

Bringing War Crimes Justice Back Home

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The transfer of Hague tribunal cases to former Yugoslavia is regarded as vital for the war crimes justice process - but it is fraught with difficulty.

The international community's move to establish a war crimes court in Bosnia and Herzegovina has raised serious questions over whether the country's legal system, detention facilities and media are up to the challenge.

The transfer of low- and medium-ranking trials to the Balkans is key to the Hague tribunal's completion strategy, which envisages all its cases finishing by the end of 2008 and the court closing its doors two years later.

Judge Theodor Meron, tribunal president, has said that the creation of the War Crimes Chamber, WCC, within the Bosnian state court, "will ensure that the prosecution of [alleged] war criminals takes place in an efficient and fair manner and in accordance with internationally recognised standards of due process".

The substantial involvement of the international community in the establishment and staffing of the WCC - expected to be up and running at the beginning of 2005 - has caused controversy in the region. But the Office for the High Representative, OHR - which is the prime mover behind the new chamber - insists that this is necessary.

"The reason for including such a significant international presence in the interim period covering the first five years of this chamber's work is to provide support for domestic judges and prosecutors, and to ensure that international standards are met," said an OHR spokesperson.

"Also, to assure all those involved that justice - even when dealing with war crimes - is equal to all."

More than 16 million euro has been raised to cover the court's costs for the first two years of its operation, and a donor conference is to be held in 2005 to raise a further 21 million euro. This amount will be required to see it through to 2008 - the end of the projected "transition phase", after which the international community's involvement will lessen, and the running of the court will be handed over to local officials.

With so much money and effort involved - not to mention the reputation of the tribunal - the stakes are high.

An important factor in the success of the WCC will be the extent to which people in Bosnia begin understanding and accepting its role. Local media will play a central role in building public confidence in the process, and ultimately promoting reconciliation.

To assist the Bosnian media, IWPR will implement a new programme designed to train journalists in the legal framework governing the WCC, and how to report on war crimes trials in a fair and objective manner. The intention is to help the print and broadcast media in Bosnia produce good, balanced reporting on this most sensitive of topics. Associations of war victims, veterans and other key citizens' groups will also be engaged and encouraged to better understand the new institution.

IS BOSNIA READY?

Questions have been raised over Bosnia's readiness to try war crimes cases, with concerns focusing on its outdated legal system, poor or non-existent detention facilities, and somewhat lax attitude to witness protection, compounded by often-partisan media reporting in both the Federation and Republika Srpska, RS.

The Bosnian mission of the Organisation for Security and Cooperation in Europe, OSCE, reports that more than 90 war crimes trials featuring defendants of Bosnian Muslim, Serb and Croat ethnicity have taken place in Bosnia since the end of the war. Around 60 of these are ongoing.

According to the Rules of the Road agreement - which was signed in the wake of the 1995 Dayton Peace Agreement that ended the war in Bosnia - Hague investigators were required to review each case before a local prosecutor was allowed to issue an indictment and arrest suspects. The tribunal's office of the prosecutor received criminal files against nearly 6,000 war crimes suspects - but only around 850 or so of these were considered legally fit for trial.

Over the years, some 600 indictments were approved under the agreement, which expired on October 1, after which its powers reverted to the WCC. The vast majority of charges were issued in the Federation - only a handful in RS.

Domestic war crimes proceedings to date have been heavily criticised by international observers.

A recent report by Human Rights Watch, HRW, titled Justice At Risk, looked at war crimes prosecutions in the countries of the former Yugoslavia and pointed out several areas for concern. It noted that ethnic bias, poor case preparation, and a lack of cooperation from local police forces and between the neighbouring states was hampering war crimes justice in the Balkans.

The report highlighted the recent trials of Bosnian Croat Dominik Ilijasevic and Bosnian Serb Tomo Mihajlovic as being marked by a number of irregularities. In the former, prosecutors did not present any evidence supporting the charges against the defendant. And in both cases, HRW found that investigative judges had altered the phrasing of witness testimony - a practise that went unchallenged because of the poor education level of those who had given statements.

