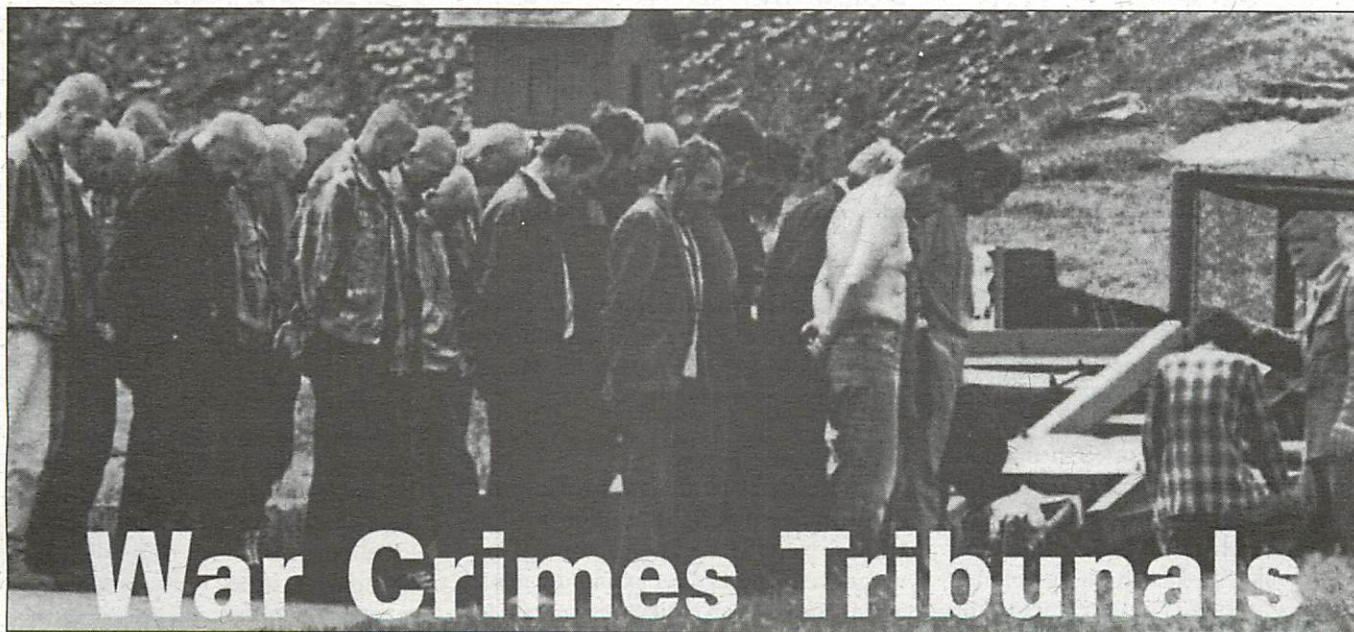


Photo by Andrew Kaiser/GAFF

Photo from the War Crimes Conference poster, held at WCL March 31 and April 1, 1998.

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lying on the other. "There will be no place for Bosnia," quoted Ashdown.

Dragoljub Kunarac

Dragoljub Kunarac turned himself in to SFOR troops on March 4, 1998. Two days later, he pleaded not guilty to one charge of the crime against humanity of torture, one charge of grave breaches of the Geneva Conventions, and one charge of violations of the laws or customs of war, and guilty to the crime against humanity charge of rape. Presiding Judge Antonio Cassese of Trial Chamber II adjourned the hearing until the following day to allow the prosecution time to consider whether to pursue the other charges.

On March 10, Judge Cassese overturned Kunarac's guilty plea, entering a plea of not guilty. The grounds were that the defendant was not adequately advised of the implications of a guilty plea. The Prosecutor noted that the crimes Kunarac claims to have committed did not fall within the indictment. The crimes he confessed to include arranging the gang rape of one woman and raping another woman himself.

Dragoljub Kunarac's attorney, Slavisa Prodanovic, was not present for any of the hearings. Prodanovic claimed to have been called back to Foca for consultations with Kunarac's co-defendants. After the hearing on Tuesday, March 7, 1998, Judge Cassese threatened to hold Prodanovic in contempt if Prodanovic failed to appear. Prodanovic sent a colleague to stand in for him. It is unclear what action the Chamber will take against Prodanovic.

Milan Simić

On March 26, 1998, Trial Chamber I granted a defense motion for the provisional release of Milan Simić on grounds of ill health. Simić is paralyzed and has several other health problems, which, the Chamber ruled, amounted to an "exceptional circumstance" required by Rule 65 of the ICTY's Rules of Procedure and Evidence.

