

# **Justice in the Balkans: Developing International Law after Yugoslavia**

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# Table of Contents

LIST OF ABBREVIATIONS ..... i

v

CHAPTERS:

1. CHAPTER ONE:  
Introduction..... 1

2. CHAPTER TWO: Inheritance of the  
ICTY ..... 13

3. CHAPTER THREE:  
Culpability..... 22

4. CHAPTER FOUR: Pleas and  
Punishment..... 28

5. CHAPTER FIVE:  
Conclusion ..... 33

APPENDIX 1  
A..... 35

APPENDIX 1  
B..... 61

BIBLIOGRAPHY..... 63

## List of Abbreviations

ICTY	International Criminal Tribunal for the Former Yugoslavia
IMT	International Military Tribunal
IMTFE	International Military Tribunal for the Far East
UN	United Nations
UNPROFOR	The United Nations Protection Force
UNSC	United Nations Security Council

## *Chapter One: Introduction*

Warfare is a dirty mess of ethics and morality. However, warfare has been ruled by strict laws that take the form of both generally accepted cultural norms such as chivalry, and as codified legal doctrine such as various Geneva Conventions of the nineteenth and twentieth centuries. It is only recently, within the last century, that international society has been trying more and more to regulate war. The establishment of tribunals and the codifying of laws has been to ensure that human rights and basic dignity are preserved in an otherwise barbarous environment. The trailblazers of these tasks have not always been successful and are often lightning rods for criticism. These tribunals and courts have not necessarily failed in their tasks. Rather, victims and the international community desire to see these efforts succeed and to ensure a fair application of the law. Above all else, the majority of the international public hopes that these efforts diminish the instances of war crimes and undue violence and bring justice to affected populations.

The history of international criminal tribunals and military tribunals is a short one. Laws of war and combat have existed for centuries in official doctrine and unofficially. For example, Hugo Grotius wrote the philosophical work “On the Law of War and Peace” in 1625 that established the basis for “just war doctrine” and suggested that all parties involved in war hold a legal and moral responsibility to uphold the laws of war.<sup>1</sup> Grotius’ work is considered the foundational work for international law. However, these and similar laws of war have never truly been applied in an international criminal court prior to the Second World War. The Treaty of Versailles following the First World War involved the “War Guilt Clause” that established

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<sup>1</sup> Jon Miller, "Hugo Grotius" *The Stanford Encyclopedia of Philosophy* (2014), Edited by Edward N. Zalta, <https://plato.stanford.edu/archives/spr2014/entries/grotius/>

Germany was responsible for instigating the war and owed reparations. This treaty is occasionally pointed to as the beginnings of international criminal law, however that is not an entirely accurate statement to make. This treaty was just a treaty and did not involve an international court or criminal sentencing. Furthermore, this treaty established the guilt and cause of the war but did not prosecute violations of the laws of war and crimes against humanity. The Hague Conventions of 1899 and 1907 as well as the Geneva Protocol of 1925 established international laws and expectations regarding conduct in war such as unjust weapons and customs of war. The Hague Conventions themselves are an interesting attempt in establishing an international court, but instead only resulted in The Permanent Court of Arbitration. The Permanent Court of Arbitration was (and still is) merely a mode of international dispute resolution and is not a court in the traditional sense so it will be excluded from the discussion. There were a small series of trials known as the Leipzig War Crimes Trials imposed on Germany by the Treaty of Versailles. These trials prosecuted nine members of the German military for various violations of the laws of war.<sup>2</sup> At the time contemporaries (such as lawyer Claud Mullins) were hopeful that the trials would be “an important landmark in international relations and a valuable demonstration of the power of abstract rules of humanity. When the time comes to build up a wider and more complete code of International Law than exists at present...it will probably be found that the War Criminals’ Trials have given material assistance.”<sup>3</sup> However, the sentences and court decisions were so minor that the Leipzig trials have largely been deemed a

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<sup>2</sup> Claud Mullins, *The Leipzig Trials: An account of the war criminals' trials and a study of German mentality*. London: H. F. & G. Witherby. 1921. 23-26 available at <http://galenet.galegroup.com.ezproxy.library.uvic.ca/servlet/MOML?af=RN&ae=F152199435&srhp=a&ste=14>

<sup>3</sup> *Ibid.*, 210

failure in retrospect and have not been influential.<sup>4</sup> Additionally, even though these trials were imposed by the international body of the Paris Peace Conference, the trial was conducted within Germany by the German Government. Thus, it did not constitute as an international criminal tribunal or court.

