

Prosecuting War Crimes

An Arizona Lawyer at The Hague

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Isa Racki looks tired. The face of the young farmer from Kosovo is framed by his short-cropped hair, already gray with a shock of white. He leans into the microphone to relate his awful tale.

The chamber in which Racki sits is a courtroom at the Hague in The Netherlands. Surrounded by older men and women wearing the flowing, black robes of authority, he testifies before the world's first war crimes court. A massive wall of glass separates him from the viewing public as he tells how local Serbian police began shooting at ethnic Albanians.

"Once they took their positions, they started firing randomly," Racki tells a three-judge panel. "They fired in the direction of the houses."

Tom Hannis looks on. He has heard these depressing stories before, read them in stacks of documents and searched for physical evidence to support them.

It's a whole new world for Hannis, who once worked as a top federal prosecutor in Phoenix. Now, he pursues war criminals for the International Criminal Tribunal for the former Yugoslavia.

Gone is the 20-minute commute from the Arcadia area to his job as chief of the U.S. Attorney's criminal division in Phoenix. Gone too are the certainties of the American legal system. Memories of successful cases against the Viper Militia and Oklahoma City bomber Timothy McVeigh are distant.

Hannis, 58, has spent the past five years prosecuting members of the Serbian police, military and elected government whom authorities believe orchestrated genocide in the Balkan Peninsula more than 15 years ago.

The job often takes him to field offices in rural Kosovo. There, Hannis joins an investigator and an interpreter to interview witnesses and gather evidence for trials that can last years.

The complex cases had their genesis in a complex region. More than a decade ago, multiple wars were being fought by Croats, Bosnian Muslims, Serbians and Kosovo Albanians. A U.N. bombing campaign ended the strife.

But witnesses are still reluctant to talk because they fear reprisal from those who thought the atrocities were heroic. Statements often lead to empty, lush pastures where the only physical evidence—if any—is buried in a mass grave somewhere nearby.

Back at the office, Hannis is one of more than 1,000 tribunal staff members from about 80 countries. His boss is the



Peace Palace in The Netherlands, home of the International Court of Justice.

former attorney general of Switzerland.

It's the kind of position many lawyers might crave.

"It is fascinating and frustrating work," Hannis admits. "As a prosecutor, you think this is the epitome of the work I am doing. I'm prosecuting war criminals. But sometimes we get bogged down in minutia and squabbles about very little things. That is frustrating."

In Hannis' latest case, it's the word of dozens of villagers versus that of former Serbian president Milan Milutinovic and his former prime minister, army chief-of-staff, head of the Interior Ministry, and two generals.

According to the indictment, the six men ordered or failed to punish Serbian troops who systematically shelled villages, destroyed homes and mosques, sexually assaulted women and killed civilians.

They were charged, along with former Yugoslav president Slobodan Milosevic, with orchestrating the deportation of hundreds of thousands of ethnic Albanians—forming what Hannis has called a "joint criminal enterprise" intended to "manipulate or modify the ethnic balance of Kosovo to maintain Serb control."

Racki says that rocket launchers fired from the direction of the local police station peppered a neighbor's house. Hundreds of villagers fled for Macedonia, and his 27-year-old wife eventually died of injuries she suffered during the melee—one of the few things Racki actually witnessed.

The high-profile trial is full of hearsay evidence, one of the many quirks in how the tribunal metes out justice. Witnesses regularly testify—mostly in writing—that their home was destroyed or their family members were killed based on information from neighbors.

Hannis says that although prosecutors try to corroborate such statements, many enter the court record as presented. It is a boost for prosecutors and a major difference between the tribunal's rules of evidence and those in the United States.

"In America, if I had a single homicide I might have 20 witnesses come in and testify about the killing of that one individual,"



Hannis and his calendar, with names of witnesses and accused.

Hannis says. "Here, we might have one witness testify about the killing of 20 or 200."

Defense attorneys typically claim their clients had nothing to do with the attacks, lacked the power to stop them—or that the crimes never occurred at all, Hannis says.

"A lot of the accused in these cases have the mindset of, 'Oh no, we can't admit that there were any war crimes because that makes my nation, my government, my people look bad,'" he explains.

Defense lawyers insist on hard evidence. But dozens of accounts usually win over judges.

"These are tear-jerking stories," Hannis says. "I mean, you sit in a courtroom sometimes and almost everybody—including the judges—are in tears because it's just unimaginable."

One boy who was about 13 years old recently testified about the last time he saw his father before the older man was taken away and shot. The defendant was Momcilo Krajisnik, a former economist and right-hand man to one of the war's chief operatives.

"Krajisnik actually stood up and said, 'Your honor, it's really hard for me to listen to this evidence,'" Hannis recalls. "And I thought, 'Well good. I'm glad.'" (Krajisnik received a 27-year sentence in September.)

Other tribunal quirks include a three-judge panel (plus one alternate), two defense attorneys for each accused (there is no public defender's office), and black robes (and sometimes wigs) worn by lawyers. For even the worst offense—genocide—there is no death penalty.

