
Judging genocide

Getting justice for the worst war crimes may be impossible. But two United Nations courts are trying, and a court in Belgium has just joined in

ARUSHA AND THE HAGUE

“**W**E DON’T have a place to put our robes on. There’s no place to hang up our coats, or to lay down our briefcases! We have been mistreated by this tribunal!” The speaker is a New York defence lawyer; the scene is the courtroom at Arusha in Tanzania. The trials taking place here, before a United Nations tribunal, are for the murder of hundreds of thousands of people in neighbouring Rwanda in 1994. Much more time and energy, in this dusty town at the foot of Mount Kilimanjaro, seems to be consumed with complaints about how badly the court works.

On June 8th the International Crisis Group (ICG), a think-tank based in Brussels, added its voice to the chorus. The Rwanda tribunal, after seven years of life and with an annual budget of \$90m, was hopelessly behind schedule, “bogged down by incompetence and bureaucratic infighting”. Five of its nine judges had spent more than 18 months without hearing a substantial case. The only case of consequence heard since July 1999, that of Ignace Bagilishema, a former mayor in western Rwanda, ended on June 7th with his acquittal. Mr Bagilishema, who had been accused of being instrumental in the deaths of 45,000 Tutsis, was let off because of insufficient evidence. Perhaps the verdict was correct; but with confidence in the court so low, many are doubtful that justice has been done.

External difficulties are certainly distracting. Arusha is ill-equipped to host 800 UN staff, from over 80 countries, and swarms of defence lawyers. Power cuts are so frequent that the tribunal relies on its own generator. At first, Arusha’s small banks could not cope with the large dollar salaries of UN staff. Although it has a con-

ference centre, and is well-off compared with the rest of Tanzania, the town has few hotels, hospitals or shops. Setting up a tribunal there was a matter of improvisation or making do. The court’s website, for example, was knocked together at a dollar-an-hour Internet café in a local shop.

In 1997, an internal UN report exposed “the most troubling deficiencies” in the finance section of the tribunal. Although these have been rectified, other problems remain. In May, seven prosecution lawyers were told by the chief prosecutor that they had been sacked for “professional incompetence” and for being “absorbed in their own narrow self-interest”.

Yet in 1998 the court at Arusha managed to convict the Rwandan prime minister, Jean Kambanda, the first head of government to be convicted of genocide and crimes against humanity. This, says Kingsley Moghalu, a tribunal spokesman, set a precedent for the indictments of Chile’s General Augusto Pinochet and Yugoslavia’s ex-president, Slobodan Milosevic, by other legal bodies. And suspects are still being arrested. At the end of April Kenyan police arrested a former Anglican bishop, Samuel Musabyimana, who is accused of genocide and of paying militia-men to kill Tutsis.

Mr Moghalu also points out that the Arusha tribunal has broken new ground in international law. It has established that rape can legally be considered an aspect of genocide. The first trial of a woman charged with genocide (another minister from the old Rwandan government) is due to begin soon. The court is trying to develop a concept of restitutive justice by assisting victims of crimes, usually witnesses and their families.

Yet there is no denying that Arusha is slow; painfully so. Seven years ago, at least 800,000 Tutsis and a relatively few

Hutus were killed by machete-wielding countrymen in less than two months; it may have been the fastest-ever slaughter on such a scale. Just 63 people have been charged in connection with those crimes. Of those, 45 have been caught; nine are on trial, and 27 more are waiting to be tried. Only eight people have been convicted, and these have not yet heard their sentences.

The speedier Belgians

With everything moving so slowly, the chances of convicting large numbers of people at Arusha are slim. The ICG study concludes that “there is a serious risk that those already in custody will be released because they have been held for too long without trial.” Meanwhile, the new Rwandan government across the border views the proceedings with impatience. It keeps some 130,000 genocide suspects in its own prisons, and in 1998 executed for that crime 22 people, all of them convicted in a sub-standard court.

On June 8th, however—the very day of the scathing ICG report—two Roman Catholic nuns were found guilty in a different court, thousands of miles away, of complicity in the Rwandan genocide. Their trial had lasted a mere two months. Sister Maria and Sister Gertrude had handed over to their killers up to 7,000 Tutsis who were sheltering in their convent; later, they provided petrol so that militiamen could set fire to a barn in which about 500 Tutsis had taken refuge. They were sentenced to prison terms of 12 and 15 years by a jury sitting not in Africa, but in Belgium. It was the first time that a jury of citizens from one country had judged defendants for war crimes committed in another.