The Permanent Court of International Justice was established based on Article 14 of the Covenant of the League of Nations, which was established following the First World War and Paris Peace Conference.<sup>5</sup> Later this court would be replaced by the International Court of Justice. Similar to the Permanent Court of Arbitration, this court was not a military tribunal and did not have any cases regarding the violation of the laws of war. The cases largely regarded border and treaty disputes in addition to the occasional international criminal case.<sup>6</sup> None of these cases prosecuted an individual for a crime against humanity or war crime.

The first truly international prosecution of violations of the laws of war took place after the Second World War. After defeating Germany, the Allied Powers (the United States of America, France, the Soviet Union, and the United Kingdom) established the IMT, which was to prosecute major German Nazi war criminals. The trials were held in the Nuremberg Palace of Justice starting on November 19, 1945. The Nuremberg Trials were the first major trials for war criminals and would set the precedent for subsequent *ad hoc* tribunals to follow. The accused

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<sup>4</sup> James F. Willis, *Prologue to Nuremberg: the politics and diplomacy of punishing war criminals of the First World War*. Westport, Connecticut: Greenwood Press, 1982. 139; Harry M. Rhea "The Nuremberg effect on contemporary international criminal justice." *Criminal Justice Studies* 21, no. 4 (2008) 363 DOI: 10.1080/14786010802554246

<sup>5</sup> Ole Spiermann, "‘Who Attempts too Much Does Nothing Well’: the 1920 Advisory Committee of Jurists and the Statute of the Permanent Court of International Justice" *British Yearbook of International Law* (2003) 73 no. 1 187-189 DOI: <https://doi-org.ezproxy.library.uvic.ca/10.1093/bybil/73.1.187>

<sup>6</sup> *Ibid.*, 211

were indicted with one or more of the following crimes: participation in a common plan or conspiracy for the accomplishment of a crime against peace; planning, initiating and waging wars of aggression and other crimes against peace; war crimes; and crimes against humanity.<sup>7</sup> Twenty-four accused individuals were brought in front of the IMT and the trials proceeded for just under a year.

The Nuremberg trials were a success as far as administering hefty punishments for war crimes. Out of the 24 accused, only three were acquitted of all the crimes for which they were indicted.<sup>8</sup> Those who were found guilty were sentenced either to varying lengths of prison time or death. Of those found guilty of both “war crimes” and “crimes against humanity”, all were sentenced to death with a handful of exceptions.<sup>9</sup> Walther Funk, Adolph Hitler’s Minister of Economics, received a life sentence.<sup>10</sup> Baron Konstantin von Neurath was sentenced to only 15 years’ imprisonment due to his short period of active duty as Protector of Bohemia and Moravia

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<sup>7</sup> "Volume 1 - Indictment." *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/count.asp>.