In spite of these well-documented problems with the local judiciary and legal system, the tribunal altered its statute this year to allow lower- and middle-ranking cases investigated by its prosecutor to be transferred to the Balkans for trial. Rule 11 bis of the tribunal's Rules of Procedure and Evidence was amended on July 28, 2004 to facilitate this process. Under this provision, the president of the court may appoint a trial chamber for the purposes of referring a case to the authorities of a state in whose territory the crime was committed, in which the accused was arrested, or which has jurisdiction and is willing and able to accept the case.

However, in order to do so, the tribunal must be satisfied that the defendant will receive a fair trial and that the death penalty will not be imposed.

With the tribunal eager to reduce its caseload, there is real pressure on the regional war crimes chambers - in Croatia and Serbia as well as in Bosnia - to get their work off to a good start and maintain the standards of global justice pioneered in Holland. If this does not happen, Hague insiders worry privately that the image and legacy of the tribunal will be damaged.

The WCC will have the power to carry out its own investigations and issue indictments, but initially it will deal with cases originated by the tribunal's Office of The Prosecutor, OTP, and transferred to the Bosnian court by a Hague trial chamber.

Observers believe that the first trial to be transferred in this manner will be that of Zeljko Meakic, Momcilo Gruban, Dusan Fustar, Predrag Banovic and Dusko Knezevic, who are accused of crimes against humanity and violations of the laws and customs of war. These middle-ranking Bosnian Serb indictees have been charged with one count of persecutions, two counts of murder and two of inhumane acts and cruel treatment relating to the treatment of Bosnian Muslim and Croat civilians in the Omarska and Keraterm detention camps set up in the Prijedor municipality in 1992.

Tribunal chief prosecutor Carla Del Ponte made an official request for the transfer of this case on September 2, arguing that "Bosnia and Herzegovina would provide all necessary legal and technical conditions for fair trials", and a trial chamber has been assigned.

However, the chamber - headed by tribunal president Meron - voiced doubts about the WCC's readiness to take Hague cases, and asked prosecutors for more information about the progress made. "It is not obvious how a trial chamber could make [such a decision] before [the WCC] has even been established," Meron noted.

Nonetheless, Liam McDowall, the tribunal's outreach officer, told IWPR that the tribunal was keen to have cases identified and processed in time for the establishment of the Bosnian court, "In doing so, two issues must be taken into consideration. Firstly, there must be cast-iron guarantees that there will be a fair trial. And there have to be suitable facilities."

CHANGING THE LAW

The former concern has been addressed by the adoption of certain legal reforms designed to bring Bosnian law into line with international standards. This legislation was only passed recently after something of a fight, and there are still problems to sort out before it can be implemented.

Until recently, the Bosnian legal system had changed little from that used in the former Yugoslavia. Reforms were needed if the legislation was to be brought into line with the unique mix of common and civil law being used by the tribunal. This system, with its many elements from the common law system used in the United Kingdom and the United States, is not readily understood in the Balkans, and has caused confusion among local analysts and the general public alike. (See [A Tale of Two Systems](#) by Rachel S. Taylor)

Four bills vital to the establishment of the WCC were approved by the Bosnian state parliament's lower house in September 2004 - but only two of these were voted through by the upper chamber on September 30 after Bosnian Serb representatives refused to back the changes.

One of the stalled laws pertained to the smooth transfer to the WCC of both cases initiated by the tribunal and evidence gathered by its investigators. The other made provision for the establishment of a registry office - administrative body - in the new chamber, which would be headed by an international legal figure and staffed by many foreign officials, who would eventually hand over control of the office following a five-year transition period.

