

Pocar: Extension to Tribunal Mandate Likely

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But experts say some UN Security Council members want the court closed and may obstruct extension. The outgoing Hague tribunal president has told IWPR that's he believes United Nations Security Council will allow the court to remain open until all cases are complete, but some observers remain unconvinced.

Speaking to IWPR in the final days of his term as president of the International Tribunal for the former Yugoslavia, ICTY, Judge Fausto Pocar – who handed over to Jamaican judge Patrick Robinson on November 17 – said he expected an extension to be granted to the court, which is set to close its doors in two years' time.

"It is clearly not feasible that all [remaining] cases will be completed by the end of 2009 and, as they will be mid-trial, it is unlikely that the Security Council will not allow judges to complete them," he said.

"Nobody could do that without exposing themselves to criticism from the broader international community. Stopping a case in the middle of trial cannot be done, that's my assessment."

However, tribunal watchers warn against assuming the court will be allowed to continue, saying that divisions among council members make its behaviour hard to predict.

Under a completion strategy authorised by the council – which appears to have ignored repeated calls from the tribunal's president to lengthen its mandate – all first-instance trials are to be completed by the end of this year and all appeals procedures by 2010.

However, Pocar pointed out last week that a recent decision to extend the contracts of judges could pave the way for prolonging the court's lifespan.

On September 29, the Security Council passed a resolution to extend permanent and temporary judges' contracts "until 31 December 2009 or [until] the completion of cases to which they were assigned, if sooner".

Pocar said that in passing this resolution, the council appears to have accepted that the 2008 completion target will not be met – meaning the court could be given an extension later on.

"If the Security Council was committed to the idea that all trials will finish in 2008, there was no reason to extend [the contracts of] trial judges until the end of 2009," he said. "The fact that the principle has been accepted – that judges must be extended to allow them to complete their current trials – opens the way to a further extension [to their contracts] in the future."

Five trials of suspects already in custody at the Hague court are yet to start, including that of the former Bosnian Serb president Radovan Karadzic who was arrested in July after 13 years on the run. The prosecution of former senior Serb police officer Vlastimir Djordjevic, and the joint trial of former Bosnian Serb interior minister Mico Stanisic and ex-Bosnian Serb police commander Stojan Zupljanin are also yet to

begin. There is also the pending case of the former Bosnian Serb army general Zdravko Tolimir.

Pocar confirmed this week that he intended to start all remaining trials in the first half of 2009, meaning they would not be complete by the end of that year, when judges' contracts are due to expire. He said he expected that additional time would be given for them to be completed.

"It appears to me clear that at [the] end of 2009 if trials are not finished, as they will not be finished, there is an opening for another extension [to judges' contracts] until they are completed," he said.

In addition to those suspects awaiting trial, there are two war crimes suspects indicted by the tribunal who continue to evade arrest. The former Bosnian Serb military commander, Ratko Mladic, and the Croatian Serb leader, Goran Hadzic, remain at large almost 13 years after the end of the Yugoslav wars.

Mladic is charged with genocide in relation to the 1995 massacre of nearly 8,000 Muslim men and boys at Srebrenica. According to media reports last week, Serbian police conducted an unsuccessful raid on a factory in the town of Valjevo, in the west of Serbia, in an effort to arrest him.

As things stand, even if Mladic is arrested, judges' current contracts would likely expire before he could be tried.

Pocar, nevertheless, remains optimistic about bringing the former general to justice.

"If [Mladic] is arrested tomorrow, I might be confident that the trial may start in 2009. If the arrest comes [in] mid-2009, probably the trial would not start before 2010," he said.

While he acknowledged that some Security Council members would like to see the court closed sooner than others, he was confident that all would see the importance of trying Mladic at the ICTY.

"I believe that even those who are against extending the mandate of the ICTY accept that a person like Mladic has to be tried by an international court," he said.

Luka Misetic, a defence lawyer at the ICTY, is also confident that the tribunal will be allowed to finish its work.

"I suspect at the end of the day, everyone will be on board with the fact that these trials need to be completed," he said.

