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NEWS FROM THE INTERNATIONAL WAR CRIMES TRIBUNALS

by Brian Tittlemore*

International Criminal Tribunal for the former Yugoslavia (ICTY)

ICTY Indictments and Proceedings

As of October 1996, 74 suspects remain under indictment by the ICTY, 54 Serbs, 17 Croats, and 3 Muslims. Of these, 7 are in custody, with the remaining indictees still at large, primarily in the former Yugoslavia.

Of particular interest is the recent *Gagović & Others ("Foca")* indictment, issued on June 26, 1996, in which the Prosecution has charged as against certain of the indictees that the detention and sexual slavery of women and girls at a private house in Foca constituted the crime against humanity of "enslavement" under Article 5(c) of the ICTY Statute, and that the rape of women and girls constituted the crimes against humanity of rape and torture under Article 5(f) and Article 5(g) of the ICTY Statute. This is the first time that charges of this nature have been advanced before an international criminal court.

One trial has proceeded before the ICTY, *The Prosecutor v. Dušan Tadić*. In addition, a series of pre-trial motions have taken place before the two ICTY Trial Chambers in the *Rajić* and *Blaskić* cases, among others, dealing with such matters as disclosure of evidence and protection of witnesses. Two more proceedings are scheduled to take place before the ICTY in the near future, the sentencing of Bosnian Croat *Dražen Erdemović*, scheduled to be handed down on November 25, 1996, and the trial of Bosnian Croat Defense Council Commander *Tihomir Blaskić*, scheduled to commence on January 8, 1997.

Update on the Tadić Trial

In the *Tadić* case, the Defendant is charged with international crimes related to the collection, mistreatment and killings of Bosnian Muslims and Croats within and outside the Omarska Death Camp in Prijedor in 1992. The *Tadić* trial opened on May 7, 1996, and the Prosecution completed its case in August 1996. The Defense commenced its case on September 10, 1996 and completed it on November 7, 1996. Summation in the trial was scheduled to

begin on November 25, 1996, with a verdict expected in the spring 1997. During the course of the trial, the Tribunal heard a total of 125 witnesses, received over 500 exhibits in evidence and accumulated more than 6,000 pages of transcripts.

In addition to the pivotal decision of the Appeals Chamber of the ICTY on the Tribunal's jurisdiction (see Diane F. Orentlicher, *War Crimes Tribunal Dismisses Jurisdictional Challenge*, 1 THE HUMAN RIGHTS BRIEF, Vol. 3, No. 1, at p. 4), several decisions have been issued by the ICTY's two Trial Chambers during the course of the trial on interlocutory motions.

For example, in the *Decision on the Defense Motion on Hearsay (5 August 1996)*, *Dušan Tadić Case No. IT-94-IT*, the Tribunal dismissed a motion by the Defense to have hearsay evidence directly implicating the accused in the crimes charged against him generally excluded, and held that in ascertaining whether hearsay evidence should

be admitted, the Trial Chamber would "determine whether the proffered evidence is relevant and has probative value, focusing on its reliability," and in so doing would "hear both the circumstances under which the evidence arose as well as the content of the statement." The Tribunal's decision suggests that in future cases, the ICTY will be inclined to follow the civil law-oriented approach reflected in ICTY Rule 89 in determining the admissibility of evidence. Here, the focus of the inquiry is ascertaining whether the evidence is relevant and has probative value, rather than applying established rules and exceptions as tends to be the approach in common law jurisdictions.

In addition, ICTY Rule 61, or "super-indictment," proceedings have taken place regarding several indictees, including Radovan Karadžić and Ratko Mladić, resulting in the issuance of eight international arrest warrants. To date, neither the authorities in Belgrade or Pale

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Facts About the International War Crimes Tribunals

- Both Tribunals were created by Security Council resolution under Chapter VII of the UN Charter as enforcement measures to maintain or restore international peace and security.
- Each Tribunal has two Trial Chambers, composed of three judges each, and a common Appeals Chamber, composed of five judges.
- The Tribunals have a common Chief Prosecutor and separate Deputy Prosecutors.
- The ICTY is competent to prosecute grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity, committed on or after January 1, 1991 in the territory of the former Yugoslavia. The ICTR is competent to prosecute genocide, crimes against humanity, and violations of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II, which were committed between January 1, 1994 and December 31, 1994 in the territory of Rwanda and by Rwandan citizens in the territory of neighboring States.
- Both Tribunals have concurrent jurisdiction with, but primacy over, national courts. Over 80,000 suspects are currently imprisoned in Rwanda awaiting prosecution before the Rwandan courts in connection with the 1994 genocide.
- The penalty imposed by each Tribunal is limited to imprisonment.