The close involvement of so many internationals had enraged Bosnian Serb politicians. "Unfortunately, representatives of the international community do not trust us and that is something that we must reconcile ourselves to," the Serb foreign minister of Bosnia, Mladen Ivanic, told IWPR.

A number of politicians and commentators in RS had also complained about the registry's jurisdiction over a second chamber in the Bosnian court - one which deals with economic and organised crime.

The failure to pass two of the four new laws was condemned by the tribunal and the OHR. Del Ponte and High Representative Paddy Ashdown issued a joint statement following a meeting on October 20, in which they called on the Bosnian parliament to pass the legislation without delay, warning that failure to do so would "severely undermine the fight to hold war criminals responsible" for their actions.

The remaining two laws were passed the following day - although with some differences in the wording of the version approved by the lower house, so some harmonisation will be needed before implementation.

The Bosnian presidency adopted the registry agreement on October 27, and subsequently ratified it. It's expected to be formally signed by the Bosnian presidency and the OHR before the end of November.

All procedures must be in place by the end of this year to allow the WCC to start its work on January 1, 2005.

Early indications are that there will be little obstructionism from the Bosnian Serb deputies who initially opposed the passage of the new legislation - although some in Banja Luka are concerned that there has been insufficient time for local legal professionals to get to grips with the new laws before the WCC begins operating.

Once the new laws have been implemented, they will give the WCC prosecutor Marinko Jurcevic the power to issue new indictments for war crimes.

In addition to this tranche of legislation, two other new laws have recently been passed by the Bosnian parliament. One brings Bosnian law into line with the European Convention on Human Rights - a relatively straightforward process as Sarajevo is already a signatory - and the other tackles the more complicated and controversial subject of witness protection.

PROTECTING WAR CRIMES WITNESSES

The process of appearing as a witness in a trial held in The Hague is a daunting and traumatic one for most Bosnians. In a country as small as Bosnia, the decision to appear in a domestic war crimes case is even more problematic, as little or no provision has been made to protect such people during and after they give testimony.

Until now, it has been impossible to punish anyone who reveals the identity of a protected witness in a Bosnian war crimes case. As a result, many potential witnesses have simply refused to testify for fear of being subsequently targeted, and the few who have chosen to take the stand haven't bothered to ask the authorities for protection.

The task of improving witness protection procedures has fallen to the State Investigation and Protection Agency, SIPA - equivalent to the FBI - which has taken on board recommendations from a series of local and international working groups on the subject. The WCC's registry will also include a victims and witness unit, which will liaise with SIPA.

The new reforms passed by the Bosnian parliament will also allow the courts to better protect those who choose to appear as witnesses. If so desired, their appearance can be disguised in the courtroom and pseudonyms used - much like the system in place in The Hague - and the judges will have greater powers to impose media restrictions on how the testimony of a protected witness is reported.

“Witness protection now must be respected as a rule of law, and the media has its own part to play in this,” said the Hague tribunal’s McDowall.

“However, a regional approach will be necessary,” he said, explaining that non-Bosnian media in the Balkans must not name a protected witness in their own countries, as the news is certain to filter back to Bosnia - with serious implications for the safety of the witness.

SPOTLIGHT ON THE MEDIA

Hague insiders and local analysts believe the media will play an important role in shaping public attitudes towards WCC. How the court and its proceedings are reported will determine how it is viewed in the region, with journalists acting as an indirect liaison between the court and the people it serves.

Judith Armatta of the Coalition for International Justice, who has been observing the war crimes proceedings against former Yugoslav president Slobodan Milosevic from the beginning, said, “Most people will not sit down to watch the court, and in any case most legal proceedings have to be interpreted, so a lot will depend on how the media plays it,” she said.

The media’s level of influence with regard to the WCC has raised the issue of responsible reporting, and with it concerns about the standard of professionalism among some of the region’s newspapers and broadcasters.

The situation in Bosnia is complicated by the differences between its two entities. There is a markedly different interpretation of the bloody events of the Nineties in the media of both, and this is reflected in how war crimes justice is reported.

