1998 - THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

1. Overview of the Activity of the Tribunal

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1 January 1991 was established by UN Security Council Resolution 827 on May 25, 1993. The Tribunal, which uses the shorter version of its name, i.e. the International Criminal Tribunal for the Former Yugoslavia (ICTY), is an ad hoc tribunal established under Chapter VII of the United Nations Charter as a measure to protect international peace and security.

The jurisdiction of the International Criminal Tribunal for the Former Yugoslavia includes grave breaches of the Geneva Conventions, violations of the laws and customs of war and crimes against humanity.

The Tribunal consists of three parts: the Chambers, the Independent Prosecutor (with an investigation department) and the Secretariat. Of late, the Tribunal has 14 instead of 11 judges, elected by the UN General Assembly. The judges are assigned to two three-member Trial Chambers and a five-member Appeals Chamber. The latter, as well as the Prosecutor, have a common responsibility for both the tribunals for the former Yugoslavia and for Rwanda. With the election of three new judges, a third Trial Chamber has been established so that with the three courtrooms that are now in place, several simultaneous trials will be possible and the work of the Tribunal will gain in expeditiousness.
The first judges made their solemn declaration in November 1993, while the Deputy Prosecutor, Graham Blewitt, who established the prosecutors office, assumed his duties in mid-February 1994.

The Tribunal employs a total of 625 persons of 57 different nationalities. The budget for 1998 amounted to 64.8 million US dollars, while expenditures for 1999 are estimated at 94.1 million US dollars.

In October 1994 the UN detention unit was built and made available. It is a part of the prison located in Scheveningen, a suburb of the Hague. In November 1998, work on extending the detention unit was completed.

The judges have several times amended and supplemented the Rules of Procedure and Evidence so as to evolve a procedure reflecting a balance between Continental and Anglo-Saxon Law. The duty of states to co-operate with the Tribunal has been elucidated in the Rules of Procedure and Evidence. Rule 58 stipulates that the obligations under article 29 of the Statute shall prevail over any legal impediment to the surrender of the accused or of a witness to the Tribunal that may exist under the national law or extradition treaties. The Rules further specify that if a State, within a reasonable time, takes no action to execute a warrant of arrest against the accused, the Tribunal, through the President, may notify the Security Council accordingly.

The first public hearing was held on 8 November 1994 and addressed the request to Germany for deferral to the competence of the Tribunal for prosecution against Dusan Tadic, who had been arrested in Germany on the charge of crimes committed in the Prijedor area. Tadic was transferred to the Scheveningen detention unit on 24 April 1995 and thus became the first person accused of war crimes committed on the territory of the former Yugoslavia to be handed over to the Tribunal. He was also the first person to be tried and the first to be convicted, though his defence has lodged an
appeal. At the beginning of the proceedings, Tadic had raised objections as to the Tribunals jurisdiction, which were rejected by the Appeals Chamber.

From May 7th 1996, when the first trial began until 10 December 1998, the Tribunal pronounced four judgements following three trials and a plea of guilty. Five of the accused have been convicted, and one has been acquitted.

Four trials were in progress at the end of 1998. The most recent one had begun on 30 November 1998, the charge being genocide. Six more trials are expected soon.

Since the Tribunal's establishment, 24 indictments have been made, involving 84 persons. The Prosecutor has withdrawn indictments against 18 persons. One accused was acquitted and one is serving his sentence. Six have died (two in detention, of whom one committed suicide). At the end of 1998 the 22 indictments published involve 57 persons.

In 1998 twenty-six indicted persons were in custody, and one has been temporarily released to go to Republika Srpska, for health reasons. The detainees include 12 Serbs, one of whom has been temporarily released, 12 Croats and two Moslems.

In early December 1998, Radisav Krstic, General of the Republika Srpska Army, was arrested after having been previously accused in a sealed indictment for genocide in Srebrenica. By the same act, two more persons were indicted whose names were deleted following publication. It is the strategy of the Chief Prosecutor, the Canadian Justice Louise Arbour, to have some indictments remain "secret" (they are not made public until they are served on the accused) for the purpose of facilitating arrest. This method has been strongly criticised in Yugoslavia.

Until the end of 1998 eight international arrest warrants were issued following the procedure envisaged in Rule 61. Among the eight
wanted persons are the former President of "Republika Srpska Krajina (RSK)", Milan Martic, the political leader and former President of Republika Srpska, Radovan Karadzic, and the former Commander of the Republika Srpska Army, General Ratko Mladic.

By 8 December 1998, SFOR, the international force in Bosnia and Herzegovina, had arrested 11 accused. Incidents occurred in the process of arrest. One of these was the killing of Simo Drljaca, a Serb from Prijedor.

The Tribunal has not been able to meet expectations primarily because states emerging on the territory of the former Yugoslavia have been reluctant to co-operate. The FRY refuses to fulfil its obligations vis-à-vis the Tribunal such as they have been laid down in the UN Security Council Resolution and confirmed by the Dayton-Paris Peace Accord for Bosnia, signed by the then President of the Republic of Serbia, Slobodan Milosevic, President of Croatia, Franjo Tudjman and President of the Presidency of Bosnia and Herzegovina, Alija Izetbegovic.

