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News from the International War Crimes Tribunal

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NEWS FROM THE INTERNATIONAL WAR CRIMES TRIBUNALS

by Ewen Allison

International Criminal Tribunal for the Former Yugoslavia (ICTY)

ICTY Indictments and Proceedings

As of March 1997, 73 suspects remain under indictment by the ICTY: 53 Serbs, 17 Croats, and 3 Muslims. Of these, 7 are in custody, with the remaining indictees still at large, primarily in the former Yugoslavia.

Dražen Erdemović

To date, the Tribunal has handed down only one sentencing judgment, the sentencing judgment in the case against *Dražen Erdemović*. On November 29, 1996, Trial Chamber I sentenced Erdemović to 10 years in prison for his participation in the mass execution of some 1,200 Muslim civilians captured after the fall of Srebrenica in 1995.

In its sentencing judgment, the Trial Chamber addressed how to punish crimes against humanity that fall under the ICTY's jurisdiction. First, the Chamber noted that under the ICTY Statute, the Chamber "shall have recourse to the practice of courts in the former Yugoslavia" in deciding on sentences. Observing that there had been no similar cases before Yugoslav courts that might have served as precedent in the Erdemović case, the Tribunal found that it could not draw any significant conclusions as to the sentencing practices for crimes against humanity in the former Yugoslavia. It did, however, indicate that it would consider general practice regarding prison sentences in the courts of the former Yugoslavia, without being bound by same, particularly because the Yugoslav Code reserves its most severe penalties for such crimes as genocide and war crimes against the civilian population.

In determining the sentence, the Chamber rejected as unfounded defense claims that Erdemović acted out of extreme necessity arising from

duress and the order from a superior, finding that the defense "produced no testimony, evaluation or any other elements" to support this claim. Mitigating circumstances duly considered by the Tribunal, however, included the fact that Erdemović surrendered to the tribunal, pleaded guilty, cooperated fully with the Prosecutor, and showed remorse for his participation in the massacre at Srebrenica.

On December 23, 1996, Erdemović appealed the Trial Chamber's decision to the Appeals Chamber, in part on the ground that the Trial Chamber ought to have accepted the Defendant's evidence of duress from a superior officer when the Prosecutor submitted no counter-



The International Criminal Tribunal in The Hague.

evidence. The public hearing on Erdemović's appeal ended on May 26, 1997. The Appeals Chamber has not indicated when its decision will be issued.

Dušan Tadić

The trial of *Dušan Tadić* concluded on November 28, 1996, and the decision of Trial Chamber II was released on May 7, 1997 (see *ICTY Issues Final Judgment Against Dušan Tadić*, in this issue).

Čelebići Trial

The Čelebići trial opened on March 10, 1997. It is the first collective trial for war crimes before an international criminal tribunal since the Nuremberg and Tokyo trials. The four defendants are *Žejnil Delalić*, commander of the First Tactical Group of the Bosnia Muslim forces with authority over the Čelebići camp detention facility in Central Bosnia; *Zdravko Mucić*, commander of the Čelebići camp; *Hazim Delić*, deputy commander of the Čelebići camp; and *Esad Landžo*, a guard at the

Čelebići camp. They are charged with grave breaches of the Geneva Conventions and violations of the laws and customs of war perpetrated against Serb victims. All face charges of war crimes in the form of rape and torture. The first three defendants are accused of liability on grounds of their command responsibility, making Čelebići the first ICTY trial to address this issue.

On April 14, 1997, the Prosecutor moved to withdraw two counts against the defendant Landžo, related to the beating to death with a baseball bat of one alleged victim, for the reason that the "further investigation has revealed that this charge was based on erroneous information from witness confusion

concerning the victim's identity." The motion also requests that the charges be withdrawn "with prejudice, such that these charges may not be raised against the accused at a later time."

To date, several witnesses have given evidence, including Grozdana Čečez, the first rape survivor to testify before the Tribunal, and Mirko Babić, who alleges that on one occasion, the defendant Landžo poured gasoline over his legs and set them on fire.

Tihomir Blaškić

The trial of *Tihomir Blaškić* is scheduled to begin on June 23, 1997. Blaškić, a Croat General and former Commander of the Croatian Defense Council (HVO), is charged with grave breaches of the Geneva Conventions, violations of the laws and customs of war, and crimes against humanity in relation to events in the Lasva Valley area in Central Bosnia. *Blaškić* is the first high-level official to be tried before the ICTY. On December 20, 1996, Trial Chamber I rejected Blaškić's request for provisional release pending trial, finding that it could order provisional release only in rare cases in which the accused's state of health is not compatible with any

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form of detention, and that Blaškić's release might discourage witnesses from appearing.

