

(c) **Commentary**

**Kosovo: The British Government and ICTY**

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**Keywords:** Kosovo; ICTY; United Kingdom; UNMIK

**Abstract:** This article gives an account of the support provided by the British Government to the International Criminal Tribunal for the former Yugoslavia. In 1999, the author was the UK Kosovo War Crimes Co-ordinator, and was responsible for providing information and assistance to the ICTY Prosecutor.

**1. INTRODUCTION**

The British Foreign Secretary, Robin Cook, said in September last year:

No country is more committed than Britain to bringing to justice those who carried out the atrocities in Kosovo that outraged the world and led to our action to make sure Belgrade could not continue that tragedy.<sup>1</sup>

Support for the International Criminal Tribunal for the former Yugoslavia (ICTY) has been central to the British Government's policy over Kosovo. The purpose of NATO's intervention in March 1999 was to prevent the repression (killings, ethnic cleansing and destruction of property) that was being carried out against the indigenous Kosovar population. While the NATO action was successful and enabled the refugees to return, it was clear from the outset that ICTY would bear the long-term and independent responsibility under UN Security Council Resolution 827 for investigating the serious violations of international law (including grave breaches of the Geneva Conventions and crimes against humanity) which fell within its jurisdiction, and which were at the root of the crisis.

Like many other states, the United Kingdom had been working closely with ICTY since its establishment, especially in investigating war crimes in Bosnia.

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1. Interview given by the Foreign Secretary, Robin Cook, following a meeting with Hashim Thaqi on 2 September 1999.

Nevertheless, the events and conditions in Kosovo created new demands and a need for rapid, extensive and flexible support for the ICTY Prosecutor, at that time Judge Louise Arbour.

The purpose of my appointment as “Kosovo War Crimes Co-ordinator” was to ensure that the United Kingdom provided information and assistance to the Prosecutor as effectively, fully and quickly as possible – both during the armed conflict and when it became possible for KFOR and an international civil presence, in the shape of the UN Mission in Kosovo (UNMIK), to enter Kosovo.

The help which the UK gave broke new ground, not least in the provision of intelligence information and our ability to start forensic work at the sites of some of the worst atrocities within a few days of KFOR’s entry. It also has longer-term implications for the effectiveness of ICTY within the terms of its Statute and for the future International Criminal Court (ICC).

This article gives an account of what we did and examines some of the underlying issues.

## 2. THE LEGAL FRAMEWORK

ICTY was established, and its Statute adopted, by the United Nations Security Council [Resolution 827 (1993)] for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. All States are obliged under paragraph 4 of that Resolution to co-operate fully with ICTY and its organs in accordance with its Statute. More specifically, ICTY has power to prosecute persons committing:

- grave breaches of the Geneva Conventions of 1949;
- violations of the laws or customs of war;
- genocide;
- crimes against humanity.

Article 7 of the Statute deals with “Individual criminal responsibility”, and specifies, *inter alia*, that, “a person who planned, instigated, ordered, committed or otherwise abetted in the planning, preparation or execution of a crime [...] [coming under the Statute] [...] shall be individually responsible for the crime.”

### 2.1. Cooperation and judicial assistance

Article 29, entitled “Cooperation and judicial assistance”, requires States to “co-operate with the International Tribunal in the investigation and prosecution of

persons accused of committing serious violations of international humanitarian law.” The Article continues:

States shall comply without undue delay with any request for assistance or an order issued by a trial Chamber, including, but not limited to:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest and detention of persons;
- (e) the surrender and transfer of the accused to the International Tribunal.

## 2.2. The Prosecutor

The responsibilities of the Prosecutor are described in the first part of Article 16 of the Statute:

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.
2. The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any government or any other source.

Rule 39 of the Rules of Procedure and Evidence of ICTY makes clear that “In the conduct of an investigation, the Prosecutor may [...] seek [...] the assistance of any State authority concerned, as well as that of any relevant international body [...]”