The RS media has been traditionally hostile to the workings of the tribunal - where the conviction of Serb indictees has often been seen as a sort of “victor’s justice” - but the court has also been viewed with some suspicion in the Federation, and this is mirrored in the local media.

Srdjan Dizdarevic, president of the Helsinki Committee for Human Rights in Bosnia, said, “The media - especially the printed media - are generally speaking nationalist and are not objective. They represent a serious danger to the court and its work.”

INTERNATIONAL INPUT

The Hague tribunal’s McDowall told IWPR that foreign involvement in the WCC will help to counter media pressure, “In terms of perception of fair handling and ethnic bias, that’s why internationals have been brought on board initially, to try to diminish these concerns,” he said.

A spokesperson for the OHR told IWPR that the WCC’s registry is to have a public information and outreach section, similar to that operating in The Hague, which will provide information about the body to local and international media, and to the general population.

“This office will be responsible for disseminating information to media representatives, maintaining contact and cooperation with NGOs and other international institutions operating in similar fields,” he said. “And, most importantly, [it will offer] an effective level of outreach and support to those most affected by the creation of the WCC - the victims and their families.”

Dr Jan-Willem Honig, senior lecturer in war studies at King’s College in London, feels that the WCC will bring the issues home to Bosnia with more ease than the tribunal has been able to do. However, he warned that it will be a slow process.

“Because the crimes are still relatively recent, emotions are still high, and so [the WCC] will face a challenge,” he said. “But it will make the process more immediate and allow [the victims] to follow what’s going on.”

Bogdan Ivanisevic, a Belgrade-based investigator with Human Rights Watch, agrees.

“The Hague is not just a physical distance from where the crimes occurred and where the interested communities live, but is a mental distance also,” he said.

“However, Sarajevo is just a short physical distance from where Republika Srpska begins. While the Bosnian Serbs don’t see Sarajevo as ‘our town’, hopefully the media coverage will improve as newspapers and broadcasters are willing and able to cover the trials held in the [WCC]. This will in turn raise awareness of war crimes in RS and also in the Federation.

“While the Sarajevo court has this advantage over the Hague court, it will still be a challenge for the [WCC] to gain the trust of all ethnic groups and the majority of citizens in Bosnia and Herzegovina and Republika Srpska.

“But it will have international judges and prosecutors in place, and this may neutralise the distrust that may exist.”

Michael Johnson, formerly of the Hague tribunal prosecutor’s office and also one of the founders of the Rwanda war crimes court, has been appointed registrar designate and will be responsible for the running of the WCC. He is confident that international standards will be met and maintained by the new chamber.

“The registry is here to serve the judicial system of Bosnia and Herzegovina,” he told IWPR at a recent training seminar for Bosnian legal professionals held by the American Bar Association/Central European and Eurasian Legal Initiative in Sarajevo on October 14 and 15. “We are all confident that international standards can be met.”

In his speech, the WCC’s new registrar assured delegates that the involvement of the international community would not be permanent.

“This is a partnership in which the international community is in a support rather than a directive role,” he said. “This five-year project will be in the hands of Bosnian professionals by summer 2006 at the latest.”

CHANGING ATTITUDES

The involvement of the international community is being seen as vital in the struggle to convince the people of Bosnia that concerns about the fairness of the upcoming trials are unfounded.

The threat of ethnic bias - which has been a recurring problem in domestic war crimes trials held in neighbouring Serbia and Croatia - is not as big an issue in the Federation, where cases are heard by a multi-ethnic panel of judges, but lingering doubts about the partiality of the courts remain.

However, it is hoped that once Hague cases are transferred and are heard by a Sarajevo-based court, attitudes will slowly change.

In RS, the problems are more severe. The authorities in Banja Luka have issued small number of indictments and have yet to stage a war crimes trial.