Tribunals, continued from previous page

nor the NATO-led implementation force in Bosnia-Herzegovina has executed any of these arrest warrants, even though warrants were issued pursuant to a mandatory resolution of the Security Council under Chapter VII of the United Nations Charter, and notwithstanding the agreement by the parties to the Dayton Accords to co-operate with the ICTY.

Administrative Issues

Effective October 1, 1996, the first Chief Prosecutor for the Yugoslav and Rwanda Tribunals, Justice Richard Goldstone, left the Tribunals to resume his position on the recently-established Constitutional Court in South Africa. Justice Goldstone was succeeded by Canadian Justice Louise Arbour of the Ontario Court of Appeal.

In June 1996, after repeated lags in funding negotiations at the UN over which budget ICTY funding would be drawn from, the UN General Assembly appropriated \$31.1 million for the ICTY for 1996. The budget delays not only resulted in critical under-funding of the Tribunal, but compromised its work by preventing the Tribunal from entering into long term contracts for personnel and resources. The Tribunal has also depended heavily upon voluntary contributions of cash, equipment, and personnel from countries such as the United States, Italy, Malaysia, Pakistan, Denmark, the Netherlands and Canada, and NGOs such as the Open Society Institute and the Rockefeller Foundation. Nonetheless, the ICTY still lacks resources for many of its essential functions, including mass grave exhumations, witness counseling and security, and forensic laboratory expenses.

International Criminal Tribunal for Rwanda (ICTR)

ICTR Indictments and Proceedings

The seat of the ICTR was established in Arusha, Tanzania by Security Council Resolution 977 (1995) dated February 22, 1995, and a sub-office for the Tribunal has been established in Kigali, Rwanda.

As of November 1996, 21 suspects have been indicted by the ICTR, 14 of whom are in custody. The remaining indictees are scattered throughout Rwanda, Zaire, Zambia, and Europe. It is anticipated that more than 400 suspects could eventually be indicted by the Tribunal.

Three of the suspects in custody, *Georges Anderson Rutaganda*, *Jean Paul Akayesu* and *Clement Kayishema*, have been arraigned and have had trial dates set. Rutaganda, a leading Rwandan businessman charged with genocide and crimes against humanity, is reported to be seriously ill and has spent part of his detention in hospital. Akayesu, a former mayor in Rwanda, is also charged with crimes against humanity and genocide, specifically ordering or participating in the murder of at least 2,000 Tutsis. Other notable suspects include *Colonel Theoneste Bagosora*, leader of the Rwandan army during the 1994 fighting, who is believed to have been one of the chief architects of the conflict, and *Ferdinand Nahimana*, a director and senior administrative officer of Radio Television Libre Mille Collines, the station that incited Hutus to slaughter Tutsis in broadcasts from Kigali. On November 9, 1996, Belgium transferred two additional suspects to the UN detention facility in Arusha at the request of the ICTR, *Eli Ndayambaje*, the major of Muganza commune, and *Joseph Kanyabashi*, the major of Ngoma commune.

The Kayishema trial, which was scheduled to begin on November 7, 1996, has been postponed until February 20, 1997, due to fighting between the Zairian military, Zairian Tutsi rebels, the Rwandan army, and Hutu militants in Eastern Zaire. The Akayesu and Rutaganda trials are scheduled to commence on January 9, 1997 and March 6, 1997, respectively.

Administrative Issues

In June 1996, the UN General Assembly appropriated \$32.6 million for the ICTR for the 1996-97 fiscal year. Problems with inadequate equipment and supplies and poor communications have hampered the Rwanda Tribunal since its inception. In its 1996 annual report to the UN General Assembly, the Tribunal

reiterated the need for additional human and material resources if it is to expedite its work, to search for evidence, and to issue additional indictments.

At the same time, controversy within the ICTR arose in October 1996 regarding allegations that a senior UN official with the ICTR Registry had purposefully obstructed and delayed the Tribunal's activities in Arusha and Kigali, and that UN office rules and regulations may have been violated. The UN Under Secretary-General for Internal Oversight Services has indicated that his office is currently investigating these allegations.

Concerns regarding the safety of ICTR investigators and witnesses have also frustrated the progress of the ICTR. As a result, Prosecution staff have been precluded from conducting investigations in Zaire where many Hutu refugees retreated following the 1994 genocide. In addition, the ICTR Tribunal recently ruled in the Rutaganda prosecution that the identities of witnesses would be kept from the public and media to ensure their security. ☹

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Sources of Information on the ICTY and ICTR

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ICTY/ICTR Home Page

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