It may not, however, be the last. Belgium is a signatory to a law, passed seven years ago, that allows its courts to hear

cases of alleged atrocities even if these occurred abroad. Its interest in the Rwandan case is that Belgium was the former colonial power in Rwanda, and that the nuns had fled there after the genocide. The verdict has heartened many; if more countries do as Belgium has done, perpetrators of war crimes will know they cannot hide from the long arm of justice.

Should the practice be expanded? Perhaps so, if Arusha is the alternative. But the other UN war-crimes tribunal, sitting in The Hague in the Netherlands, gives a different impression. It was created in 1993, a year before Arusha, and, like that tribunal, was seen at first as an effort by western countries to soothe their own consciences about the Balkans and elsewhere, because they had not intervened to stop the atrocities. But it has grown from similarly shaky beginnings to become respected.

The crimes examined there, though committed on a smaller scale than those in Rwanda, are just as brutal—genocide, crimes against humanity, contravention of the rules of war. Although the tribunal has not yet convicted anyone as highly placed as a prime minister, 100 people have been publicly indicted. (The chief prosecutor talks of doubling that number, and more may already have been indicted in secret, meaning that their names have not been revealed.) Thirty-eight people are awaiting trial and proceedings have started against 41, although just four people are actually serving sentences. So far, over \$470m has been spent on this court from its allocated UN budget alone.

The Hague tribunal clearly has advantages over its sister tribunal in Tanzania. It has a slightly larger budget from the UN and a few more staff (1,100 at The Hague, 800 at Arusha). But the European court gets roughly as much money again in one-off bilateral payments or gifts in kind, such as Britain's gift, a few years ago, of a newly-furnished courtroom. And the Dutch government provides back-up, such as security, that the Tanzanian government cannot provide in Arusha.

There are also more resources available to the prosecution at The Hague. Arrests are made mostly by NATO troops in the Balkans. For Arusha, suspects are picked up when police, mostly in French-speaking west African countries, happen to spot them. Arusha depends mostly on witnesses for evidence, many of them illiterate farmers who could not record their impressions at the time. The Hague enjoys intelligence intercepts from western armies, satellite

photographs and other high-tech methods of collecting more durable evidence.

Take, for example, the trial of Radislav Krstic, a one-legged Serb general who is accused of killing 8,000 Bosnian Muslims in Srebrenica in July 1995. The case against him rests partly on photographs of vehicles, buildings and soldiers in and around Srebrenica which were taken from NATO planes and satellites. The prosecution has presented over 900 exhibits, including those photographs and evidence gathered by spies, as well as over 100 witnesses. Arusha has nothing like this.

The best lawyers and judges are also more willing to work in Dutch comfort than to go to down-at-heel Tanzania. Carla Del Ponte, a former Swiss attorney-general with a reputation for hunting down members of the Russian mafia, is the chief prosecutor for both tribunals. She spends three weeks in every two months in Arusha, and finds it exhausting. "With Rwanda," she admits, "it is difficult to find people who will stay down there."

Fishing for the biggest

Neither tribunal, however valiant its efforts, could provide full justice for these horrific crimes. As with the Nazis who were tried at Nuremberg, it is clear that many thousands more people were responsible for all sorts of crimes than can actually be put on trial.

In Rwanda, the killers were mostly ordinary peasants who joined "the work", a communal activity for Hutus, who were all expected to take part in the killing. Decent Hutus who refused were often killed themselves. In the Balkans, neighbours turned on each other with a vengeance. Since no more than a tiny fraction of the guilty can be tried, is justice possible at all?

Ms Del Ponte's answer is simple: grab the people who are most responsible. In Arusha, trials are due this year of a pastor, several politicians and military officers. The Hague tribunal is also hunting down more senior people. Biljana Plavsic, once president of the Serb part of Bosnia, surrendered to the court in January, and will stand trial for genocide and other crimes. Radovan Karadzic and Ratko Mladic, two leading Serbs, have been indicted on similar charges.

The trial of one man would crown the efforts of The Hague. Pasted to the wall of Ms Del Ponte's office is a wild-west "Wanted" poster, offering \$5m for the arrest and delivery of Mr Milosevic, the main architect of the Balkan wars. Mr

Milosevic was publicly indicted during the Kosovo war in 1999, and Ms Del Ponte makes no secret of her eagerness to bring him to trial. "I am waiting for Milosevic. I will go in court then, yes!" she cries, banging the table with her fist.

She may have to wait. Mr Milosevic was arrested in Belgrade in April; Yugoslavia's new president, Vojislav Kostunica, would prefer to have him tried for war crimes at home first, although a new law would allow co-operation with the court in The Hague. Staff at the war-crimes tribunal are confident that outside pressure will eventually bear fruit. The news, released on June 3rd, that the Belgrade authorities were examining bodies from several mass graves in Serbia has increased speculation that Serbs are being prepared for Mr Milosevic's journey to The Hague. "There is no question [about] the transfer of Milosevic," says one official. "It is just a question of when they will do it."