## 2.3. United Kingdom legislation

The United Nations (International Tribunal) (Former Yugoslavia) Order 1996<sup>2</sup> was made under the United Nations Act 1946 for the purpose of enabling the United Kingdom to co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing International Tribunal crimes and punishment of persons convicted of such crimes.<sup>3</sup>

The Order contains a series of specific provisions which are summarised in Article 3(2) of the Order,<sup>4</sup> and also states that “nothing in this order shall be con-

2. Statutory Instrument 1996/716 as amended by Statutory Instrument 1997/1752 and Statutory Instrument 1999/1755.

3. Article 3(1) of the Order.

4. Article 3(2) of the Order is as follows: “In particular, but without prejudice to the generality of paragraph (1), this Order has effect- (a) to provide for the arrest and delivery to the International Tribunal

strued as preventing the provision of assistance to the International Tribunal otherwise than under this Order.”<sup>5</sup>

The help which the United Kingdom has given to ICTY comes within this legal framework.

### 3. ATROCITIES IN 1998 AND EARLY 1999

The events in Kosovo during the fifteen months leading up to the military action have been documented by a wide range of independent organisations, including Human Rights Watch and Amnesty International, and by the OSCE Kosovo Verification Mission (OSCE-KVM) whose findings<sup>6</sup> have been published by its parent body, the OSCE’s Office for Democratic Institutions and Human Rights.

During 1998, there was growing concern about reports of killings, torture and other brutality inflicted by FRY/Serbian forces upon the civilian population – a process which began with a Serbian operation in the Drenica region in the west of Kosovo in early March 1998, resulting in the deaths of around 80 men, women and children.

Human Rights Watch has published extensive accounts of many of the atrocities, and most of their reports are available at their web site.<sup>7</sup> The following extract from their report on killings at Gornje Obrinje (once again in the Drenica region) on 26 and 27 September 1998<sup>8</sup> gives the flavour of Serbian actions:

Fourteen people [members of the Delijaj family] were killed in a nearby forest where they were hiding from government shelling, six of them women between the ages of twenty-five and sixty-two. Five of the victims were children between eighteen months and nine years of age. Of the three men killed in the forest, two were over sixty years old.

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of persons accused or convicted of an International Tribunal crime and for the arrest in cases of urgency of persons suspected of having committed an International Tribunal crime, (b) to secure the attendance before the International Tribunal of persons as witnesses or to assist in investigations, (c) to give effect to requests by the International Tribunal for the discontinuance of certain proceedings in courts constituted under United Kingdom law, (d) to provide the International Tribunal with other forms of assistance in the investigation and prosecution of International Tribunal crimes, (e) to enforce orders of the International Tribunal for the preservation or restitution of property and to give effect to requests to determine the ownership of property, (f) to make provision for the immunities and privileges of the International Tribunal and persons connected therewith.”

5. Article 3(3) of the Order.

6. OSCE-KVM, *Kosovo/Kosova – As Seen, As Told* (1999) and OSCE-KVM, *Kosovo/Kosova – As Seen, As Told, Part II* (1999). See <http://www.osce.org/kosovo/reports/hr/index.htm>.

7. <http://www.hrw.org>.

8. “A Week of Terror in Drenica: Humanitarian Law Violations in Kosovo”, published in February 1999.

Human Rights Watch visited the scene on September 29 while the bodies were being carried out. All fourteen victims were wearing civilian clothing; most appeared to have been shot in the head at close range, and several of the bodies had been mutilated.

The report continues by describing the deaths of seven other members of the same family, the brutal interrogation and summary execution with an axe of a husband and wife, and the slitting of a sixteen-year-old boy's throat.

On the same day fourteen men were interrogated and summarily executed in a separate incident:

The men were first sprayed with bullets from a short distance, then a police officer walked among the men kicking them and shooting again at anyone who showed signs of life. One of the fourteen men miraculously survived by feigning death, and gave a detailed and damning testimony of the executions [...] Several other witnesses corroborated his account of the day's events.

### 3.1. Racak

The situation continued to worsen over the months that followed. The killing of 45 civilians at Racak on 15 January 1999 caused particular international revulsion. Eyewitness reports have been extensively documented.<sup>9</sup> On 17 January, the North Atlantic Council (NAC) condemned the killings and called for the FRY to co-operate with ICTY. On 18 January 1999, Judge Arbour applied for entry to Kosovo in order to "investigate the reported atrocities at Racak", but was refused entry.

