

## TRIBUNAL IN HAGUE

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### THE TRIBUNAL IS BUSIER THAN EVER

Following the death of Slobodan Milošević, the International Criminal Tribunal for the former Yugoslavia found itself in the spotlight again. Negative publicity generated by opponents of the ICTY and some sensationalist media coverage caused many to ask what will become of the Tribunal in the future. Some have even suggested that with the passing of one of its most prominent accused, the ICTY has lost its purpose.

Nothing could be further from the truth.

The 13th year of the Tribunal's existence has become its busiest. For the first time in its history, the Tribunal is holding trials against 24 accused concurrently for crimes committed throughout the former Yugoslavia – in Croatia, Bosnia and Herzegovina, as well as Kosovo. The persons currently on trial include the former president of Serbia, the former Chief of the Yugoslav Army General Staff, the former President and Prime Minister of the Bosnian Croat war-time entity Herceg Bosna, and a number of other high ranking politicians and military personnel alleged to have committed war crimes.

At the same time, cases against 14 individuals are currently on appeal while the cases against another 20 high-ranking accused are in pre-trial, including those against Vojislav Šešelj, former Deputy Prime Minister of Serbia, Ante Gotovina, former "Operation Storm" commander, Ramush Haradinaj, one of the most senior leaders of the Kosovo Liberation Army, as well as Jovica Stanišić and Franko Simatović, the former Head and high-ranking member of the Serbian State Security Service, respectively.

Proceedings against 93 persons have concluded to date and 18 of them have already served their sentences.

Six accused, including Ratko Mladić and Radovan Karadžić, are still at large.

Milutinović et al. case

The trial of against Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić, the Milutinović et al. case began on Monday, 10 July, before Judge Iain Bonomy (presiding), Judge Ali Nawaz Chowhan, Judge Tsvetana Kamenova and Judge Janet Nosworthy (ad litem reserve Judge).

The charges against the six former high-level political and military leaders of Serbia and the Federal Republic of Yugoslavia (FRY), all former associates of former Yugoslav leader Slobodan Milošević, focus on an alleged campaign of terror and violence directed against Kosovo Albanians and other non-Serbs living in Kosovo during 1999. The crimes with which they are charged include deportation, forcible transfer, murder and persecutions of thousands of Kosovo Albanians.

The indictment alleges that the accused participated in a joint criminal enterprise (JCE), the purpose of which was, among other things, to modify the ethnic balance in Kosovo to ensure continued Serb control over the province. Milan Milutinović was the President of Serbia and a member of the Supreme Defence Council of the Federal Republic of Yugoslavia (FRY); Nikola Šainović was the FRY Deputy Prime Minister; Dragoljub Ojdanić was the Chief of the General Staff of the Yugoslav Army (VJ) and later the Minister of Defence of the FRY; Nebojša Pavković was the Commander of the Third Army of the VJ and later Chief of the General Staff of the VJ; Vladimir Lazarević held the positions of Chief of Staff of the Priština Corps of the VJ, Commander of the Priština Corps, Chief of Staff of the Third Army of the VJ and Commander of the Third Army of the VJ, in succession; and Sreten Lukić held the positions of Head of the Serbian Ministry of Internal Affairs (MUP) Staff for Kosovo & Metohija, Assistant Chief of the Public Security Service (RJB) and the Chief of Border Administration of the Border Police in the MUP and Assistant Minister and Chief of the RJB.

The accused and other members of the joint criminal enterprise, used the powers available to them as political and military leaders to achieve the purpose of the JCE by criminal means consisting of a widespread or systematic campaign of terror and violence directed at the Kosovo Albanian population. According to the indictment approximately 800,000 Kosovo Albanian civilians were deported.

The prosecution asserts that throughout Kosovo, forces of Serbia and the FRY systematically shelled

towns and villages, burned homes and farms, damaged and destroyed Kosovo Albanian cultural and religious institutions, murdered Kosovo Albanian civilians and other persons taking no active part in the hostilities, and sexually assaulted Kosovo Albanian women.

#### Milan Martić case

The trial against Milan Martić, the former high-level leader of the Serb wartime entity in Croatia, began on 13 December 2005 before Judge Bakone Justice Moloto (presiding), Judge Janet Nosworthy and Judge Frank Höpfel. The prosecution concluded the presentation of its case on 19 June 2006 and the Defence began presenting its evidence on 11 July 2006.

Milan Martić is charged with the extermination or murder of hundreds of Croat, Muslim and other non-Serb civilians in large areas of Croatia and Bosnia and Herzegovina, in the period between August 1991 and December 1995. He is also charged with persecutions, imprisonment, torture, inhumane acts, cruel treatment, deportation, forcible transfer, plunder of public or private property, wanton destruction and unlawful attacks on civilians allegedly committed in the same period.

