

UN Resists Pressure to Extend Hague Court's Term

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While Security Council agrees to extend judges' contracts, it drags heels over prolonging Yugoslav tribunal's mandate.

The United Nations Security Council is resisting calls to let the Hague tribunal continue its work beyond 2010, agreeing only to allow temporary judges to remain 'till the end of next year.

According to a resolution of September 29, the Security Council extended the contracts of 27 ad-litem or temporary judges at the Hague court "until 31 December 2009 or [until] the completion of cases to which they were assigned, if sooner".

This resolution came after tribunal president Fausto Pocar sent two letters to the Security Council on June 5 and September 1, in which he asked for extensions to the contracts of the temporary judges - which were set to run out in August 2009.

The president has also made repeated calls for the Security Council to ensure that the court remains open beyond 2010 in order to try all its indicted suspects. Under Security Council resolutions passed in 2003 and 2004, a completion strategy dictates that all Hague trials must finish by the end of this year, and all appeals by 2010.

However, while the Security Council has agreed to retain the judges, who were drafted in to aid the court's ten permanent judges, it has so far failed to respond to requests to push back the tribunal's looming deadline.

Lawyers at the tribunal say that even with these extra judges there to ease the court's workload, this tight deadline will not allow pending cases to be heard thoroughly. They argue that judges cannot simultaneously represent the interests of justice, which takes time, while meeting the Security Council's demands for expeditiousness.

Most notably this applies to the former Bosnian Serb president Radovan Karadzic, who was only arrested in July this year. The office of the prosecutor, OTP, submitted proposed amendments to Karadzic's indictment on September 22. It intends to charge him on 11 counts of war crimes and crimes against humanity in Bosnia between 1991 and 1995, including two counts of genocide.

While judges are yet to confirm the proposed amendments, observers say Karadzic is likely to need at least a year to prepare his defence, considering the complexity of the charges he is facing.

Michael Karnavas, a defence lawyer at the tribunal, told IWPR that it would be "mind-boggling" to envisage Karadzic being able to prepare his defence case in fewer than 12 months.

"I cannot think, when you look at the indictment and you look at the scope of it and the complexity of it, how anybody can prepare with a team of lawyers, not just a couple of lawyers, with a team of lawyers in less than a year," he said.

“I would say, in actuality, this is a case where you need a year and a half to two years to prepare.”

Karnavas points out that if Karadzic is to receive a fair trial, it is vital that he is allowed the same amount of time to prepare his defence as other suspects have been given. As a comparison, the indictment of former Bosnian Serb assembly speaker Momcilo Krajisnik, which included similar, but more limited, charges than that of Karadzic, was finalised on March 7, 2002, and the trial did not start until February 2004. Momcilo Perisic, who served as chief of the Yugoslav army between 1993 and 1998, was taken into tribunal custody at the beginning of 2005 and his case has just got underway three and a half years later.

The lawyer insists that in the interest of a fair trial, the tribunal must guard against different defendants receiving different treatment as the court seeks to speed up trials to meet the Security Council deadline.

“Otherwise, what we’re saying is if you came earlier in a process you get a fair trial but now since you’re coming in towards the end you’re not going to get a fair trial,” he said.

The Security Council has called on the tribunal “to take all possible measures” to meet the completion deadline. Tribunal judges, who are responsible for setting the start date for trials, have certain strategies at their disposal to speed them up, including limiting the number of witnesses as well as the court time allotted for testimony.

Yet tribunal spokesperson Nerma Jelacic told IWPR that any decisions or procedures designed to speed up trials will in no way compromise the rights of the accused to a fair trial.

“Whereas the [tribunal has]streamlined a number of procedures in order to be able to speed up the pre-trial and trial proceedings it is always stressed that this is done without any jeopardy or threat to the fairness of the trial, especially bearing in mind the rights of the defendant,” said Jelacic.

Meanwhile, the court has played down the significance of the 2008 and 2010 deadlines, describing them as guidelines based on the suspects that were in the tribunal’s custody when they were made four years ago. The court’s founding statute puts no time limit on prosecuting indictees.

“These dates were only ever seen and used as indicators bearing in mind the number of accused in custody at the time,” Jelacic told IWPR.

“The latest resolution [which allows judges to stay on until the end of 2009] indicates that the Security Council also accepts that 2008 is not the year in which we will complete first instance trials.”

According to Jelacic, there is an ongoing discussion on the tribunal’s completion strategy.

“The dialogue about the completion strategy and with it the mandates and the staff of the tribunal is ongoing beyond this [September 29] resolution through the [UN] working group on ad hoc tribunals among others,” she said.

A spokesperson for the UN Secretary General said that the completion dates currently in place leave some room for manoeuvre.

“If the Security Council reviews the case and deems more time is necessary, they could always grant more time,” Farhan Haq told IWPR.

According to UN sources, the tribunal has yet to formally ask for an extension to the 2008 and 2010 completion targets, a claim Jelacic denies.

“The tribunal has made it clear, in at least the last five reports to the UN, that these dates are not realistic any more,” she told IWPR. “The tribunal's president has been explicit.”

In recent addresses to the UN, Pocar seems to have made his position clear.

“The international tribunal shall not close its doors before all of those fugitives are tried and the Security Council should make clear that the trial of these fugitives by the international community does not hinge upon the international tribunal's proposed completion strategy dates,” he told the Security Council on June 4 this year.

Then, in an address to the UN General Assembly on October 13, the president told assembled members states that the late arrest of suspects “will inevitably lead to slippages in the scheduled end of [tribunal] proceedings”.