Dr Honig of King's College noted that some very recent events - including an unprecedented apology from the RS government for the deaths of 7,800 people in the July 1995 Srebrenica massacre - had given hope for greater progress in the future.

"There has been a mellowing," he said. "Progress has been made and there is now a degree of cooperation. There is no longer a blanket denial of the past. [The WCC] can be a good thing, but it will be a tricky thing to pull off. We cannot immediately expect it to make giant steps. "

Human Rights Watch's Ivanisevic agrees, "There is an opportunity for these [WCC] trials to have an educational role [in society] and even have a cathartic effect, but it is not that simple.

"We have to remember the post Second World War experience in Germany. Even after the Nuremberg trials [established Nazi guilt], there was still a strong resistance in German society [to accepting responsibility], and this remained strong for a decade or two."

PRACTICAL CONCERNS

Another possible stumbling block for the WCC is the lack of suitable prison facilities.

Initial ambitious plans to build a state-of-the-art detention centre - costing around 20 million euro - were shelved late last year due to uncertainty over funding. And while there are a number of prisons in Sarajevo and its surrounding area, these were all deemed to be unsuitable even as a stopgap.

The housing of remanded suspects and convicted prisoners is a particularly sensitive issue in multi-ethnic Bosnia. For example, a Bosnian Muslim accused of crimes against Serbs could not be held in custody in a majority Serb prison, as his life might be in danger.

Ethnic issues aside, the Council of Europe had expressed doubts over the conditions in existing jails, which are well below European standards. It has long argued that for the construction of a new facility, in line with the prison reforms it has been recommending.

A temporary detention centre with 21 cells designed to hold only remanded WCC indictees and prisoners -

which has been funded by the justice ministries of the Bosnian state, the Federation and the RS - is now being built near the state court building in Sarajevo. Funding for a larger dedicated modern prison is now being sought from potential donors within the EU and the United States.

Chief prosecutor Jurcevic, speaking at the ABA-CEELI training seminar in October, told IWPR that he would like to see a separate donor conference held to attract funds for a new prison, as without such backing it would be difficult to raise enough money for a very high quality facility.

In spite of these continued concerns, the mood in Sarajevo and in The Hague is largely upbeat.

“What is needed will be a fresh approach to the judiciary so that it acts in the interests of society and not simply certain self-interested groups,” said McDowall. “There are still serious challenges, but we are still aiming for the January 1 kick-off.”

PROSPECTS FOR RECONCILIATION

Many believe the establishment of the WCC is an important step towards reconciliation, as it is argued that this process will not truly get under way until greater numbers of the country’s suspected war criminals are brought to justice.

“If you have been victimised, you want to see the guy who was responsible in court - you do not want to see that person still walking the streets. There certainly will not be any significant reconciliation in the region until people feel that justice has been done,” said Armatta of the Coalition for International Justice.

It is hoped that more prosecutions, conducted scrupulously and fairly, will chisel away at the wall of denial that prevents some sections of Bosnian society - particularly the Serbs - from coming to terms with the past.

Amor Masovic, president of the Commission for Tracing Missing Persons and a member of the Party of Democratic Action, said, “A considerable part of the Bosnian public is not ready to face the truth and admit that crimes were committed.”

Dizdarevic of the Helsinki Committee for Human Rights, said, “The court will face strong pressure from nationalists from all three [ethnic groups] who insist that they were the victims; that they fought to protect their [people] and that in a defensive war there are no war crimes.”

Barisa Colak, president of the ruling Croatian Democratic Union in Bosnia, admits that winning people over will be hard, but will ultimately pay dividends.

“We have to deal with something that was very hard for us,” he said. “The wounds are still fresh and time is needed to heal them. If we successfully finish the trials of crimes committed by all peoples then this will help the final reconciliation process.”

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For more details about IWPR's new Bosnian war crimes reporting project, please contact IWPR's programme manager in Bosnia and Herzegovina, [Nerma Jelacic](#).

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