The justice of the victors?

Even if a tribunal is able to put the worst offenders on trial, some question whether justice results. On one reckoning, there is no punishment severe enough to fit crimes like genocide. UN courts cannot sentence anyone to death, and UN-approved prisons are usually tolerable places. Not much of a deterrent, therefore, for those committing crimes in the heat of a war. This is a particular problem in Arusha, where prisoners live in greater comfort than surviving victims of the genocide. The Arusha tribunal is now trying to find African prisons (in Mali, Swaziland and elsewhere) which meet international standards but are still seen as punishment.

A greater problem is that war-crimes tribunals are perceived as nothing more than revenge on the victor's part. Serbs complain that The Hague tribunal is a western plot, directed mainly at them. Those on trial in Arusha feel the same.

In general, victors in war escape facing justice. The Nuremberg trials after the second world war did not consider whether British or American bombing raids against civilians were war crimes. Russia's soldiers are most unlikely to face a war-crimes court over the murder and torture of Chechens. The Hague tribunal did investigate NATO's bombing raids on Yugoslavia, but concluded, rightly or wrongly, that there was no reason to prosecute.

Critics can therefore argue that war-crimes courts are doubly selective: not only are very few people tried, but very

few wars are considered for judicial investigation. When justice is so selective and seems driven by political interests, is it justice at all?

This question is being answered, in part, by the proliferation of different tribunals where war crimes can be tried. More UN war-crimes tribunals are in prospect, as is a permanent International Criminal Court. And there remains the example of Belgium: wherever war criminals seek sanctuary, that country can put them on trial. The limitations of Belgium, however, are seen in the case of Mr Milosevic. Where the fish are very big, the tribunal judging them needs international stature.

Recent violence in Burundi, Congo and East Timor has led to demands for dedicated UN tribunals. Atrocities committed by the Khmers Rouges in Cambodia in the 1970s may one day also be examined by a court, perhaps with an international element, although legislation to establish one has stalled in the Cambodian parliament. Members of the military junta in Myanmar are said to worry that they may one day end up in court. Some even argue that Henry Kissinger should be tried for human-rights abuses in Chile, Cambodia and elsewhere during the cold war (so far, he has been called as a witness only).

The most likely third UN tribunal will be one for Sierra Leone, in west Africa. Over ten years, rebels have committed horrific cruelties against civilians in the country. Tens of thousands of people are

thought to have been killed—though the slaughter is not technically considered a genocide, since it has not been an effort to kill a whole ethnic group.

Whereas the tribunals for Rwanda and Yugoslavia were set up by the UN's Security Council and are entirely international, the new one will be based on an agreement between the UN and Sierra Leone's government made last October. If money and support can be found (\$22m is needed for the first year), Sierra Leone's tribunal will mix local and foreign judges and an international prosecutor. If the war allows, the tribunal will sit in Freetown, the shattered capital. Cash may be the main problem. The Rwandan and Yugoslav tribunals are mostly financed through mandatory fees levied on all UN members, but the Sierra Leonean court will depend on donors.

Sceptics may ask what the use of a third court would be. The brutal fighters in Sierra Leone's war will not be deterred by the threat of prison. The court may interfere with peace efforts, and may drain away resources that would be better spent on ordinary people. But those involved in both the existing tribunals argue that courts provide something extremely valuable: an historical record that atrocities did take place and that victims suffered. Getting that fact established, they say, may help countries like Sierra Leone begin reconciliation and rebuilding.

The other big development, the creation of a permanent International Criminal

Court, may answer the allegation that international justice is always the victors' sort. In July 1998, a UN meeting in Rome adopted a statute for the permanent court. So far, 139 countries have signed up to it. Once 60 countries have ratified the necessary legislation (Croatia became the 32nd country to do so, on May 21st), the court will come into existence, possibly within two years.

The world criminal court is likely to be based on the two existing UN tribunals, and will build from precedents and practices established there. It will try only crimes committed after its creation. The stumbling block remains the reluctant United States. President Bill Clinton signed up to the Rome statute just before leaving office, but many suspect that American involvement in the court is destructive. The United States demands, for example, a guarantee that American soldiers will never be put on trial, which even its closest allies reject as incompatible with the rule of law.

But, if the new permanent court is to build on the stumbling successes of the two UN tribunals in Arusha and The Hague, it will need as much support as possible from rich countries. If America continues to oppose it, Europe, Canada, Australia and other backers will have to throw their full weight behind it. The two existing tribunals have shown how much political will, money, expertise and sweat is needed to make such courts work.