The remaining workload at the court suggests that some extension will be necessary.

In his letter of September 1, Pocar forecast that the Perisic trial, which commenced October 2, is expected to last until October 2010 – ten months beyond the extensions of judges’ terms which the Security Council has just issued.

Other trials which have not even begun yet include those of Vlastimir Djordjevic, a former senior Serb police officer charged with war crimes in Kosovo; the joint trial of former Bosnian Serb interior minister Mico Stanasic and ex-Bosnian Serb police commander Stojan Zupljanin; as well as that of the former Bosnian Serb army general Zdravko Tolimir. Meanwhile, the trial of Jovica Stanasic and Franko Simatovic – both former high-level officials in the Serbian secret service – has been suspended indefinitely pending an improvement in Stanasic’s health.

In addition to this, two war crimes suspects indicted by the tribunal also remain at large. Ex-Bosnian Serb military commander Ratko Mladic and former Croatian Serb leader Goran Hadzic continue to evade arrest, and there is uncertainty over whether the Security Council will allow the tribunal to remain open long enough to try them if they are ever caught.

Professor Robert Donia, an historian and expert on the Hague tribunal, said the Security Council must make a provision so the remaining accused can still be arrested after the completion of trials at the court.

“The council should provide for a vestigial tribunal with the personnel and resources to try Hadzic and Mladic,” he said.

“It would be a great disservice to the cause of international justice if the tribunal must rush recklessly to judgement in the interests of ‘judicial economy’ and allow high-profile indictees to remain on the lam with impunity.”

He acknowledged that there had been a positive side to the firm completion strategy at the tribunal which, he said, had resulted in a more focused approach from parties in the courtroom and increased the efficiency of trials.

“Deadlines have brought greater discipline to the proceedings, forced prosecutors to present their cases more efficiently, as in the revised Karadzic indictment, and led defence attorneys to abandon some political grandstanding to focus on more relevant questions of guilt and innocence,” he told IWPR.

However, he added that not allowing the proper passage of justice to run its course could jeopardise the validity of judgements handed down at the tribunal.

“Deadlines will ultimately come to threaten the integrity of judicial outcomes if the UN Security Council does not adapt to the tribunal’s needs and provide for limited extensions or exceptions if requested by the chambers’ judges,” he said.

For Karnavas, it is not just the credibility of the Hague court that is at stake if trials are rushed and fugitives are never prosecuted, but also the future of international justice. As the International Criminal Court, ICC, in The Hague prepares to begin its first trials and another ad hoc tribunal, the Special Tribunal for Lebanon, is planned, he said it is vital that judicial procedure does not fall short.

“If the international community takes a step back and says that when it comes to certain persons or when it comes to a completion strategy we are willing to do less than what is required, then how can you possibly ask countries to associate themselves and to cooperate with the ICC or any future ad hoc tribunals?” he asked.

State cooperation is seen as central to the work of international courts, and in the case of the tribunal, a lack of it has often been an obstacle to capturing indicted war crimes suspects. While Mladic and Hadzic, and until recently Karadzic, have continued to evade arrest, both the current and former chief prosecutors have consistently asked for Serbia’s cooperation to help bring them to justice in The Hague.

“In order to succeed in fulfilling our mandate, we still rely heavily on cooperation from the states of the former Yugoslavia,” Chief Prosecutor Serge Brammertz told the Security Council earlier this year.

According to Karnavas, in order to secure the cooperation of these states, it is necessary that due process is seen to be followed.

“The least that you can possibly do from the tribunal’s point of view is give [suspects] a fair trial because the governments are saying, ‘we are willing to cooperate, we’re willing to help, we are encouraging our citizens, if they are accused, to come forward’,” he said.

“But in exchange, there’s a quid pro quo, the exchange is you are going to give them a fair trial.”

Marko Hoare, a Balkans specialist at Kingston University in London, told IWPR that the Security Council must extend the term of the tribunal to ensure the remaining trials are fair.

“[The Security Council] should extend it on a reasonable basis,” said Hoare. “Ultimately, [the work of the court] should take as long as justice takes.”

He suggested that the Security Council was not keen on keeping the tribunal going any longer than necessary, adding that the international community’s wider geo-political concerns were higher on its agenda, particularly the European Union’s goal of incorporating Serbia.

“Most of the western powers would like to bring Serbia into the EU and into NATO,” said Hoare. “So there [are] reasons why no one wants to have this dragged out.”

As things stand, of all the 27 EU member states, only the Netherlands – with the backing of Belgium – insists on the arrest of Serbia’s remaining fugitives before furthering its European integration.

Hoare says that from a global political perspective, the tribunal appears to have achieved its goals.

“It’s served its purpose,” he said. “The purpose was to diffuse international anger at what went on in Bosnia and it has to some extent succeeded in that task.”

But a spokesperson for the office of the UN Secretary General Yves Sorokobi dismissed the suggestion the court was no longer a priority for the international community.

“The tribunal is not an experimental initiative. This is something the world community really feels strongly about,” said Sorokobi. “The council has always done what’s right by the tribunal [and] has been extremely supportive of [it].”

Despite the Security Council’s seeming reluctance to agree to keep the court open beyond 2010, the UN Secretary General’s office offered some reassurance regarding its future.

“It’s highly unlikely that the council will proceed to terminate the mandate of an institution that is doing such major work in the face of mounting evidence that that institution may require more time,” said Sorokobi.

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