The Prosecutor supported the motion after the defendant agreed to certain conditions upon the Prosecutor's receipt of guarantees from the government of the Republika Srpska that the agreement would be observed. The agreement with the defense requires Simić to return to the Hague at his own expense and to

report daily to his police department near his Bosniansky Samac home once a day. He will not have any contact with his co-defendants, and the Republika Srpska posted a \$25,000 bond.

Milan Simić, along with five others, is under indictment for his involvement in a 1992 terror campaign in his home town of Bosanski Samac. He faces three charges of war crimes and crimes against humanity.

As noted earlier, one of Simić's codefendants, Zoran Zigić agreed to go to the Hague and was transferred from a Banja Luka prison. Another codefendant, Predrag Kostić, was arrested in Italy last month for trying to extort money from a priest. Wanted for the rape of a female prisoner in 1992, Kostić has not yet been turned over to the ICTY.

Čelebići

Counsel for defendants Zejnil Delalić, Zdravko Mucić, Hazim Delić, Esad Lanžo urged, on March 12, 1998, that charges be dropped for lack of evidence. A week later, however, the judges of Trial Chamber II ruled that prosecutors had presented enough evidence for the trial to continue.

Slavko Dokmanović (Vukovar Hospital)

On March 20, Stipe Mesić, last president of the former Yugoslavia, testified that Serbian leaders intended to create a greater Serbia, one containing parts of what is now the Republic of Croatia and the Bosnian Federation. He also related details relayed by current Yugoslav president Slobodan Milosevic concerning an April 1991 conversation between Milosevic and Croatian president Franjo Tudjman. In that conversation, Milosevic observed that Bosnia was untenable and agreed with Tudjman to carve up Bosnia, part going to Croatia, part going to Serbia.

Milan Kovačević

The trial of Milan Kovačević, former president of the Prijedor Executive Board, is to begin on May 11. He is indicted for genocide.

Administrative Matters

In March 1998, the British Government donated U.S. \$2 million to the United Nations Voluntary Fund. The money is earmarked for exhuming mass graves. The 1998 exhumation program is set to begin in late April. Canada and Denmark also contributed, donating U.S.

\$281,858 and \$30,329 respectively. With the British donation, the program is now fully-funded.

International Criminal Tribunal for Rwanda

As of mid-April 1998, one trial has been completed at the ICTR, and two others continue. A decision in the first case is expected in June, and the other trials should be completed by that time. New trials have been postponed until then. Twenty-five persons are in custody at Arusha. Thirty-five people have been indicted, and the Tribunal expects to indict 65 more.

Status of Current Proceedings

Jean Kambanda

In a breakthrough for prosecutors Jean Kambanda plead guilty to genocide charges before the tribunal in May. Kambanda, the former prime minister of Rwanda, is expected to testify against former colleagues in connection with the Rwandan massacres. Under the rules of the tribunals, Kambanda can no longer be tried in Rwanda for these crimes. This is the first conviction for the tribunal since its inception three years ago. It was also the first guilty plea entered before any international tribunal, including Nuremberg.

Jean Paul Akayesu

Trial Chamber II rejected a petition submitted on March 2, 1998, by the defense for Jean Paul Akayesu, former mayor of Taba. The petition requested production of twelve witnesses detained in Rwanda. Among them Filip Reyntjens and one of the accused, Ferdinand Nahimana, both of whom, the defense hoped, would counter testimony of the history of the Rwandan genocide, especially testimony by historian Alison DeForges. The prosecution objected, claiming "It is completely unacceptable to quote an accused person as an expert witness." A week later the Chamber rejected the petition.

On March 6, the Tribunal dealt with its first accusations of perjury. Defense counsel noted several inconsistencies in testimony by various witnesses, suggesting that some of them had lied on the stand. The judges ruled three days later that "the fact that you have doubts or can pick out imprecision or contradictions is not enough in itself" to establish grounds for a perjury inquiry.

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Jean Paul Akayesu testified in his own defense on March 12 and 13, 1998. He generally denied responsibility for atrocities in Taba and testified that after hearing of the death of President Habyarimana on April 7, 1994, Akayesu took a number of measures to prevent bloodshed and help victims.

A major issue in his testimony was the content of a letter from the prefect of Gitarama. Akayesu admitted to reading the letter at several meetings in early May 1994 in Taba, as he was ordered to do by the prefect. Akayesu characterized it as one telling him to "organize meetings with people to calm them down. There was also talk of self-defense and how to fight the enemy." He further stated that it was Silas Kubimana who "stirred things up" by claiming that fighting the "enemy" meant fighting Tutsis. The prosecution pressed Akayesu as to whom the word "enemy" meant—Tutsis or Hutus.