"I just think in its supervisory role, the Security Council wishes to ensure that everybody abides by and has a sense of urgency in terms of completing these cases."

Yet its apparent reluctance to extend the court's term at this stage has prompted speculation about the levels of commitment of some council members to completing all ICTY trials.

Some tribunal observers say that divisions within the council make its intentions towards the court hard to fathom.

Goran Sluiter, professor of international law at Amsterdam University, warned against over-confidence on the part of the tribunal.

"It is not a wise strategy to be too self-assured like [Judge] Pocar," he said. "The Security Council is very unpredictable and difficult right now."

Some say that Russia is reluctant to extend the life of the tribunal and is holding the Security Council back from sanctioning an extension to the court's timeframe.

"The Russians...have serious problems with the ICTY and want it to close today rather than tomorrow," said Sluiter.

Commenting on the arrest of Karadzic in July this year, the Russian foreign minister Sergey Lavrov said, "I hope that, anyway, the tribunal [for the former Yugoslavia] will finish its work by the date fixed by the UN Security Council. We need to shift from ad-hoc, temporary judicial bodies to work on a universal basis, on the basis of judicial procedures that are devised through international conventions."

A spokesperson for the Russian foreign ministry confirmed this week that this remains the view of Lavrov's office.

Others say that Russian resistance is less of an obstacle to keeping the court open than wrangling between Europe and the United States.

"It's true that Russia has never been too keen on [the ICTY] but I don't think that's a decisive factor," said David Chandler, a professor of international relations at Westminster University.

Instead, he cited "internal divisions between American and European powers" which exist over affairs in the Balkans.

"Particularly, the Americans are saying, 'Well [the ICTY's] done its job and the longer it goes on, it's not really serving much of a useful purpose.'" he said.

However, US support for international criminal justice was emphasised by the legal adviser to the US Secretary of State John B Bellinger III, who hinted that it was committed to supporting an extension of the ICTY'S mandate.

"Given that the delay is due in part to the recent capture of fugitives, it will be necessary to make some reasonable accommodation," he said in a November 14 address at the Fletcher School of Law and

Diplomacy in Massachusetts.

Bellinger also informed his audience that the US was considering ways in which the ICTY and the International Tribunal for Rwanda, ICTR, could remain open in a reduced form to try fugitives as they are arrested.

“We are now working in New York with other members of the Security Council to define which functions will be assigned to the residual mechanism [or mechanisms] that will handle certain limited matters once the tribunals have completed their current work,” he said.

“The United States would like to see a mechanism with a limited mandate, but also with the capacity to ramp up and handle trials of Mladic and [Rwandan businessman and war crimes fugitive Felicien] Kabuga if they are not apprehended and tried before the tribunals’ operations cease.”

Last week, Pocar repeated his call for such a mechanism to remain in place to deal with the prosecution of fugitives caught after the ICTY closes.

IWPR understands that there are preparations for such a mechanism underway.

According to UN sources, on October 22, the Security Council was briefed about an assessment visit to the Hague court in September to gauge the requirements of a residual judicial body. Factors such as the tribunal’s archives, cost effectiveness and its capacity to try the remaining fugitives are being considered, said the source.

However, some observers say that retaining a smaller court in the hope that remaining fugitives are one day arrested may not be efficient.

“You don’t know if and when these people are arrested, so you would have [staff] staying there and doing nothing at this tribunal,” said Sluiter.

He expressed doubt as to whether a court operating on a limited basis would be able to conduct a trial efficiently. Such a residual court would also have little sway in pressuring states to hand over remaining suspects, he added

As an alternative, Sluiter recommended mandating a neutral state with the capacity to try any remaining fugitives.

“It can be more effective to put the burden on a state and also a state with some influence, maybe a state like France or Germany, big states that might be much more effective,” he said.

Transferring suspects to an impartial country would also mean avoiding incurring the large financial cost of keeping part of the ICTY open, argued Sluiter.

However, Pocar pointed out that some kind of residual tribunal would be needed for some years to review cases and deal with any contempt of court proceedings arising after the court's closure.

Simon Jennings is an IWPR reporter in The Hague.

Location: Balkans
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