In their report, the OSCE-KVM comment,

[t]he mass killing at Racak most graphically illustrates the descent into violence amounting to war crimes and crimes against humanity, and was to become a precedent for numerous other atrocities recounted to the OSCE-KVM in the period after 20 March.<sup>10</sup>

### 3.2. A systematic pattern of behaviour: events after the start of the NATO air campaign

The atrocities described above were not isolated events, but appeared to form part of a systematic practice of attacks (involving destruction of villages, torture and extra-judicial killings) carried out by FRY/Serbian forces against the civilian population contrary to international humanitarian and human rights law. This was accompanied by the notorious programme of ethnic cleansing – evidently

9. See, for instance, the Human Rights Watch, *Yugoslav Government War Crimes in Racak*, press releases of January 1999.

10. OSCE-KVM Reports, *supra* note 6, at 3 of Executive Summary.

an attempt by the FRY/Serbian authorities to expel a very large proportion of the ethnic Albanian population from Kosovo – a process often accompanied by extortion. Prime Minister Tony Blair said in his statement to the House of Commons on 23 March,<sup>11</sup> “a quarter of a million Kosovars – more than 10 per cent of the population – are now homeless as a result of repression by Serb forces.”

The tempo of the killings and other atrocities increased in late March. However, as the OSCE-KVM has pointed out, the violations of humanitarian and human rights law “inflicted on the Kosovo Albanian population after 20 March were a continuation of actions by Yugoslav and Serbian military and security forces that were well rehearsed, insofar as they were already taking place in many locations in Kosovo well before 20 March.” In the year leading up to 20 March, around 500 ethnic Albanians had been killed in atrocities and over 400,000 people had been at various times displaced from their homes.

The conclusion of the Executive Summary of the OSCE-KVM Report<sup>12</sup> is worth quoting here in full:

The scale on which human rights violations recur is staggering. It has been estimated that over 90 per cent of the Kosovo Albanian population – over 1.45 million people – were displaced by the conflict by 9 June 1999. The death toll as yet can only be guessed at, but the prevalence of confirmed reports and witness statements about individual and group killings in this report is indicative. The violence meted out to people, as recounted vividly, particularly in the statements of refugees, was extreme and appalling. The accounts of refugees also give compelling examples of the organised and systematic nature of what was being perpetrated by Yugoslav and Serbian forces, and their tolerance for and collusion in acts of extreme lawlessness by paramilitaries and armed civilians.

The commission of human rights and humanitarian law violations during the internal armed conflict in Kosovo during the time it was being monitored by the OSCE-KVM was not one-sided. All parts of this report look at violations committed by both parties to the internal conflict. It must be stressed, however, that an obvious conclusion of the analysis is that there was certainly nothing resembling balance or equivalence in the nature or the scale of the human rights violations committed by each side. Suffering in Kosovo in the period monitored by the OSCE-KVM was overwhelmingly Kosovo Albanian suffering, at the hands of the Yugoslav and Serbian State military and security apparatus.

#### 4. PROVISION OF INFORMATION AND INTELLIGENCE

As the situation worsened in Kosovo, Judge Arbour made clear to all Governments that she expected as much support as possible in accordance with the Statute of the Tribunal in support of her responsibility for the impartial investi-

11. House of Commons Hansard: Column 161: 23 March 1999.

12. See note 6, *supra*.

gation and prosecution of persons responsible for serious violations of international humanitarian and human rights law.

My first task on becoming the Kosovo War Crimes Co-ordinator was to assess the help that the UK was providing and to see in what ways an already effective performance could be further improved. We realised that there was scope for increasing the flow of information to ICTY about the way in which events had unfolded in Belgrade and Kosovo from the beginning of 1998 onwards.

A great deal of relevant information had been accumulated by a range of Government Departments. The Foreign and Commonwealth Office had lead responsibility, and the material in its possession included a large amount of reporting and analysis. The Ministry of Defence and intelligence services similarly possessed some relevant information.

In broad terms, the subjects about which the Prosecutor was seeking information included:

- The political sequence of events. The actions and decisions of the FRY Government and the representations made to them as international concern about the humanitarian situation deepened.
- The actions, deployment, composition and practices of the FRY/Serbian police and army and “irregular” paramilitary forces.
- The actions of the KLA.
- The circumstances of specific atrocities, and the background to these events.