The presidents of the Tribunal have informed the UN Security Council no less than four times that the FRY authorities had declined to surrender accused persons residing on the territory of the FRY. Yugoslav authorities have also refused to recognise the jurisdiction of the Tribunal for possible crimes committed in Kosovo and have not allowed the Chief Prosecutor and her team of investigators to go to Kosovo and Metohija and conduct investigations there. The President of the Tribunal, Gabrielle Kirk MacDonald, requested the Security Council on 6 November 1998 to take effective measures in order to make the FRY comply with its obligations under international law.

2. Reactions in the Federal Republic of Yugoslavia

The Federal organs and the authorities in the Republic of Serbia have strongly disapproved of the Tribunal ever since its establishment. State officials and establishment jurists claim that the
Tribunal was established by an incompetent organ, i.e. the Security Council in violation of international law, and was an illegal and illegitimate political instrument designed to put pressure on the Serbs, the aim being to declare the latter solely responsible for the crimes committed during the conflicts in the territory of the former Yugoslavia. ¹

The position of official Belgrade is that the Statute of the Tribunal cannot have primacy over national law. The refusal of the FRY to execute the warrant for the arrest of Mile Mrksic, Veselin Sljivancanin and Miroslav Radic and to surrender these three officers of the former JNA who are indicted for the killing of at least 200 non-Serbs in 1991 in Vukovar was justified by reference to the FRY Constitution, which does not allow the extradition of FRY nationals. Occasionally, the authorities claim that war criminals are to be tried in the domestic courts. However, until 1999 only one trial took place and was adjourned sine die.

Major Milos Gojovic, President of the Supreme Military Court, declared on 9 December 1998 that the military prosecutor had reviewed the indictment of the Hague Tribunal against the three above officers and "was satisfied that the indictment was groundless, dismissed it and ordered the military court in Belgrade to institute proceedings against persons unknown believed to have committed crimes in Vukovar" (Politika, 10 December, p. 24). Mrksic, Sljivancanin and Radic were summoned to attend the hearing on 17 December as witnesses. The Supreme Military Court officially confirmed that they had testified "about all the circumstances surrounding the event and responded to all questions asked" (Dnevni telegraf, 18 December, p. 5). The Prosecutor of the Tribunal expressed the view that the proceedings before the military court had for objective to

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¹Another objection to the Statute is that is does not provide for the prosecution of crimes against peace. The drafters of the Statute have allegedly done this so as to protect officials in the other federal units of the former SFRY; according to the official version in Serbia, the latter were solely responsible for the outbreak of hostilities in the SFRY.
shield the officers from international criminal responsibility and demanded that the Yugoslav authorities defer the case to the Tribunal (Blic, 8 December, p. 7).

The Humanitarian Law Center, which has dealt with the most serious human rights violations committed during the wars waged from 1991 to 1995, concluded that the Yugoslav authorities have not shown any serious intention to punish or assist in the punishment of those accused of the gravest crimes committed during the armed conflicts in the territory of the former Yugoslavia (FHP-8).

The authorities in Montenegro, none of whose citizens are on the published list of indictees, have a different view of the Tribunal. "Montenegro considers that the Hague Tribunal is legal and legitimate and ... and the State authorities are prepared to make their contribution towards shedding light on every case containing elements of a criminal offence against humanity and international law", stated State Prosecutor Bozidar Vukculvic (Pobjeda, 28 April, p. 3)

involve siding with one of the warring parties ... such tribunals — it would seem — are designed to mete special punishment to pariahs of the international community, while the permanent members of the Security Council can do whatever they please, without any responsibility involved." This statement was made by Zoran Stojanovic, Professor of Law, Belgrade University School of Law, whom Politika styles "President of the FRY Committee for Collecting Data on Crimes" (11 November, p. 2).

The campaign against the Hague Tribunal gained momentum in September 1998, following the death of Milan Kovacevic, a Bosnian Serb accused of war crimes in Prijedor, whose demise was attributed to neglect by the doctors in the Hague detention unit. Under the heading "Perfidious Euthanasia by the Hague Doctors", Politika reported on the opinions expressed by Milan Kovacevic's psychiatrist and medical expert for the defence: "We had warned them officially (the prison doctors) that Kovacevic's state of health was such as to
necessitate hospitalisation in an appropriate medical institution rather than being placed in a prison cell. However, the doctors in the Hague paid no heed to our warning but perfidiously administered euthanasia ...

"(10 September, p. 21). Four days later the same daily stated that "the initial idea according to which all those responsible for the commission of crimes in the conflicts on the territory of the former Yugoslavia should answer to the Tribunal has turned into a stick used primarily against Serbs. A confirmation of this is that 90% of the indictments have been brought against Serbs." (14 September, p. 16). The Yugoslav public knows very little about the Tribunal. The average citizen is almost completely ignorant of the reasons why it was established, of its organisation and of the rules governing its activities. The prevailing view is that the Tribunal is a political rather than a judicial body, established with the aim of casting a slur on the Serbs. The average citizen reasons along these lines due to the endless harping of the stale-owned media.