<sup>8</sup> "Judgment - Fritzsche." *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judfritz.asp>; "Judgment – von Papen" *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judpapen.asp>; "Judgment – Schacht" *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judschac.asp>

<sup>9</sup> "Judgment – Sentences" *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judsent.asp>

<sup>10</sup> Ibid.

where the crimes he was accused of took place.<sup>11</sup> Neurath also received a lighter sentence due to a falling out he had with Hitler and his resignation from his post.<sup>12</sup>

The case of Albert Speer is a unique one. Speer was Minister of Armaments under Hitler and was directly responsible for the use of slave labour in German armaments productions. He was the only defendant to plead guilty before the court, albeit not the only one to express repentance.<sup>13</sup> For this, Speer was given a meagre 20 years in prison. Comparatively, at first glance, it is a light sentence considering the fate of the rest of Hitler's "inner circle." It may seem that Speer received a lighter sentencing because he pled guilty and accepted full responsibility for his actions and complicity in the crime. However, there is an often forgotten addition at the very end of the official sentencing: "in the closing stages of the war he was one of the few men who had the courage to tell Hitler that the war was lost and to take steps to prevent the senseless destruction of production facilities....He carried out his opposition to Hitler's scorched earth programme in some of the Western countries and in Germany by deliberately sabotaging it at considerable personal risk."<sup>14</sup> In this case, Speer's admission of guilt had less of a bearing in his sentence than his actions against Hitler. Some have suggested that Speer's cultivation of a "good Nazi" image (a Nazi who was unaware of the Holocaust and resisted Hitler) has led to his favourable treatment by the Tribunal and historians.<sup>15</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> "Judgment – von Neurath" *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judneur.asp>

<sup>13</sup> "Judgment – Speer" *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judspeer.asp>

<sup>14</sup> Ibid.

<sup>15</sup> Dan Van Der Vat, *The Good Nazi: The Life and Lies of Albert Speer*, Houghton Mifflin Harcourt, 1997



The largest complaint launched against the IMT is that it was a form of “victor’s justice”. The first use of the term was in reference to the IMTFE, where Japanese war criminals from the Second World War were tried; however scholarly and public debate also often criticize the Nuremberg Trials of having this same bias.<sup>16</sup> The unconditional surrender of Germany ended the Second World War in Europe provided the Allied powers with the ability to try criminals and enforce sentences. The IMT concerning violations of the laws of war was established by the Allied powers and solely prosecuted the defeated enemy. The IMT judgment explicitly stated that “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”<sup>17</sup> However, not all individuals who committed war crimes were tried at Nuremberg. Although the German Nazi leadership exclusively faced indictment, individuals from other nations undoubtedly violated laws of war throughout the Second World War. It has brought about the question of whether or not it is reasonable for the victor to prosecute the defeated on different standards than those held by the defeated or other figures in the war.

The legitimacy of the IMT is another debate surrounding the objectivity of the Nuremberg trials and an *ex post facto* application of the law. While other customs of war had already been established with The Hague Conventions and with the Geneva Protocol, indicting the defeated had no precedent in the generally accepted customs of war. The concept of “conspiracy” as a legal method of establishing responsibility was used for the first time in the history of International criminal law. Furthermore, the “crime of aggression” was likewise

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<sup>16</sup> Richard H. Minear, *Victors' Justice: The Tokyo War Crimes Trial*. Center for Japanese Studies, University of Michigan, 1971

<sup>17</sup>“The Law of the Charter.” *Trial of the Major War Criminals Before the International Military Tribunal: Proceedings Volumes (The Blue Set)*. 14 November 1945-1 October 1946. The Avalon Project. <http://avalon.law.yale.edu/imt/judlawch.asp>.

unprecedented in international laws. The IMT was also established after the end of the Second World War, and the United Nations did not exist until late June of 1945 after the unconditional surrender of Germany in early May. This ambiguity in legitimacy and authority was utilized (ineffectively and as a desperate effort) by Herman Goering, the second most powerful leader of the Nazi regime.<sup>18</sup> Goering's attempt failed and was not seen as a valid defence by the Tribunal. A debate has arisen of whether or not laws or institutions and retroactively enforce authority.<sup>19</sup> How can one be expected to follow laws and obey the international governing bodies when they have yet to be founded? Is the authority of *ad hoc* tribunals entirely legitimate, or must a established and constant court or tribunal be established to avoid controversy?