Counsel submitted closing arguments in late March 1998. The judges are now deliberating. In closing arguments on March 19 and 23, the prosecution reviewed the law applicable to Akayesu's case, summarizing the nature of genocide, crimes against humanity, and war crimes. The prosecution further stated that Akayesu, joined the Hutu extremist camp at the April 18, 1994, meeting with the Prime Minister in Gitarama, shortly after the massacres in Taba began. They claimed Akayesu was present at numerous rapes and killings, or knew about them and did nothing to prevent them and even aided and abetted such acts, and he ordered some atrocities outright. While the prosecution conceded that Akayesu actually saved some lives before April 18, 1994, he thereafter ordered and participated in acts of genocide.

Defense attorneys Nicolas Tiangaye and Patrice Monthe delayed in appearing for the prosecution's closing arguments. When the attorneys refused to come after a car was sent to their homes, Judge Kama immediately issued a formal warning. Tiangaye and Monthe appeared in court that afternoon, citing "problems with the Registry" as their reason for not appearing earlier. It is known that there are disputes about payment for defense counsel.

In closing arguments for the defense, counsel claimed that Akayesu never changed in his opposition to the *Interahamwe* militia, taking action to save Tutsi

lives both before and after the April 18, 1994, meeting, and finally fled Taba in May 1994. During that time, defense counsel argued, Akayesu lost control of the Taba commune to *Interahamwe* leader Silas Kubwimana. The defense also mentioned testimony by former UNAMIR commander Romeo Dallaire that the international community failed to act to prevent the genocide, though Dallaire urged a change of mandate and more resources. The prosecution declined to offer a rebuttal.

Clement Kayishema and Obed Ruzindana

The Prosecution completed its case before Trial Chamber II on March 13, 1998. Some 52 witnesses testified in a trial that began in April 1997. The last three eyewitnesses, known only as PP, UU, and NN, described respectively rapes and massacres occurring at a church in Mubuga, at Muyira in the Bisesero region, and at the Kibuye stadium. In addition, a handwriting expert authenticated the handwriting of one of the accused on several of Kayishema's letters that demonstrated his position of authority and role in organizing the genocide. Finally, Rene Degni-Seguy, UN Special Rapporteur for Rwanda and the UN's first investigator of the genocide, testified to the systematic nature of the killings, notably the propaganda campaign and establishment of "self-defense forces."

The defense on March 13, 1998, moved to begin its case on June 1, 1998. The delay was necessary in order for the defense to gather more evidence. The defense teams have faced several refusals by the Registry to pay for an investigator, at one point purportedly claiming that an investigator would unnecessarily complicate the counselor's work. The prosecution at first felt that there should be no delay, but after hearing the defense's recounting of its difficulties, suggested a delay of six weeks. The Chamber ordered the Registrar to respect the rules regarding payments of expenses incurred by the defense. The investigators were paid immediately. The Chamber also ordered that the trial resume on May 11, or earlier, if the parties were ready to proceed.

George Rutuganda

Testimony continues in the George Rutuganda trial. In early March, several witnesses testified in his trial. Two witnesses recounted a meeting that they and Rutuganda attended, claiming Rutuganda seemed happy when his father

suggested killing entire Tutsi families. Witness O testified to seeing Rutuganda with an *Interahamwe* official and a vehicle with several guns in the back, and also testified to hearing Rutuganda order the execution of O's brother at a roadblock. On March 10, anthropologist William Haglund testified about the exhumation of 27 bodies behind a garage that Rutuganda owned. Eight of the victims were shot in the head from behind, and others had apparently died from beatings. On March 10, witness T, who survived executions at the garage site, testified to "sixty or seventy" executions in Rutuganda's presence, including that of T's brother. Nizan Peerwani, a doctor who examined some of the corpses, testified on March 16 that deaths were caused by trauma inflicted by adults and excluded self or accidental infliction of wounds. Witness Z stated that he had been personally ordered by Rutuganda to stop distributing food, his usual job, and to bury bodies instead.

François-Xavier Nsanzuwera, the State Prosecutor in Kigali from 1990 to 1995, testified on March 23, 24, and 26 about the mass of arrests in 1990 and the massacres of Tutsis in March 1992 in the Bugesera region. He also gave the results of research into the political parties' youth wings—especially the *Interahamwe's*—and detailed the composition of their leadership, in which the defendant occupied the post of deputy national vice-president. Nsanzuwera further noted that Rutuganda played a key role in organizing and funding *Interahamwe* groups, which included looting Rwandan currency and exchanging it for French francs, as well as providing beer at member meetings and other occasions. He also described his experiences during the massacre.

Tiphaine Dickson, the Canadian lawyer representing Georges Rutuganda, moved the Tribunal on March 9 to order the Prosecutor to investigate Witnesses E and CC for perjury, on the basis of contradictory testimony and newspaper articles. The Tribunal rejected the motion, stating that contradictions were not enough to support such a motion and establishing criteria for such an investigation. The defense appealed the ruling regarding CC ten days later, arguing that the criteria constitutes "an excessive burden of proof (. . .) well beyond that which is required by the regulations governing procedure and proof." Dickson also felt

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that the Chamber "had erred in the law" by judging that a "falsehood" uttered by a witness did not constitute "good reasons to believe" a false testimony. The Appeals Chamber has not yet ruled on the defense's appeal.