The indictment alleges that, from 4 January 1991 until August 1995, Milan Martić held various leadership positions in the so-called Serbian Autonomous District (SAO) Krajina, which was later re-named the Republic of Serbian Krajina (RSK) and that, as such, he participated in a joint criminal enterprise. The indictment further alleges that the purpose of this joint criminal enterprise was the forcible removal of a majority of the Croat, Muslim and other non-Serb population from approximately one-third of the territory of the Republic of Croatia and large parts of the Republic of Bosnia and Herzegovina, in order to make them part of a new Serb-dominated state through the commission of crimes. These territories included the SAO Krajina and the city of Zagreb in northern Croatia, and the Autonomous Region of Krajina (ARK) in northern Bosnia and Herzegovina, in particular in Bosanski Novi, Bosanska Gradiška, Prnjavor, and Šipovo.

#### Prlić et al. case

The trial against Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić began on 26 April 2006 before Judge Jean-Claude Antonetti (presiding), Judge Árpád Prandler, Judge Stefan Trechsel and Judge Antoine Kesia-Mbe Mindua (ad litem reserve Judge).

The charges against the six high-level leaders of the Bosnian Croat wartime entity focus on ethnic cleansing of Bosnian Muslims and other non-Croats during 1992-1994 from areas in the territory of the Republic of Bosnia and Herzegovina, which were claimed to be part of the so-called Herceg-Bosna, declared as a political and territorial entity in November 1991. The charges include murder, rape, sexual assault, destruction of property, imprisonment, deportation and forcible transfer. The indictment concentrates on crimes committed in the municipalities of Prozor, Gornji Vakuf, Jablanica, Mostar, Ljubuški, Stolac, Čapljina and Vareš.

The indictment states that the six accused participated in a joint criminal enterprise to politically and militarily subjugate, permanently remove and ethnically cleanse Bosnian Muslims and other non-Croats who lived in areas on the territory of the Republic of Bosnia and Herzegovina which were claimed to be part of the Croatian Community (and later Republic) of Herceg-Bosna, and to join these areas as part of a "Greater Croatia". According to the indictment, as president, and later prime minister, of the Herceg-Bosna/HVO, Jadranko Prlić was the most powerful official, other than Mate Boban, in the Herceg-Bosna/HVO political and governmental structure. Bruno Stojić was the top political and management official in charge of the HVO armed forces. Slobodan Praljak served simultaneously as a senior Croatian Army officer, Assistant Minister of Defence and senior representative of the Croatian Ministry of Defence to the Herceg-Bosna/HVO government and armed forces, playing an important role in securing weapons and ammunition for the HVO army. Milivoj Petković, in his various positions and functions, exercised de jure and/or de facto command and control over the Herceg-Bosna/HVO armed forces. Valentin Ćorić played a key role in the establishment, administration and operation of the HVO Military Police. Berislav Pušić was president of the commission taking charge of all HVO prison and detention facilities holding prisoners of war and detainees.

The indictment alleges that in addition to the six accused, the joint criminal enterprise included Franjo Tuđman, Gojko Šušak, Janko Bobetko, Mate Boban, Dario Kordić, Tihomir Blaškić, Mladen Naletilić and various members and officials of the HVO, among others.

As part of the ethnic cleansing, the six accused are accused of use of force, intimidation and terror by conducting mass arrests of Bosnian Muslims who were then either murdered, beaten, sexually assaulted, robbed of their property and otherwise abused. In attacks on Muslim towns, villages and areas, there was systematic shelling and snipping of civilians. Personal property including houses and cars were taken over by the HVO. Property owned by Muslim civilians was destroyed ensuring there would be no return of

the population. Prisons and detention units were set up in order to detain Bosnian Muslims, including the elderly, women and children. They were often kept in horrible conditions and deprived of basic human necessities, such as adequate food, water and medical care. Many of these detainees were then "released" only to be transferred or deported, forced to sign over property to the HVO. Many detainees were also subjected to forced labour, digging trenches, assisting in the building of military fortifications or retrieving dead bodies in dangerous combat situations.

#### Popović et al. case

The trial of seven senior Bosnian Serb military and police officers facing charges for crimes committed in Srebrenica commenced on 14 July 2006 before Judge Carmel Agius (presiding), Judge O-Gon Kwon, Judge Kimberly Prost and Judge Ole Bjørn Støle (ad litem reserve Judge).