Further concerns about fairness at the Nuremberg Trials have been discussed at length. The Nuremberg trials have been criticized for not providing any defendants with the right to appeal the sentencing. The Nuremberg tribunal also allowed the introduction of *ex parte* affidavits,<sup>20</sup> 300,000 of which were admitted into court over the course of the Trials.<sup>21</sup> The accused in all of these cases were denied the right to confront the witnesses testifying against them. The accused were therefore unable to cross-examine or defend themselves as effectively as they could have, had their rights been protected by the IMT. The indicted were also not always privy to discovery and the full extent of the IMT's evidence archives were not available to the defence.<sup>22</sup> Some of these affidavits may have been key pieces of evidence in the trial that sealed

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<sup>18</sup> Harry M. Rhea "The Nuremberg effect on contemporary international criminal justice." 370

<sup>19</sup> Ibid; Michael P. Scharf "A Critique of the Yugoslavia War Crimes Tribunal" *Denver Journal of International Law and Policy* (1997), 305-6

<sup>20</sup> "Ex parte affidavits" simply put, is a written statement for the use in court that is taken without the accused present; Telford Taylor *Anatomy of the Nuremberg Trials* Knopf Doubleday Publishing Group. New York. (1992) 174

<sup>21</sup> Michael P. Scharf "A Critique of the Yugoslavia War Crimes Tribunal". 307

<sup>22</sup> Ibid;

the fate of Nazi war criminals, though by no means is it suggested that the Nuremberg criminals were not guilty. However, the rights of the defendants must be preserved in all cases so that in instances where guilt is much more difficult to discern an innocent party may effectively defend themselves.

The Nuremberg trials were not the only International Criminal Tribunal at this time. The IMTFE, or Tokyo Trials, were established on April 29, 1946 and prosecuted the leaders of Imperial Japan for their war crimes. These trials were structured differently, trying individuals based on different ‘Classes’ of crimes (‘A’ ‘B’ or ‘C’), though these ‘Classes’ were based off of the indictments from the Nuremberg Trials.<sup>23</sup> The IMTFE has faced similar criticisms as the Nuremberg Trials, particularly as it concerns “victor’s justice” and *ex post facto* application of the law. For the purposes of this analysis, it is unnecessary to discuss the IMTFE at length, as it does not concern a European context. However, there is one concept unique to the Tokyo Trials that was carried forward into future applications of international criminal law: command responsibility. The case of Tomoyuki Yamashita is a unique precedent established by United States prosecutors. Yamashita was a Japanese general during the Second World War who was held criminally responsible for the war crimes committed by his troops in the Philippines. Yamashita’s defence was that his communication lines were severed and had no way of knowing what his troops had done.<sup>24</sup> The United States Supreme Court argued differently and sentenced him to death, stating in their judgment that Yamashita was liable for the actions of his troops and therefore directly criminally responsible for the war crimes they committed. Simply because he

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<sup>23</sup> Richard H. Minear, *Victors' Justice*. 24

<sup>24</sup> Amy J. Sepinwall, "Failures to Punish: Command Responsibility in Domestic and International Law." *Michigan Journal of International Law* 30, no. 2 (2009) 262-263. <http://heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/mjil30&collection=journals&id=257>

had not ordered them did not mean he was not responsible for them. This case has been hotly debated by historians who argue Yamashita truly did not have a line of communication with his troops as it had been severed by US forces. Yamashita did not possess *mens rea* (a guilty mind) and did not deserve to be held culpable for the actions of his troops.<sup>25</sup> Others have discussed the controversy on a philosophical level debating whether a commander is either criminally liable for the war crimes that his or her troops have committed or is guilty of a separate crime of failing his duty as a commander.<sup>26</sup>

1993 saw parallels quickly drawn between Yugoslavia and Nuremberg and the ICTY has been a lightning rod for similar criticisms faced by the IMT and IMTFE faced. Pioneering is a difficult path and improvements can always be made in retrospect. However, the question must be raised as to whether the ICTY is deserving of these criticisms, or is it simply in fashion to critique the trailblazer? It is also important to evaluate whether or not these faults are unavoidable in the prosecution of international war crimes due to the complex nature of both the crime and method of prosecution. The ethical and philosophical issues that surround the criticisms of the ICTY are a starting point upon which a more empirical analysis will be conducted.