The information that we have provided to the Prosecutor has been made available on a confidential basis under Rule 70B of the Rules of Procedure and Evidence. Overall, I am confident that we have been able to make a valuable contribution both by the material that we were able to provide and by analysis of the wide range of information already in the public domain. This was a process which continued throughout the period of the NATO air campaign and subsequently. A considerable number of officials have taken part in the dialogue with the Prosecutor’s staff.

#### **4.1. Provision of Information by other Countries**

The UK’s support in this field was mirrored by other UN member States.

### **5. DEBRIEFING REFUGEES**

We were able to provide help by interviewing Kosovar refugees who came to the UK, and the far larger number who were in the Former Yugoslav Republic

of Macedonia. This task was performed by "Defence Debriefing Teams" composed of personnel from the armed services skilled in interview techniques.

### **5.1. Interviews at refugee reception centres in the UK**

The Debriefing Teams began their work at refugee reception centres in the UK in May. The arrangements had been co-ordinated beforehand with the Home Office and the voluntary organisations that played a large part in looking after the refugees. The procedure was for a team to visit each centre for around a week, and to begin by giving a presentation to the refugees (with the help of interpreters) making clear that their aim was to identify refugees who had information which might be of value to ICTY. They would explain that the interview reports would be sent to the Prosecutor's staff, who would be responsible for deciding whether to follow up at a later stage by taking a formal statement from the person interviewed. The team always emphasised that it was entirely a matter for each individual refugee to decide whether he wished to offer information.

In practice, the teams found that they were overwhelmed by the number of refugees who wished to give an account of what had happened to them. In most cases the refugees had not been debriefed previously. Those conducting the interviews were impressed by the clarity of the accounts which the refugees gave of their experiences.

The voluntary welfare organisations which were running the reception centres commented on several occasions that the process of interviews had a therapeutic effect. While the refugees had been given a great deal of practical support, the interviews with the Defence Debriefing Teams were, in most cases, the first occasion when they had been given an opportunity to describe the deeply distressing circumstances of their departure from Kosovo. The fact that this was in the context of an investigation by a Tribunal set up by the UN Security Council was important to those interviewed and provided an affirmation that the interests of justice were not being overlooked. The broader "restorative" and positive effect of the work of ICTY (in the eyes of the Kosovar population) was a feature that we encountered subsequently in other aspects of our support for the Tribunal.

### **5.2. Interviews at refugee camps in the former Yugoslav Republic of Macedonia**

A Defence Debriefing Team also began work in the refugee camps in Macedonia. The procedures were in essence the same as those followed in the UK, but the practical problems of holding interviews and collating information in camps, some of which were accommodating thousands of refugees, were greater.

In many cases the team was helped by the fact that large groups of refugees had arrived together from a particular village or region. This structure made it



easier for the interviewers to identify groups of refugees who had undergone similar experiences and could offer information about a specific series of events. The team also co-ordinated its work with that of other bodies which were holding interviews, so as to avoid duplication of effort.

### **5.3. My visit to Albania and Macedonia in late May**

During a visit to Albania and Macedonia in May, I was able to meet refugees and talk to the local authorities, ICTY investigators, the Defence Debriefing Team in Macedonia, the UNHCR, and a range of official and NGO advisers working at refugee camps.

In Albania I met some refugees out of a total of around 2,000 who had been imprisoned in appalling conditions in Mitrovica and subjected to beatings and other degrading treatment (at one stage forced to stand shoulder to shoulder for 24 hours without food, water or access to a lavatory), but had at least survived (having been dumped on the Albanian border).<sup>13</sup>

In Macedonia I met a family with two young children from the south east of Kosovo. The mother told me that – before being compelled to leave Kosovo – she had been interrogated at her home and struck by a Serbian policeman who was trying to establish the whereabouts of her husband. The policeman had then seized her small son by his legs and dashed his head against the ground as a means of trying to compel her to talk. A British medical adviser who was with me thought that the boy (whose behaviour was clearly distressed) was suffering from psychologically caused mutism as well as a clinical condition, apparent damage to hearing in one ear. The family were shortly afterwards accepted as medical refugees to the UK. Although on a different scale, this account of casual brutality towards a child was as chilling and revealing as many incidents which were more terrible in objective terms.