Many of the sentences fall far short of U.S. penalties for lesser

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offenses. For example, former Bosnian president Biljana Plavsic received an 11-year sentence in 2003 for persecution, which covers murder, detention camps, deportations, and sexual assault, among other things.

"It is kind of mind-boggling to think that some guy in Arizona or Texas would get more (time) for a couple of kilos of cocaine than he would if he had killed five guys in a prison camp," Hannis marvels.

The tribunal was created by the United Nations in 1993. It is funded by the U.N. and contributions from participating nations. The tribunal is governed by the laws of the Geneva and Genocide conventions, among others.

Though it remains one of the world's first and most useful tools in bringing international war criminals to justice, the tribunal is not without its flaws. And critics worldwide don't mind pointing them out as the debate on how the United States should treat enemy detainees rages on.

First, to build a case, prosecutors must get help from the same governments they suspect are harboring the accused. For example, Ratko Mladic, a former Bosnian-Serb army commander accused of orchestrating the massacre of 8,000 Muslim men and boys, was still on the army's payroll as late as November 2005 and remained at large in November 2006.

"My personal view is that there hasn't been a 100 percent, good-faith effort by some of the people who could have helped find him or get him here sooner," Hannis says. "He has lots of hardcore supporters in the region and elsewhere. It's mind-boggling."

Second, there isn't enough courtroom space to support more prosecutions. There are only three courtrooms, and attorneys get about four hours of real trial time per day, Hannis says. That means only six trials are going at any time.

Third, all the evidence has to be translated. At any moment, trial participants may speak or ask to see documents in English, French, Serbian or Albanian.

Finally, there isn't much existing case law to support various motions and evidentiary questions that arise during a trial.

In American courts, Hannis says, "The boundaries were much clearer and the rules were much clearer. They have been settled for a long time. Here, it's kind of constantly in a state of flux."

As a result, trials often take years to complete—so long that prosecutors are struggling to meet sentencing goals, and some of the accused have died before the trial and sentencing were completed.

One of the deceased includes Slobodan Milosevic, whom authorities had tapped as the mastermind. His trial generated about 1.2 million pages of documents—about 120 DVDs—whose contents could have shaken loose more information to help other prosecutions, including Hannis' current case.

Then Milosevic died of a heart attack in his jail cell in March 2006, shocking the world and tribunal staff.

"It was very depressing and very frustrating because so many people put so much time and energy and effort into that case," Hannis says.

Regardless, the tribunal has managed to indict 161 people for war crimes in the former Yugoslavia, according to its Web site

(www.un.org/icty). Forty-six have been sentenced, 11 were referred to local courts for prosecution, and another 11 died before, during or on provisional release from their trials.

The tribunal must finish all trials by the end of 2008 and all appeals by 2010, according to a self-imposed deadline the United Nations approved. Hannis admits he isn't sure if all the trials will make the cutoff, and tribunal officials continue to lobby for an extra year for prosecutors to complete their work.

Hannis acknowledges these flaws and says the tribunal has been successful—to some degree. The problem, he says, is that prosecutors jumped from low-level perpetrators to the ones at the top because they were pressed to show results. This meant the middlemen who could have fingered those in higher offices often went free.

"I don't think it's been as effective as it could be or I had hoped for," Hannis says. "But I think it's been effective."

"If there's just one," he adds. "If we save one life in the future or stop one massacre, one deportation or one prison camp with terrible conditions, then it's all worthwhile."

For now, Hannis is likely to remain at The Hague until all trials conclude. He has been "on loan" from the U.S. Department of Justice for the past five years and is awaiting State Department approval for a three-year extension.

Paul Charlton, United States Attorney for the District of Arizona, calls the job "the brass ring for prosecutors" because of the nature of the crimes and multiple, high-profile defendants. Charlton says he hopes Hannis will return to the Phoenix office, where he worked for 12 years and eventually oversaw cases involving drugs, immigration, organized crime and fraud.

"Tom reminds me of what I would imagine Abraham Lincoln would have been like in trial: He is a tall person with the kind of presence that you immediately find yourself liking him and trusting him," Charlton says.

"Juries were immediately drawn to him," he adds. "He could take complex cases, difficult matters, and bring them to an understandable point."

Life in Europe, meanwhile, has been a refreshing change for Hannis. He bikes to work or rides the light rail and enjoys Belgian or French cuisine over what he says is bland Dutch grub. If The Hague becomes too quiet and quaint, Hannis can hop a train to almost any large city in western Europe.

His daughters, who just enrolled at Northern Arizona University, enjoyed the cultural exchange of attending high school with children of foreign diplomats. Hannis says they "gushed" about field trips to Moscow and having friends from Russia, South Africa and Venezuela.

Hannis admits he is not sure what he will do next. The uncertainty in his voice suggests that the U.N. gig may be his swan song.

"In some ways, it feels kind of good to be away from home," Hannis says. "I mean I miss it, but the few times I've visited it, it just feels like there's a different atmosphere in the country—more fearful, more anxious and more nasty."

He gazes out the window at the next office building and beyond. Traffic cruises slowly along tree-lined streets while people walk or pedal by on steel-framed, single-speed bicycles.

"I do like the European lifestyle," Hannis says, smiling. 