Charges against Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin and Vinko Pandurević, include genocide, conspiracy to commit genocide, extermination, murder, persecutions, forcible transfer and deportation. Zdravko Tolimir is also charged with these crimes but is currently still at large. Radivoje Miletić and Milan Gvero are indicted for murder, persecutions, forcible transfer and deportation. All these charges relate to the mass murder and ethnic cleansing of Bosnian Muslims from Srebrenica after the fall of the former UN safe haven to Bosnian Serb forces in July 1995.

The indictment alleges that, following the Bosnian Serb take-over of Srebrenica, thousands of Bosnian Muslims, including women, children, and some men, fled, seeking protection, to the UN base in Potočari, just north of Srebrenica. At the same time, approximately 15,000 Bosnian Muslims fled the enclave through the woods in a separate column towards the government-held city of Tuzla. Approximately one third of this group consisted of armed Bosnian Muslim military personnel. The rest were civilians and unarmed military personnel.

The indictment states Ratko Mladić, Commander of the Bosnian Serb Army, and members of his staff developed a plan to murder the hundreds of men within the crowd of Muslims in Potočari. The large scale systematic murder of Muslim men from Srebrenica began on the morning of 13 July at approximately 11.00 a.m. and continued through July 1995. At the same time, the Bosnian Serb military and police forces transported thousands of Bosnian women, children and elderly men out of the area. The Bosnian Serb forces continued killing the captured Bosnian Muslim men from the Srebrenica enclave through July and August.

The indictment also states that from about 1 August 1995 through about 1 November 1995, Bosnian Serb Army and police personnel including Vujadin Popović, Drago Nikolić and Vinko Pandurević participated in an organised and comprehensive effort to conceal the killings and executions by reburying bodies exhumed from initial mass graves to secondary graves.

#### Mrkšić et al. case

The trial of Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin charged with crimes committed after the fall of Vukovar in eastern Croatia in 1991 commenced on Tuesday, 11 October 2005 before Judge Kevin Parker (presiding), Judge Christine Van Den Wyngaert and Judge Krister Thelin. The charges against the three former officers of the Yugoslav People's Army focus on their alleged involvement in the mass murder of at least 264 non-Serbs held captive in the Vukovar Hospital, and their subsequent burial in a mass grave at the Ovčara farm near Vukovar.

The indictment alleges that, in late August 1991, the Yugoslav People's Army (JNA) laid siege to the city of Vukovar. The siege continued until 18 November 1991 when the city fell to Serb forces. During the course of the three-month siege, the city was largely destroyed by JNA shelling and hundreds of persons were killed. After Serb forces occupied the city, the hundreds more non-Serbs were killed by Serb forces. The overwhelming majority of the remaining non-Serb population of the city was expelled within days of the fall of Vukovar. In the last days of the siege, several hundred people sought refuge at the Vukovar Hospital in the hope that it would be evacuated in the presence of international observers.

According to the indictment, Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin participated in a joint criminal enterprise. The purpose of the JCE was the persecution of Croats or other non-Serbs who were present at Vukovar Hospital after the fall of the city, through the commission of murder, torture, cruel treatment, extermination and inhumane acts.

It is further alleged that on 20 November 1991, JNA soldiers removed about 400 non-Serbs from the Vukovar Hospital. Miroslav Radić and Veselin Šljivančanin personally participated in the selection of detainees who were to be loaded on buses. The buses left the hospital and proceeded to the JNA barracks where Serb forces comprised of the Territorial Defence ("TO"), volunteer and paramilitary soldiers humiliated and threatened detainees. Some detainees were removed from the buses and beaten

in the presence of members of the JNA. The detainees were then transported to a farm building in Ovčara, located about 4 kilometres south of Vukovar, where soldiers beat them. Soldiers then transported their non-Serb captives in groups of about 10 to 20 to a ravine in the direction of Grabovo, a village about 3 km south-east of Ovčara, where they killed at least 264 Croats and other non-Serbs from Vukovar Hospital. After the killings, the bodies of the victims were buried by bulldozer in a mass grave at the same location.

The prosecution concluded the presentation of its case on 23 June 2006 and the defence is currently presenting its evidence.

#### Momčilo Krajišnik case

The trial of Momčilo Krajišnik, former Bosnian Serb political leader, commenced on 3 February 2004 before Judge Alphons Orié (presiding), Judge Joaquín Martín Canivell, and Judge Claude Hanoteau. From 29 until 31 August 2006, the parties presented their closing arguments. The Trial Chamber is currently deliberating the judgement.

