

VIEW FROM THE HAGUE

LOCAL COURTS TO CONTINUE THE TRIBUNAL'S WORK

A citizen of Serbia and Montenegro recently asked a Tribunal representative whether it will see its work through to the end, or rather will the Tribunal establish who all was responsible for the break-up of the former Yugoslavia and its ensuing wars?

Since the Tribunal was created in 1993, those affected by the war had great expectations of it, expectations that sometimes did not conform to its mandate and resources. People looked to the Tribunal to charge former Yugoslav leaders for destroying the SFRY and causing the wars. They expected the Tribunal to charge those who committed crimes against "their own" victims, but were outraged when the Tribunal raised indictments against "their own" perpetrators. Every side believes that members of its nations are victims and expect the Tribunal to leave its politicians, soldiers and police alone, since they were "only defending their people."

The Tribunal's mandate is not and never has been to determine who was responsible for breaking apart the SFRY. The Tribunal also cannot determine which state was the aggressor and which the victim, nor can it prosecute states or organizations, such as the military or the police, or any other legal entities. The International Tribunal's mandate relates only to physical persons – individuals. Those military or police personnel whom the Tribunal has charged are not indicted for defending their nation or country from terrorists or enemy soldiers, or because they were participating in armed conflict. This is because in international law, killing an enemy soldier in battle is not a crime, but killing civilians or prisoners of war, or deliberately or carelessly destroying civilian property, carries severe punishment.

In legal language, the crimes over which the Tribunal has jurisdiction are called "crimes against humanity," "violations of the laws and customs of war," "grave breaches of the Geneva Conventions," or "genocide." In everyday language, they are crimes that we call murder, rape, torture, ethnic cleansing, arson, theft... These acts are illegal whether committed in peace or in war. What distinguishes them in war, tragically, is their scale.

The Tribunal's mandate is not to try *everyone* responsible for committing war crimes. Hundreds upon hundreds of thousands of civilians were victims of the wars in the former Yugoslavia: their family members were killed, they were raped or tortured, held in camps without enough food, water or hygienic facilities, their property was stolen or destroyed, or they were forced to leave their homes. Independent sources estimate that the number of perpetrators who should be tried for their responsibility in committing these crimes numbers several thousand. It is not feasible for one court to try them all.

Since its inception, the Tribunal has publicly indicted well over a hundred persons. The Security Council, which created the Tribunal in 1993, asked that it complete its investigations by 31 December 2004. The Tribunal's Office of the Prosecutor announced that it submitted its last indictments to the Court by that deadline. According to the Tribunal's procedures, an indictment is not official until an independent judge confirms it. It is also standard practice that the court does not comment on indictments that the Prosecutor has submitted to it for confirmation, nor on any indictments which may be sealed. Therefore, some indictments may yet be publicly announced.

The Tribunal's indictments are significant because many of them charge those most responsible for massive crimes, such as the genocide in Srebrenica in 1995. For the victims, the societies to which they belong and for lasting peace in the region, it is not enough to only hold accountable those soldiers, police or others who killed, raped, tortured, looted and destroyed with their own

hands. It is vital that those who organized and ordered the most serious crimes, or allowed them to be committed, are held accountable. This has been one of the Tribunal's greatest achievements -- criminally prosecuting the presidents, prime ministers, army and police generals, paramilitary leaders and other high-level officials without whom it would have been impossible to commit crimes on such a vast scale. This is a concrete example that holding high office does not mean immunity.

With the Tribunal's last indictments, the work of trying those responsible for war crimes, not only does it not finish, but in some sense, it is just beginning. Specialised institutions for processing war crimes have been formed or are being set up all around the region. They are trying their own cases and they are preparing to take over some cases from the Tribunal. The Tribunal is actively and wholeheartedly assisting these efforts. What is now most important is regional political will to help local courts become truly effective, and to facilitate regional cooperation amongst them. In this way, local courts would be able to work alongside the Tribunal and to continue where it will finish its work by the end of this decade.

Outreach Programme

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