### **5.4. Response by ICTY**

The Prosecutor's staff found that the reports provided by the Defence Debriefing Teams were among the most useful of those which they were receiving from governmental and non-governmental organisations. In conducting interviews of this sort, it is important to strike the right balance between obtaining too little and too much information. We benefited from close liaison between the Debriefing Team and ICTY investigators in Macedonia, and by obtaining timely feed-back from their colleagues in The Hague.

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13. See the statement by Prime Minister Tony Blair in the House of Commons on 8 June 1999. House of Commons Hansard: Column 464.

## 6. SUPPORT FOR THE PROSECUTOR AFTER KFOR'S ENTRY INTO KOSOVO

It quickly became clear that the Prosecutor would be faced by an enormous investigative task as soon as it was possible for her to have access to the sites of reported atrocities in Kosovo. The refugees had brought with them accounts of killings and other appalling acts throughout Kosovo (but particularly in the south and west) which had intensified from the second part of March onwards. Many of these events are documented in the Indictment against Milošević, Milutinović, Sainović, Ojdanić and Stojiljković confirmed on 24 May.<sup>14</sup>

Forensic evidence would be of greatest value to ICTY if it could be collected as soon as access to the scenes of crime became possible. Self-evidently, nothing could be done to prevent the perpetrators of crimes from attempting to destroy or tamper with evidence before KFOR's arrival. Thereafter it would be both possible and important to conserve evidence, in particular grave sites, until they could be properly examined by forensic teams. This would need to be discussed with the refugees as they returned. The Kosovar population would have a natural desire to hold funerals and to give bodies a decent burial with the minimum delay.

There were also likely to be other types of evidence, possibly including official FRY/Serbian documents left in Kosovo, which would need to be secured as rapidly as possible.

These were primarily issues for discussion between the Prosecutor and KFOR. Judge Arbour had established an excellent working relationship with the Commander of KFOR, General Sir Michael Jackson. Nevertheless, we (together with other participants in KFOR) were able to contribute to the discussion and to help ensure that liaison between ICTY and KFOR was set up effectively.

## 7. THE UK SCENES OF CRIME TEAM

The establishment of a UK Scenes of Crime Team posed the most demanding of the administrative problems which we encountered. Judge Arbour asked Governments for help in April, and Robin Cook announced in the House of Commons on 18 May<sup>15</sup> that the UK would provide a Scenes of Crime Team.

### 7.1. Setting up the UK Team

Preparations in London were co-ordinated between the Foreign and Commonwealth Office, the Home Office, the Association of Chief Police Officers (ACPO), the Anti-Terrorist Branch of the Metropolitan Police, other Police

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14. Prosecutor v. Milošević *et al.*, Case No. IT-99-37-I, 24 May 1999.

15. House of Commons Hansard: Column 883: 18 May 1999

Forces in the UK and the Forensic Science Service. We decided at an early stage that our aim would be to provide a self-contained Scenes of Crime Team complete with a pathologist, a forensic anthropologist, photographers, scenes of crime officers and forensic experts with the skills which were needed. We estimated that this would mean a total of around 18 members. (Throughout most of the deployment, the Surgeon General's Department in the Ministry of Defence generously provided a radiologist and X-ray equipment as an addition to the team.)

The team would have to be completely self-sufficient in terms of equipment and vehicles. We were faced with the logistic problem of delivering this package within a couple of weeks, at a time when there was practically no civil transport to Skopje (and none to Kosovo) and when the resources of the Royal Air Force were fully stretched.

During the planning stage, I made a visit to The Hague with a senior police adviser, Richard Monk (the former Commissioner of the International Police Task Force in Bosnia), to discuss the requirements in detail with ICTY. Shortly afterwards, on 12 June, Detective Chief Superintendent John Bunn (the Head of the Anti-Terrorist Branch of the Metropolitan Police) and I made an advance visit to Skopje and from there into Kosovo.