Momčilo Krajišnik is charged with genocide, persecutions on political, racial and religious grounds, extermination, murder, deportation and inhumane acts committed against the Bosnian Muslim, Bosnian Croat and other non-Serb populations of the following municipalities in Bosnia and Herzegovina: Banja Luka, Bijeljina, Bileća, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bratunac, Brčko, Čajniče, Čelinac, Doboј, Donji Vakuf, Foča, Gacko, Hadžići, Ilidža, Ilijaš, Ključ, Kalinovik, Kotor Varoš, Nevesinje, Novi Grad, Novo Sarajevo, Pale, Prijedor, Prnjavor, Rogatica, Rudo, Sanski Most, Šipovo, Sokolac, Teslić, Trnovo, Višegrad, Vlasenica, Vogošća and Zvornik. The indictment alleges that between 1 July 1991 and 30 December 1992, Momčilo Krajišnik, Biljana Plavšić and others, including Slobodan Milošević, Željko Ražnatović aka "Arkan", Radovan Karadžić and Ratko Mladić, participated in a joint criminal enterprise in which they planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation or execution of persecutions of the Bosnian Muslim, Bosnian Croat or other non-Serb populations in these municipalities. The objective of the JCE was primarily achieved through a manifest pattern of these persecutions.

The indictment states that Momčilo Krajišnik held a prominent position in the Bosnian Serb leadership. He was a member of the National Security Council, the Expanded Presidency of the "Serbian Republic of Bosnia and Herzegovina", the Main Board of the Serbian Democratic Party of Bosnia and Herzegovina (SDS) and the Bosnian Serb Assembly, of which he was also President. By virtue of those associations, positions and memberships, he had de facto control and authority over the Bosnian Serb forces and Bosnian Serb political and governmental organs and their agents, who participated in the crimes alleged in the indictment. As a consequence, it is alleged that Momčilo Krajišnik knew or had reason to know that all the crimes alleged in the indictment were about to be committed or had been committed by his subordinates and he failed to take necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

#### THE LOGISTICS

Most of the trials currently held involve multiple accused. Two of these proceedings are among the largest multi-accused trials ever held at the Tribunal – the Milutinović et al. trial involves six accused while the Popović et al. trial concerns seven individuals. The Tribunal's rules allow up to three members of a defence team to be present in court to represent each of the accused. This means that there can be over 50 people present in the courtroom on an average day (this number includes the prosecution team, the judges, registry personnel, security officers and interpreters).

In order to accommodate such trials, the ICTY remodelled its three courtrooms. This project was successfully carried out between 28 November 2005 and 28 March 2006. As a result, Courtroom One can now accommodate trials of up to six accused, Courtroom Two allows for trials of up to three accused, and Courtroom Three is able to provide for trials of up to nine accused. In addition, all courtrooms are now equipped to provide simultaneous interpretation in four languages. Also, Courtrooms One and Three also have sizable public galleries for viewing court proceedings. These galleries can accommodate dozens of visitors simultaneously.

In order to further facilitate court proceedings and make them more efficient, the Tribunal has implemented what is commonly referred to as the 'e-Court system'. The aim of this system, which integrates all case-related documents into a central electronic database thereby eliminating the need for unnecessary paper filings is to increase the accessibility of information while expediting proceedings. Following the successful trial run in the Sefer Halilović case, it was decided that e-Court would be applied to all current and future proceedings at the Tribunal.

In addition to these new measures, some of the Tribunal's usual activities have become more complex.

Holding trial against so many individuals simultaneously also affects the functioning of most other sections of the Tribunal and especially the Victims and Witnesses Section (VWS). The VWS is a section within the Registry of the ICTY which is responsible for assisting all witnesses testifying before the Tribunal, regardless of whether they were invited by the Prosecution, the Defence or the Trial Chamber. As such, the VWS organises travel for the witnesses and persons who may accompany them if needed, provides psychological and medical support as necessary while they are in The Hague and ensures their protection. In the four weeks following the summer recess this year, the VWS has had to arrange for 44 fact witnesses to appear before the Tribunal. Their testimony added up to a record 320 'days' (a 'day' in this context is a day in court per case – each day at the Tribunal, there are five cases which means five court days). Of those, 39 witnesses had additional medical and/or psychological support needs which were attended to by VWS staff.

All other sections of the Tribunal – the prosecution, court management, the office of legal aid, the interpretation section, the security service, the detention unit, the communications section, the trial chambers, to name a few, are affected by this challenging pace.

As it implements its completion strategy and heads towards the fulfilment of its mandate, the Tribunal is going through its most intense activity to date. The cases currently before the ICTY show the importance of this institution's mandate – to bring to justice those responsible for some of the most serious violations of humanitarian international law in Europe since World War Two. In accordance with its completion strategy, the Tribunal is scheduled to close its doors by 2011. The ICTY is doing everything in its power to meet that deadline. However, the Tribunal can only close its doors after the remaining fugitives, and especially Radovan Karadžić and Ratko Mladić have had their day in court thereby reaffirming the international community's position that there should be no amnesty for international crimes.