Theoneste Bagasora/ Military Commanders

Responding on March 17, 1998, to a prosecution motion 11 days earlier, Trial Chamber II postponed the trial of Theoneste Bagasora. The trial had been scheduled to begin on March 12. Judge Hussein Sekule stated that the reason for postponement was to allow for a decision on whether to try all military defendants together. By putting the most important players in the horizontal and hierarchical chains of command on trial at once, Chief Prosecutor Louise Arbour hoped to show a "common criminal undertaking" demonstrating that the massacres were organized. A joint charge sheet was issued on March 6, 1998. Another prosecutor, James Stewart, also stated that it would take more time to turn evidence over to the defense, and that for the sake of justice a new trial should not begin until the three ongoing trials were completed. Judge Ostrovsky chastised Stewart for the slowness in turning over evidence, noting that in November the Chamber had ordered the turn-over to occur by December 12.

On April 2, 1998, the Chamber refused to grant the Prosecutor's motion to combine Bagasora's trial with others. Judge Tafazzal Hossain Khan said that one judge could not accept the motion, as some of those indicted in the new charge sheet were already cited in other cases.

A dispute arose over testimony by Eric David, Professor of International Law at the University of Brussels, who offered *amicus curiae* evidence collected by Belgian courts and officials. The defense argued that the role of a friend of the court was to neutrally clarify a point of law, not to offer evidence for the prosecution. That would amount to being both a witness and a friend of the court at the same time. The prosecution declined to give an opinion.

Hassan Ngeze/Media Figures

The Chief Prosecutor is preparing a joint charge sheet on which several defendants accused of inciting genocide would

be tried together. These persons include Ferdinand Nahima, founder of Free Radio Television Mille Collines; Jean-Bosco Barayagwiza, spokesman for the extremist Coalition for the Defense of the Republic, Georges Riggio, a Belgian journalist, and Hassan Ngeze, editor-in-chief of the Hutu extremist newspaper Kangura. Many experts believe that the charge sheet will meet with the same objections as that of the military command.

Samuel Imanishimwe

On March 25, the defense for Samuel Imanishimwe, commander of the military camp at Cyangugu in 1994, urged that the Tribunal order the prosecution to surrender evidence and to separate trials of a number of people named in the nineteenth charge of the indictment. That count groups together Samuel Imanishimwe, his fellow accused Emmanuel Bagambiki, former police chief of Cyangugu and Yusuf Munyakazi, ex-leader of an *Interahamwe* group and four other people who, according to the defense, have no connection with the case in question. The prosecution replied that it had submitted all the evidence to the Clerk of Courts, and that the four persons mentioned in the nineteenth count were not the subject of accusations, there would therefore be no legal consequences for them. He also stated that the defendant's responsibility is implicated since he had superior authority over the persons who committed the acts charged.

The next day, defense counsel filed a second petition to separate the trials. The defense argued generally that Imanishimwe had very little to do with the other defendants and should therefore be tried separately. The prosecution urged that they should be tried together in order to show a common agreement to commit genocide.

Eliziphan Ntakirutimana

Eliziphan Ntakirutimana was arrested a second time in Texas on February 26, 1997. Ntakirutimana, formerly pastor of the Mugunero Seventh Day Adventist Church, is accused of luring followers into his church, and then standing aside while Hutu militia members massacred them. A U.S. federal magistrate in Laredo, Texas, released Ntakirutimana on December 17, 1998, on grounds that the extradition law was unconstitutional and that there was not enough evidence to extradite him.

In a hearing on March 2, 1998, U.S. district judge John D. Rainey announced that he would rule "shortly" on whether Ntakirutimana could be turned over to the ICTR. Judge Rainey also stated that he would consider whether to keep the defendant in a prison infirmary or release him to his family in Laredo, Texas pending final decision.

Administrative Matters

The Deputy Prosecutor for the ICTR issued a directive on March 9, 1998, regarding the questioning of suspects by national authorities. The prosecutor affirmed the supremacy of the Tribunals, requiring that prosecutors assist officials where it would not interfere with ongoing investigations or trials. The prosecutor also directed that such interviews be taped and copies made for the national authorities, and asserted that everything said by suspects could be used against them.

On March 12, the UN's internal monitoring department submitted a second report on the ICTR's administrative and financial situation. The report stated that of 26 recommendations made a year earlier, 22 had been adopted at least partially. There were new recommendations regarding management of the defense counsel, public relations, and Prosecutor's personnel departments, use of voluntarily donated funds, and witness protection. The Registrar voiced strong displeasure at several new accusations of patronage. 🌐