The first full forensic team flew out to Skopje on a Royal Air Force flight on 17 June, and was able to start work at its first location (Velika Krusa to the west of Prizren) by Saturday 19 June, within a week of KFOR's entry. We felt that we had done a difficult job well, in that the British team was the first to start work in Kosovo in support of ICTY and then worked without any break (with rotations of staff every three or four weeks) until the end of October, when exhumation of bodies became impracticable because of the onset of winter.

While the majority of the team members in each rotation were from the UK and included some of the most experienced pathologists and other experts in Britain, we also included equally senior pathologists from Australia and forensic anthropologists from the University of Leiden. We were particularly indebted to Professor George Maat of Leiden for his help.

## **7.2. Status of the Team**

Although the British Government took complete responsibility for providing, supplying and administering the team, the members were attached to ICTY as "gratis personnel", and were subordinated operationally to the Prosecutor. All evidence and reports were submitted to the Prosecutor.

The advantage of this division of responsibilities was that we were able to mobilise a cohesive group with a common set of procedures, and to start work very quickly. The arrangement was well suited to the particular requirements of the situation, and was warmly welcomed by the Prosecutor's staff. The pattern which we established was helpful to other countries which provided forensic

teams during the summer. Nevertheless, we recognise that the normal arrangement is for ICTY to take full responsibility for managing and administering forensic teams, with individual UN Member States helping to provide suitable personnel.

### **7.3. Findings**

On 10 November 1999, Carla del Ponte (Judge Arbour's successor as Prosecutor) reported to the UN Security Council that after five months of investigations ICTY had received reports of 11,334 bodies in 529 grave sites, including sites where bodies were found exposed. Approximately 195 of these sites had been examined to date, and forensic teams from 14 countries had exhumed 2,108 bodies.

The British team investigated 70 sites (all in the south west of Kosovo) and recovered and examined some 508 bodies.

The number of bodies recovered will inevitably be less than the number of persons killed. Many bodies will never be found because of natural degradation, lack of information about the whereabouts of graves and deliberate attempts by the Serbian forces to hide evidence – for instance by burning bodies or dumping them in rivers.

Pathologists and forensic anthropologists (who are expert in analysing skeletal remains) are often able to determine with a high degree of certainty the cause and many aspects of the circumstances of death, even when remains are in an advanced state of decomposition or have been disturbed. The UK team's reports were of the highest professional standard, and will be of vital importance to future cases in the Tribunal.

### **7.4. Impressions**

It is important not to lose sight of the reality as it was experienced by the members of the team. The impressions left by the sites which we examined are abiding, and will not be forgotten quickly by any of those taking part in the forensic work. I shall give four examples:

- At Velika Krusa, we found the remains of some 40 males aged between 13 and 70. The victims had been herded into two farm outbuildings and shot at close quarters. The bodies had been covered with hay and kerosene and set on fire. It was clear from the charred remains that the victims had made a futile attempt to retreat into the corners of the rooms. Robin Cook, who visited the site on 23 June, described what he saw as “a vision of hell”. The killings are thought to have taken place on 25 March.
- At Bela Crkva, the forensic team found a total of 56 bodies. One group was made up of three women, three boys (aged 4, 6 and 7) four girls

(aged 6, 9, 10 and 12) and four men. Forensic examination showed that all had been shot at close range, some with a bullet through the head. According to eyewitness accounts, the group was shot at close quarters by FRY/Serbian forces on 25 March as they were trying to reach the shelter of a railway bridge.

- At Celine 69 bodies were found in 16 sites. One site contained the bodies of 11 children (aged between 2 and 14) and 8 women.
- At Ljubizda an uncertain number of bodies (at least 26 and possibly more), including the remains of women and children, were found in a grave concealed at a depth of four metres in a waterlogged rubbish dump near a stream. Information from villagers suggested that a larger number of bodies had been deposited at the dump over a number of days, and that some may have been removed subsequently. Clothing, including children's garments, and possessions such as satchels and school exercise books were found on the surface of the site.

#### **7.5. Day to day liaison with ICTY and with other forensic teams**

As explained above, the team was tasked by, and reported to, the Prosecutor's staff in Kosovo. The main contact over day to day developments was the ICTY liaison officer at the KFOR headquarters in Prizren. The team also maintained regular contacts with the senior ICTY staff at Pristina.

