



"The Tribunal's Completion Strategy and the Importance of cooperation of States for its work"

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A presentation by Olga Kavran
Spokesperson for the Prosecutor from the ICTY

Although Ms. Kavran has worked in different functions with the ICTY she now works solely for the Office of the Prosecutor. Ms. Kavran states that she speaks for the prosecutor of the ICTY.

Completion strategy

In 1993 the ICTY was established. It is the first tribunal after Neurenberg and Tokyo. In 1995 the first case took off. Since the start 55 persons have been accused, currently 26 suspects are on trial. Fifty-three verdicts have been made of which 48 people are convicted. Because the ICTY is an ad hoc tribunal its jurisdiction began 1-1-1991 and is open ended. The end date has to be decided upon by the UN Security Council. The completion strategy, developed in 2002, comprises the completion of the work of this temporary tribunal. The time path of the completion strategy:

- The own investigations of the ICTY have to be completed in 2004
- Hearings in first instance will be completed in 2008
- The appeals have to be completed in 2010.

The ICTY has decided it wants to focus on bringing to trial the most severe leaders.

It is of great importance that the rule of law and local judicial structures in the region are strengthened in order to enable the Court to finish its job. Currently there are war crimes chambers in Bosnia (mixed national and international staff) and Serbia (local staff), in Croatia the county courts have jurisdiction (only local staff).

A part of the completion strategy is to transfer cases of the ICTY to local authorities. One of the ways this can be done is via the 11 bis rule in which is stated that people can be sent to the former Yugoslavia to face trial there. This is done via the referral bench of the ICTY. After the relocation these cases are monitored by the OPT. The number of cases transferred to local authorities is comparatively small, 11. A larger number, 848 persons, had to face trial before local authorities. The most sensitive cases are dealt with in national courts; all other cases are dealt with in local or district courts.

State cooperation

An important complication of enforcing international (criminal) law is that there is only the judicial component and no legislative or executive power to support the judiciary. International courts do not have the mechanisms provided for in national systems: no police force, inability to arrest its own fugitives.

Cooperation with states is crucial in the following situations:

- Access to witnesses
- Access to documents
- Transfer of 6 remaining fugitives amongst which are Mladic and Karadzic, two architects of crimes against humanity in the former Yugoslavia

States are obliged to cooperate under the UN Security Council. Article 29 of the ICTY Statute states that if a state is unwilling:

- Article 7b: the ICTY can report to the UN Security Council about the non-compliance with rules and procedures. This has happened four times, 3x Serbia and 1x Croatia
- EU conditionality: full cooperation with the ICTY is a condition for completing the EU stability and association agreements. Serbia's cooperation stopped last year and consequently the EU delayed accession talks. Unfortunately the EU has again recommenced negotiations with Serbia. The ICJ ruling that Serbia is liable for genocide was not mentioned at all by the EU in these negotiations. It is in the interest of the OTP that the EU will again claim Serbia's full cooperation with the ICTY as a necessary condition.

Cooperation is extremely important. During the Tudzman regime in Croatia and the Milosevic regime in Serbia cooperation was almost impossible.

Questions:

- What happens if cases are delegated to countries in which the National legal system is not sufficient to prosecute the crimes the ICTY wants to put on trial? In other words, if for example a person has to be sentenced under Dutch penal law can Dutch Penal law cope with these allegations?

Ms. Kavran: This problem will not arise as the ICTY only delegates cases to Former Yugoslavian Republics and these countries are legally competent so problems will not arise. As these legal systems are sufficient the ICTY only trials the most senior cases.

- In 2001 there was a call to establish an international arrest team; what is the current opinion of the international community regarding this matter?

Ms. Kavran: This will probably not be feasible due to a lack of political will. The Prosecutor's office has asked for such a team but so far no response has been given.

- Why is it that the ICTY sends criminals to the region where the crimes took place while the ICTR does not?

Ms. Kavran: Preferably criminals are trialled in the region where they committed the crime. If people are trialled locally this means more understanding and involvement of the local community. The local community can actually see that the perpetrators of war crimes are punished. The language is important as well.

- What will happen when the ICTY closes its doors, will there be local trials?

Ms. Kavran: Hopefully the process of bringing justice to the former Yugoslavia will not stop at that point, but the future will tell what will happen.

- How many cases are we talking about?

Ms. Kavran: It differs from region to region. In Croatia for example there are many Serbs facing prosecution. While in Serbia only few people are on trial.

- Are there any signs that a new Serbian government with a new multi-annual mandate will be more willing to extradite war criminals that reside in their territory now?

Ms. Kavran states that she sure hopes so, it will definitely be in the interest of Serbia but it is not certain yet as the government is not yet formed.