In the press supporting the regime in Serbia no attempts have been made to recall that Yugoslavia is under the obligation to co-operate with the Tribunal. Moreover, no mention has been made of the critical views of the Tribunal officials vis-a-vis Yugoslavia. On the other hand, pro-regime papers regularly convey statements by Yugoslav officials against the Tribunal. "The International Criminal Tribunal for the former Yugoslavia constitutes a framework for the political goals of the most powerful states, members of the Security Council, while its activities unnecessarily interfere in war conflict or

Following the proceedings against three Bosnian Moslems and one Bosnian Croat for crimes against Serbs, which ended in November with the acquittal of one of the accused, Politika published articles such as: "Judgement — a Direct Insult to the Serbs" (17 November, p. 19) and "Different Yardsticks of the Hague Judges" (18 November, p. 18). It was argued that this was only further confirmation that the "Tribunal is a instrument to blame the Serbs as
the main culprits for the conflicts in the territory of the former Yugoslavia."\(^2\)

The arrest by SFOR of General Radisav KisI\(^k\) of the Army of Republika Srpska had a strong impact on public opinion. For several co having committed crimes against Serbs to be brought to trial and to improve the image of Serbs in the world. The independent press recalls that "the Serbs are bound by rules governing war, which are older than the Hague" \(\{\text{Demokratija, 6 January, p. 5}\}\) that the Hague Tribunal constitutes a stage in "in the century and a half long resistance to unscrupulousness and crime" and a preparation for a permanent international criminal court \(\{\text{Nasa borba, 14 September, p. 7}\}\), and that "refusal to co-operate with The Hague" is "detrimental" to Yugoslavia's interests \(\{\text{JBlic, 13 November, p. 8}\}\). All the same, the independent media have not been successful in their efforts since the authorities tend to restrict their visibility, audibility and circulation.

Towards the end of the year, the government of the FRY worsened its otherwise bad relations with the Hague Tribunal on account of Kosovo and Metohija. It refused to allow Prosecutor Arbour and her associates access to the Province and to conduct on-

\(^2\)The prevalent view in Croatia is that the Tribunal's activities are directed against Croats. The arguments resorted to are similar to those in Serbia, though the direction is different. At least, this is the official position. Ivic Pasalic, Vice-President of the Croatian Democratic Community (HDZ), Croatian President Franjo Tudjman's party, and his advisor, at the very end of 1998, reiterated Croatian disappointment in the Tribunal. According to the HINA agency reports, "Pasalic emphasised ... We could not even imagine that criminals who were responsible for aggression and who have committed crimes against Croats in Croatia and in Bosnia and Herzegovina would remain unpunished and that there would be no wish to bring to justice those who were responsible for the war ... So far, 13 Croats have been indicted and we therefore ask ourselves whether they are being tried in accordance with the international conventions or according to political criteria." According to the same source, "The Croatian Helsinki Committee (HHO) expressed its concern because of the increasingly strong and ever more violent attacks by the Croatian authorities against the Hague Tribunal ... The Committee underlines that the Secretary General of the HDZ, Drago Krpina, and the President's Advisor Ivic Pasalic and echoing the wishes of President Tudjman compete in their public statements in lambasting the Hague Tribunal." \(\{\text{HINA bulletins 3031 and 3044 of 30 December 1998}\}\).

The independent press has addressed the issue of the Tribunal in calmer tones. It has endeavoured to explain the reasons for its establishment and how it functions. These papers alone publish statements made by the Hague Tribunal officials explaining their moves and responding to criticism. Moreover, independent newspapers remind the public that the PRY has undertaken the obligation to co-operate with the Hague Tribunal, emphasising that such co-operation is necessary in order to lift the burden of collective responsibility from the Serbs, to make it possible for those

The Humanitarian Law Center organised an international conference on war crimes trials on 7 and 8 November in Belgrade, attended by some 70 experts from Yugoslavia and abroad. The President of the Tribunal Gabrielle Kirk MacDonald, Chief Prosecutor Arbour and her deputy Graham Blewitt, who were to take part in the debate, refused to come because the Yugoslav Consulate had issued them visas which excluded access to Kosovo and Metohija.

Serbian State Television (RTS) covered the first day of the Conference but only broadcast the statements of those participants from the FRY who claimed that the Tribunal was illegal and illegitimate and that the Tribunal and its Prosecutor were politically motivated and biased. RTS, in its television and radio programmes, did not cover any presentation or contribution in favour of the Tribunal and did not at all report on the second day of the Conference, nor on the fact that the Tribunal representatives had failed to come and on the reasons for their absence.
As the independent press also tends to print unfavourable comments about the work of the Tribunal and publish the views of Yugoslav jurists who deem that the establishment of the Tribunal under a Security Council resolution was illegitimate and wrong, the impression the Yugoslav public opinion has of the Tribunal is predictably unfavourable. The question is whether its existence and activities have achieved the goals of every criminal prosecution to discourage any potential perpetrators of such crimes. Clearly, the attitude of both conflicting parties in Kosovo has not confirmed that this was the case.