The ICTY staff helpfully organised several liaison meetings between all the forensic teams operating in Kosovo.

#### **7.6. Help from local villagers**

Wherever possible, the team obtained the help of local villagers who had survived and (in most cases) spent time in refugee camps. In some cases villagers or survivors had previously given the bodies a temporary burial, sometimes in polythene sheeting to preserve the remains as far as possible. In other cases the bodies had been buried by the FRY/Serbian forces.

The team tried, whenever possible, to identify the victims, as well as establishing the cause of death. Even when bodies were badly decomposed, clothing and other possessions together with the data from forensic analysis often made it possible to identify the individual.

At many sites, the villagers held a mass funeral and reinterred the bodies as soon as they could be released from the mortuary. Invariably, the members of the team were invited to attend the funeral. Relations with villagers were always positive. The attitude of the local people (who in nearly every case had known or been related to the victims) was one of relief that a proper forensic examination was being carried out.

### **7.7. Help from Dutch, German and Russian units of KFOR**

The team was dependent on the local units of KFOR for demining and other engineering support and for other forms of logistic and practical help. Demining was of crucial importance, particularly at sites where the FRY/Serbian forces had buried the remains. Explosive booby traps were found on three occasions.

During the first two and a half months, Dutch and German units provided this support. Subsequently, a Russian unit had responsibility for the area where the team was working. In all cases the practical support that we received was exemplary, and reflected the priority that the Commander of KFOR gave to support for ICTY and the forensic effort.

The team's main point of contact at the KFOR headquarters in Pristina was with the Provost Marshal (Colonel Ian Walters and subsequently Colonel Markussen) who had responsibility for overall co-ordination with ICTY and all the forensic teams. The support and advice that both these officers gave was outstandingly helpful.

## **8. TASKS FOR THE FUTURE, COSTS AND CONTRIBUTIONS**

This article has focused on the help provided to ICTY during 1999. At the time of writing, it is certain that the Prosecutor's investigations in Kosovo will continue at least until the end of 2000. The UK is continuing its support both in the provision of information, and by helping with forensic work. This year the British forensic personnel are working on the staff of the United Nations Mission in Kosovo (UNMIK). We shall also continue to play our part in encouraging the development of an effective relationship and flow of information between ICTY and the civil law enforcement agencies in Kosovo.

The financial value of the help that we have given in Kosovo has been considerable. The real cost of the UK forensic work in Kosovo in 1999 was considerably higher than the budget of £0.84 million, as many of the inputs (for instance Royal Air Force transport) have been provided free of charge. Similarly, it is difficult to give a precise financial value to much of the other support described above.

Looking beyond the crisis in Kosovo, the British Government has funded the cost of constructing a third court-room at The Hague, contributed to ICTY's Exhumation Programme in Bosnia, funded the translation of prosecution documents and seconded a number of personnel to the Tribunal. This year the UK also funded the first conference of all the judges from both Tribunals, held near London in October. The UK's voluntary contributions to ICTY since 1994 have totalled almost £3 million. This is in addition to our annual UN assessed contributions (£3.1 million in 2000).

## 9. THE VALUE OF ICTY

When discussing the future tasks of ICTY and the costs of its operation, it is not unusual to encounter some scepticism about the effectiveness and value of the Tribunal. The most common line of criticism is to question whether ICTY has made a sufficient impact in the former Yugoslavia. Journalists frequently ask, "why bother with forensic investigations?"

The reply to these doubts contains several points. In the circumstances in the Balkans, it would be unrealistic to hope that every indictment will lead to a quick arrest. Nevertheless, it is significant that around half of ICTY's known indictees are now in custody, including three top officials of the Bosnian Croat Army including General Blaškić and senior Serbian officers Galić, Krstić and Tadić indicted in respect of crimes committed between 1992 and 1995.