A significant preliminary proceeding in the Blaškić case involves the enforcement of two subpoenas duces tecum issued on January 15, 1997 by Tribunal Judge Gabrielle Kirk McDonald at the Prosecutor's request. One is addressed to Bosnia-Herzegovina and Ante Jelavić, the successor of the Custodian of the Records at the Central Archives of the former Ministry of Defense for the Croatian Community of Herceg Bosna, and the other is addressed to the Republic of Croatia and the Croatian Defense Minister, Gojko Šušak. The subpoenas requested the production by February 14, 1997 of materials relevant to the case, including minutes from meetings and telephone records. None of those named complied with the subpoenas by the February deadline. Judge McDonald ordered that the parties comply, or in the alternative make a personal appearance before the Court to show the cause of their non-compliance, but the subpoenas remained unsatisfied. Consequently, on March 4, 1997, Judge McDonald requested that all addressees and the Prosecutor submit by April 1, 1997, briefs on legal issues relevant to the subpoena question, including the power of a judge or Trial Chamber of the ICTY to issue subpoenas duces tecum to a sovereign state. She further invited requests by others for leave to file amicus briefs by April 7, 1997. Twelve persons or organizations were subsequently granted leave to file amicus briefs, and oral arguments on these issues were heard on April 17, 1997 by the full panel of Trial Chamber II. A decision is pending.

Administrative Issues

On February 6, 1997, Italy and the ICTY signed the first Agreement on the Enforcement of Sentences imposed by the ICTY. Ten other states have indicated their willingness to enforce ICTY sentences: Bosnia and Herzegovina, Croatia, Denmark, Iran, Finland, Germany, the Netherlands, Norway, Pakistan and Sweden. Legislation in four other countries (Austria, Belgium, Spain and Switzerland) would enable them to enforce sentences. Conditions will be maintained in accordance with Italian and international standards and monitored by the International Committee of the Red Cross.

In April 1997, the Norwegian Foreign Ministry confirmed that Norway had received a request from the ICTY for assistance in establishing a witness-protection program.

Budget Matters

The UN proposes freezing the budgets of the ICTY and ICTR at 1996 levels for the first quarter of 1997, although both tribunals have asked for more funds. The ICTY budget assumes only three trials in 1997, and does not provide for the appeal that is anticipated in the Dušan Tadić case.

International Criminal Tribunal for Rwanda (ICTR)

ICTR Indictments and Proceedings

Out of the 21 indictees of the ICTR, 13 are in custody; one is in the United States and 12 are in Arusha.

The first trial before the ICTR is that of *Jean-Paul Akayesu*, the former Hutu Mayor of Taba, Rwanda. He is charged with genocide, murder, and torture, including the deaths of at least 2,000 Tutsis. The trial started on January 9, 1997 after three postponements. The prosecution rested its case on March 7, 1997, and the trial resumed with the case for the defense on May 22, 1997. The defense's case began with the cross-examination of expert prosecution witness Allison des Forges, a historian and human rights activist.

Two other defendants, *Joseph Kanyabashi* and *Elie Ndayambaje*, appeared before the court in Arusha on November 29, 1996 for preliminary hearings. Both are former mayors in Rwanda and are charged with genocide. Kanyabashi's lawyers have since brought a motion before the ICTR to have his case dismissed, arguing that the Tribunal has no jurisdiction to try him because it was not established by the U.N. General Assembly or an international body.

The trial of *Georges Rutaganda*, a former Hutu militia leader charged with genocide, crimes against humanity, and violations of Common Article 3 of the Geneva Conventions, began March 18, 1997. Rutaganda intends to prove that the events in Rwanda were not genocide but rather the suppression of a Tutsi rebellion. The Trial Chamber suspended Rutaganda's trial on March 28, 1997, and the trial resumed on May 27, 1997.

The joint trial of defendants *Clement Kayishema* and *Obed Ruzindana*, charged with genocide and crimes against humanity arising out of events in Kibuye Prefecture, was adjourned indefinitely on May 8, 1997 after fourteen witnesses had testified. The reasons for the delay have not been disclosed.

Finally, on February 19 and 20, 1997, *Ferdinand Nahimana*, former Director of Radio Mille Collines; *Andre Ntagerura*, former Rwandan Minister of Transport; and *Anatole Nsengiyumva*, former Lieutenant Colonel in the Rwandan army, pleaded not guilty to charges of genocide and crimes against humanity. In March 1997, *Thoeoneste Bagosora*, a former Colonel in the Rwandan army, pleaded not guilty to similar charges.

Administrative Issues

Since the fall of 1996, there had been numerous complaints by judges and prosecutors and other staff members that the administrative organs of the ICTR were not functioning properly, including charges of incompetence and misuse of funds. The UN's Office of Internal Oversight Services (OIOS) investigated the charges and released its report on February 12, 1997.

