

## **ANALYSIS: A Job 'Half Done'**

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The irregular pattern of arrests is forcing the tribunal to retry many cases, slowing down the judicial process and raising tribunal costs

The trial date for Mitar Vasiljevic was last week set for September 10. A Bosnian Serb accused of crimes at Visegrad, he has been held in custody since January last year and his case is due. Yet there is a good chance already that the Visegrad trial may have to be redone.

There is nothing unique in this. The war crimes tribunal has compiled a solid record of convictions to date, dozens of arrests are pending, and a large number of indictments are in preparation. But the complexity of the task facing the court is demonstrated by the fact that fully half of the 14 trials that have been completed or are nearing closure in the coming months will have to be reheard.

Since the opening of its first trial in May 1996, the first European war crimes tribunal since Nuremberg has completed 10 trials. Two defendants have been acquitted, while the remaining 19 have been sentenced to a total of 342 years' imprisonment. The balance sheet of sentences and acquittals will grow in the upcoming months, when the four on-going trials of ten accused are expected to conclude.

Yet when the third set of judges are appointed to new four-year terms at the tribunal this November, they can look forward to repeating as many as seven of the cases already completed by their predecessors.

The reason is not that the Appeals Chamber is expected to order retrials of any of the cases decided in the Trial Chambers, although this too is possible. Rather the failure of UN member states - both NATO members and regional governments - to arrest and transfer suspects to The Hague in a timely manner means that they arrive at the court sporadically.

This has compelled the court to organise separate trials of persons accused on the same indictments. Of the 14 trials to date, 14 defendants in seven of the cases were not in the dock. Fresh trials will have to be mounted for them, if and when they are transferred to The Hague. This means mounting essentially the same case, with essentially the same evidence, against newly arrived defendants.

A typical example of the problem is the Lasva valley indictment against political and military leaders of Croats in Central Bosnia. There were six names on the original indictment. The prosecution abandoned cases against two, Ivo Santic and Pero Skopljak. Due to their separate arrivals in The Hague, the remaining four - Tihomir Blaskic, Zlatko Aleksovski, Dario Kordic and Mario Cerkez - were tried in three separate trials.

Of the total of 14 trials held so far (including the four current proceedings), only two managed to gather all those named on the case's indictment in the same courtroom. These were the trial of the four accused of crimes against Serb detainees at the Celebici camp, and the trial of six Bosnian Croats ("Kupreskic and others") accused of participation in the massacre at Ahmici.

In half of the trials, only a small number of the accused were tried. In the trial of Anto Furundzija, commander of the Croatian Defence Council, HVO, in Central Bosnia, his subordinate, who allegedly committed rape and torture for which his superior was also sentenced, was absent. Of the two accused of crimes in the Luka camp in Brcko, only Goran Jelusic, the self-styled "Serbian Adolf", was in the courtroom, while his co-accused, Ranko Cesic, was absent.

Apart from the three sentenced for rape and sexual enslavement in Foca, five more persons stand accused of the same crimes. Two, Dragan Gagovic and Janko Janjic, were killed during attempted arrest, while three others, Gojko Jankovic, Dragan Zelenovic and Radovan Stankovic, remain fugitives.

In two current trials for the Prijedor camps of Omarska and Keraterm, a total of eight accused are in the courtroom. Yet six more are missing: Zeljko Meakic, Momcilo Gruban, Dusan Knezevic, Dragan Fustar, and the twins Nenad and Predrag Banovic.

It is more difficult to calculate the number of those who may be missing from sealed indictments, but this only adds to the totals.

After the arrest of General Radislav Krstic, his sealed indictment was crudely "edited", with the names of other suspects crossed out with a thick black marker. From this it is clear that two more officers of the Drina corps of the Bosnian Serb army stand accused, with him, of genocide in Srebrenica.

This mistake was not repeated with the indictment against Milorad Krnojelac, the former warden of the Foca prison.. In this case, the only part of the charge sheet made public states that Krnojelac and unspecified "others" are accused of crimes against Bosniak detainees of the prison in Foca.

All this indicates that at least seven trials will have to be repeated - and this on condition that the suspects arrive at the court in groups. If the remaining fugitives from the indictment for rape in Foca, or the four fugitives from the Keraterm camp indictment, do not turn up at once, the court could be compelled to have even more retrials. (In some cases, defendants themselves have asked to be tried separately, though no such petition has yet been granted.)

The costs arising from retrials is not only in cash terms, though this is clearly significant. Judge Almiro Rodrigues has estimated that each hour of a trial before the tribunal costs \$30,000. The international community is thus paying dearly for the irregularity of its arrests.

In addition, the prosecution bears the burden of proving the same things two or three times. Witnesses, including victims, are forced to come to The Hague several times to repeat their often traumatic testimonies about the suffering they have experienced. Other defendants in custody inevitably face delays in their trials, as such "retrials" only add to the court docket and slow down the whole process.

The case of Mitar Vasiljevic, scheduled last week, threatens to be another partial, or rump, trial. Absent from custody are two other names on the Visegrad indictment, the relatives Milan and Sredoje Lukic, who also happen to be related to Sreten Lukic, the current Serbian deputy interior minister.

Once again, the tribunal has found itself torn between its obligation to provide a timely trial for all accused and providing what might be described as "cost-effective justice", namely, holding one trial per indictment.

Vasiljevic has been in custody since January 25, 2000. In order to respect his right to be tried without "undue delay", he should not have to wait until his two co-accused are brought to the Hague.

Deputy Prosecutor Graham Blewitt stated that unspecified "operative measures" are being undertaken to address the problem. Clearly he hopes that the two Lukics may be brought to The Hague in time to spare the tribunal another rump trial and further waste of its limited financial and human resources. How likely this is remains to be seen.

There are currently 38 tribunal inditees still at large, including the "Kosovo five" headed by Slobodan Milosevic; the "Vukovar troika" of officers of the former Yugoslav People's Army; and the "Dubrovnik group", whose composition and number is unknown. A further 36 investigations against approximately 150 accused, mostly in high political or military positions, are under way.

Those investigations should be completed by the end of 2004. The original trials of all those presently accused or under investigation would, according to optimistic assessments, be completed by 2009. This would coincide with the expiration of the fourth four-year mandate of Hague judges.

But any such hopes of meeting this ambitious target will require that all suspects on joint indictments be tried together. If not, a fifth and perhaps even a sixth mandate of judges will be necessary, so that the job entrusted to the tribunal by the international community would not remain, as now, half done.

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