At the time of writing, four trials have been completed. Twelve accused are at the Appeals stage, and a further eleven accused are at the Trial stage. Judgments have been handed down in thirteen cases on Trial, three on Appeal and two on pleas of guilty. Fifteen accused are at the pre-trial stage. Full and up-to-date information about cases and detainees are available at the ICTY's web site.<sup>16</sup>

It is also noteworthy that UK troops in Bosnia have been responsible for 13 out of the 24 successful detentions by the NATO-led peacekeeping mission of persons indicted by the Tribunal.

This is a record of significant activity. Furthermore, the existence of the Tribunal has had a wider effect. It cannot in itself provide a solution to all the problems of the Balkans. But it is a means of providing justice that would not otherwise be available, and is also part of a much wider process of achieving stability in the former Yugoslavia. It demonstrates that international humanitarian and human rights law will be enforced, that violations will be investigated and that those who are indicted will be brought to account or lead a circumscribed existence, excluded by any country that takes seriously its obligations to the United Nations.

In the case of Milošević, it seems clear that the indictment was a major factor that influenced his readiness to agree to withdraw his forces from Kosovo.

The task for the international community at the moment must be to continue to support ICTY in its investigative and forensic work while the evidence is available. It is precisely this work which will in the longer term make it difficult for those who have been indicted to remain in power unless they are prepared to stand trial and defend their actions before the Tribunal.

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16. <http://www.un.org/icty/glance.htm>.



#### 10. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR) AND THE INTERNATIONAL CRIMINAL COURT (ICC)

Outside the former Yugoslavia, the other international mechanism for bringing those who commit atrocities is the International Criminal Tribunal for Rwanda (ICTR). The fact that ICTY and ICTR were established as an *ad hoc* response to two of the most grave breaches of international humanitarian and human rights law in recent years emphasises the importance of setting up the International Criminal Court (ICC).

The British Government has played a pivotal role in promoting the establishment of a permanent, effective ICC able to help tackle the culture of impunity for some of the worst crimes known to humanity. As one of the ICC's strongest supporters, the UK intends to be among the Court's first sixty founding members. The UK is also continuing its efforts to raise global awareness of the Court and to lobby other countries around the world to sign up to the Statute. At time of writing 117 States have signed (including the UK in November 1998) and 24 have ratified.

The UK will ratify as soon as the legislation is in place to ensure we can meet all our obligations under the Statute. On 25 August the government published a draft ICC Bill for public scrutiny. The consultation period ended in October, and the Government has been busy considering the comments received from interested MPs, lawyers, academics and human rights organisations. It was announced in the Queen's Speech on 6 December that the Government intends to bring forward this legislation in the new session of Parliament to enable the UK to ratify as soon as possible.

Meanwhile, the UK has given significant support to the work of ICTR. In addition to our UN assessed contributions to ICTR (£3.1 million in 2000) we have provided video conference facilities to enable witnesses to give their evidence in Rwanda rather than travelling to the seat of the Tribunal in Tanzania. The UK has also contributed to a recruitment task force to help identify staff to fill the Tribunal's key vacant posts, and provided a British court administration expert to undertake a consultancy on court management.

#### 11. CONCLUSIONS

The UK's approach to support for ICTY's investigations in Kosovo has been innovative. We improved co-ordination, and ensured that the needs of ICTY were taken into account by all Government Departments which either had information relevant to the Tribunal or could provide practical help. Put simply, ICTY was factored into British policy over Kosovo at every possible level. This reflected a policy commitment that was personally reaffirmed by Robin Cook to Judge Arbour during a visit that she made to London on 20 April 1999.



This improved co-ordination has worked well. The flow of information and intelligence was more productive and focussed than before. The process of debriefing refugees has already shown itself to be of enormous value in helping the Prosecutor to identify witnesses.

The organisation of the UK Scenes of Crime Team involved numerous Government Departments, Police Forces and other bodies. The rapidity and effectiveness of the operation could not have been achieved without the logistic support of the armed services and the Ministry of Defence, or without the help on the ground of the Dutch, German and Russian troops in whose area the forensic work was being carried out. Much of the real financial cost was generously absorbed by the organisations which helped.

In total, we believe that our help (and that of other countries) has become better targeted and more effective than previously. However, one aspect which has not changed is the importance which the UK attaches to the independence of the Tribunal and of the Prosecutor. We have consistently taken care to operate within the framework of co-operation between States and ICTY which flows from its Statute.