The Report concluded that many key posts were staffed by people without the requisite qualifications and expertise. In addition, the OIOS found mismanagement in almost all areas of the Tribunal and frequent violations of UN rules and regulations. The Report also indicated that the "slow development" of witness protection programs "hampered trial preparation and has the potential to impact negatively on the trials." At the same time, the OIOS Report indicated that its investigation failed to reveal any evidence of corrupt practices or misuse of funds.

The UN Secretary-General accepted the resignations of ICTR Registrar Andronico Adede and ICTR Deputy Prosecutor Honore Rakotomanana on February 26, 1997. Nigerian Agwu Okali, Director and Deputy to the Assistant Secretary-General at the UN Centre for Human Settlements (Habitat) in Nairobi, succeeded Adede as Registrar.

Prosecutions of individuals involved in the 1994 genocide are also proceeding before Rwandan national courts. Amnesty International and other

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"political acts" in Hong Kong and further prohibits these organizations from establishing ties with foreign political bodies. Under this definition, a group such as the Hong Kong Human Rights Monitor would be considered a political organization because it advocates changes in the laws. Thus it would effectively be banned from taking any action in Hong Kong and would furthermore be prohibited from having any contacts with groups in Europe or the United States such as Amnesty International or even the United Nations.

The overly broad language in the Basic Law and other legal ordinances has many people worried. They fear the future legislature will be able to interpret the laws to suit their own needs. With voting rights in question, there also is a strong likelihood that the future legislature will be oblivious to public pressure and essentially controlled through the back door by officials in Beijing.

In addition to concerns over the language of the new laws, the decision to abolish current laws may result in a legal vacuum or a constitutional crisis. This is

because the NPC Standing Committee's decision to abolish a law does not mean the former version of that law will automatically be brought back into force. Thus new laws must be drafted to replace those abolished. If the Provisional Legislature meets and acts on legislation before July 1st, however, the current elected Legislature will file suit in Hong Kong's court.

The right of movement to and from Hong Kong also was ensured in the Joint Declaration, but China's willingness to uphold its end of the agreement is now in question. Recently, two members of Hong Kong's Democratic Party who were traveling to Beijing to submit petitions against the provisional legislature were denied entry. This led many to believe that China has a "blacklist" of Hong Kong politicians. Among the Chinese immigrants in Hong Kong is political dissident Han Dongfang, who has been denied entry into China since he was expelled in August 1993.

Conclusion

Whether or not the PRC will use its influence to change the fundamental face of Hong Kong is uncertain, but recent events indicate this is likely.

Although the Basic Law appears to threaten basic civil liberties, there may be some protection for human rights if the rule of law is protected. According to the Joint Declaration, Hong Kong will continue to operate under its existing legal system, the British common law. Whether or not the judicial system will effectively protect human rights in Hong Kong remains to be seen.

If anything has the power to protect Hong Kong, it is money. Human rights groups would have little to worry about if human rights were being protected as zealously as trade and investment have been. After July 1st, Hong Kong's capitalist system and free trade policies will remain intact for at least 50 years. Hong Kong will keep its status as a free port and separate customs territory. It will keep its own monetary and financial policies without paying taxes to China. The Hong Kong dollar will remain freely convertible, and property rights and foreign investment will be protected. Often the assumption is made that human rights and economic prosperity go hand in hand. The future situation in Hong Kong, soon to belong to the People's Republic of China, may test that theory. ☉

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human rights groups have criticized these prosecutions, in particular the fact that several of the defendants who have been found guilty and sentenced to death have had no defense lawyers. It is estimated that close to 100,000 of the less prominent individuals involved in the 1994 genocide are currently awaiting trial in Rwanda, while only 16 defense lawyers are currently practicing in that country.

Witness Protection

The death of witnesses in the Akayesu trial highlighted the need for

greater security. On January 5, 1997, an unnamed woman who had testified in the Akayesu trial was killed, along with her husband and their seven children. On December 23, 1996, gunmen killed a Taba store owner, Emanuel Rudasingwa, as well as his 12-year-old daughter and ten others. Rudasingwa was also scheduled to testify in the Akayesu trial. As a result, several witnesses have withdrawn.

On March 6, 1997, the ICTR requested assistance from the UN High Commissioner for Refugees, humanitarian organizations, and the countries

concerned, in locating and protecting defense witnesses who fled camps in eastern Zaire during the first week of March.

Budget Matters

The ICTR budget assumes that 12 to 20 trials will take place in 1997. The budget provides only \$750,000 for ICTR investigators' travel. (Belgium pays for air travel between Kigali and Arusha.) Funds for ICTR security have been increased to \$3.7 million, which will enable the ICTR to hire 75 security guards. Some of these guards would accompany investigators traveling in Rwanda. ☉

For more information on the International War Crimes Tribunals, see the following articles in past issues of *The Brief*.

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