

ANALYSIS: Is the Tribunal Running Out of Time?

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US ambassador delivers contradictory signals over tribunal's future.

The war crimes tribunal may be alive and well, but the question is for how long?

It all depends on Radovan Karadzic and Ratko Mladic, which explains, as we noted at the end of January ([Tribunal Update 250](#)), why the international community, especially the US, is in a hurry to see the two fugitives behind bars in The Hague.

Once accomplished, they can tell the tribunal, "You have Milosevic, and now you have got Karadzic and Mladic. What else could you ask for? Now finish the trials and close the shop!"

The idea that since the September 11 attacks, the US has shown signs of having "had enough" of the UN tribunals for former Yugoslavia and Rwanda, and wants a clear timetable set for their closure, was given official credence over the last few days by US ambassador-at-large for war crimes issues, Pierre Richard Prosper.

Prosper confirmed the US intended to have the two UN tribunals shut down by 2007 or 2008 at the latest, in his recent testimony to the House International Relations Committee. But following a visit to The Hague, he appeared to contradict himself, saying the court would not close until Karadzic and Mladic were brought to justice.

In his congressional address, Prosper complimented "the tribunals are on the path to success", but voiced objections to various abuses, including mismanagement, lack of professionalism and inefficiency, which all "challenge the integrity of the process".

He also charged that the tribunals "completely usurp the authority and, more importantly, the responsibility of sovereign states", which have "shared responsibility" for criminal prosecution and trial of the war crime suspects.

Less than a week later, Prosper was in a position to repeat his accusations in talks in The Hague with the tribunal president, Claude Jorda, and chief prosecutor, Carla del Ponte, as well as at a joint press conference at the end of his visit, but he restrained himself.

Instead, the issue of deadlines for the completion of the tribunal's task was first raised by Del Ponte and Jorda. The former said ongoing investigations will be finished by 2004, while the latter said the trials may all be over by 2008.

These deadlines have been known in The Hague for almost two years. Both officials set certain pre-requisites for a successful "completion strategy", many of which depend more on the US and the rest of the international community than the tribunal.

At the press conference, Del Ponte repeated that there were no plans for any "reduction of the number of those cases" under investigation.

To enable the prosecution to complete about 20 ongoing inquiries into 100 suspects who held high positions in political, military and paramilitary structures of the warring sides in time, the states and entities of the former Yugoslavia need to provide Hague investigators with free access to documents, archives, witnesses and victims.

Another pre-requisite is that all those who have been - or are about to be - indicted must be delivered to The Hague as soon as possible, so their trials can finish by 2008. This, again, does not depend on the tribunal, but on the countries and international forces in the region.

In order to get through its workload effectively, the tribunal needs to be able to conduct six trials simultaneously. This depends on the availability of funds to pay for ad-litem judges for a sixth court and prosecution team. [These extra judges would complement the 14 permanent Hague judges. Most trial chambers comprise one permanent and two ad-litem judges.] But these funds, envisaged in the budget for 2002-2003, are now blocked in the Fifth (Budgetary) Committee of the UN General Assembly.

Prosper told reporters he was "in complete agreement" with Jorda and Del Ponte in respect of all the stated pre-requisites for the success of the "completion strategy".

Whether this is really so will depend on the actions of the US representative in the UN budgetary committee, who is in a position to unblock the tribunal budget.

Prosper added that the international community has responsibility to assist states in the region to hold trials through a "credible judicial or truth and reconciliation process". The latter, he added, "must also accept their responsibility to prosecute the mid and lower level offenders" which the tribunal will not be prosecuting.

Del Ponte also addressed the need for a division of work and the tribunal's efforts to "encourage" the local judiciaries to shoulder responsibility for the criminal prosecution of the "mid and lower level" war criminals. But she said in the foreseeable future this seemed unattainable.

Prosper, however, again suggested that through the "joined efforts of the international community" the countries in the region might take over part of the tribunal's burden.

It remains to be seen what the phrase "truth and reconciliation process" means in this context, and whether the tribunal will be expected to pass some of the remaining "mid and lower level offenders" from its indictments to local jurisdiction.

After the talks with tribunal officials, Prosper spent some time watching the trial of Slobodan Milosevic before exposing himself to some fierce "cross-examination" at the press conference.

At the press conference, reporters, including some US journalists, accused the American official of having "undermined the tribunal's credibility" before Congress and passing "ammunition" to Milosevic who refuses to recognise the court. They also requested examples of the "mismanagement and abuse" he referred to.

He could only offer the old but unproven charge that some defence attorneys engaged in "fee-splitting", whereby they divide their fees with the accused or their families.

The reporters treated Prosper almost as a "hostile witness", and he had to use all his diplomatic skills to handle the more provocative questions.

He strongly rejected the suggestion implied in one question, that the tribunal might become "collateral damage" of America's opposition to the establishment of the International Criminal Court.

And asked what would happen if Karadzic and Mladic were not brought to The Hague by the tribunal's projected deadline for the completion of its work, he insisted the court would not be closed before the two were brought to The Netherlands to stand trial.

Bearing in mind the trouble NATO is having capturing Karadzic, it seems the tribunal could be around for some time.

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