The ICTY was founded in 1993 to respond to human rights abuses during the breakup of Yugoslavia throughout the 1990s. The Yugoslavia crisis began in 1991 with the “Ten-Day War” when Slovenia declared independence and a brief conflict erupted between the Slovenian Territorial Defence and Yugoslav People’s Army. The crisis continued throughout the 1990s and into 2001. Conflicts included in the Yugoslav Wars included the Croatian War of Independence

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<sup>25</sup> Amy J. Sepinwall "Failures to Punish," 263

<sup>26</sup> Ibid; Gavin Dingwall and Tim Hillier, "The Banality of Punishment: Context Specificity and Justifying Punishment of Extraordinary Crimes." *UPS* 6, no. 1 (2010) 18

from 1991-1995, the Bosnian War from 1992-1995, and the Kosovo war from 1998-1999. It also included Insurgency in the Preševo Valley from 1999 to 2001 and insurgency in the Republic of Macedonia in 2001. The conflicts were driven largely by radical nationalism and a desire for ethnicity-based independent states within the region.<sup>27</sup> The wars were involved wide-scale human rights abuses, including ethnic cleansing, violations of the laws of war, concentration camps, deportation, torture, genocidal rape, and sexual abuse.<sup>28</sup>

The United Nations Security Council, concerned with the reports of human rights abuses taking place in the former Yugoslavia, adopted the United Nations Charter Chapter VII as it concerned “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression”<sup>29</sup>. Specifically, the ICTY was established with United Nations Security Council Resolution 827.<sup>30</sup> The tribunal has charged over 160 people with various crimes laid out in the ICTY Statute. The crimes the accused have been indicted with fall under four different articles of the ICTY Statute: grave breaches of the Geneva Conventions of 1949 (Article 2), violations of the laws or customs of war (Article 3), genocide (Article 4), and Crimes against humanity (Article 5).<sup>31</sup> Each article details a list of possible crimes with which an accused can be indicted although indictments and charges are not limited to what is explicitly listed. The only exception to this rule are contempt cases, the laws for which are outlined in the “Rules of Procedure and

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<sup>27</sup> “The Conflicts” International Criminal Tribunal for the Former Yugoslavia.

<http://www.icty.org/en/about/what-former-yugoslavia/conflicts>

<sup>28</sup> "About the ICTY." International Criminal Tribunal for the Former Yugoslavia.

<http://www.icty.org/en/about>.

<sup>29</sup> Ibid.

<sup>30</sup> United Nations Security Council (SC), Resolution 827. May 25, 1993. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/700/12/img/NR070012.pdf?OpenElement>

<sup>31</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 “Updated Statute of the International Criminal Tribunal for the Former Yugoslavia” September 2009. [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf)

Evidence”, specifically Rule 77. The accused in each criminal case in the ICTY faces indictment or charges based on a definition of responsibility as has been outlined in Article 7 of the ICTY Statute. Article 7(1) refers to as “individual responsibility” for “[a] person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime.” Alternatively, the basis of responsibility is “command responsibility” detailed in Article 7(2). It refers to an individual who “knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”<sup>32</sup>

This exegesis evaluates the validity of criticisms of ICTY using various methods of research. By using scholarly articles as well as public opinion and newspaper articles, the most prominent criticisms against the ICTY will be discussed. The validity of these claims will then be tested by close examination of ICTY cases and court rulings. To establish the validity of some of these claims, there is basic data about ICTY criminal cases, excluding unfinished cases, transferred cases, and contempt cases. For each case, the indictment, charges, responsibility, years sentences, ethnicity, and plea have been collected and given a unique code. All 112 individuals whose cases have been completed at the ICTY can be compared for certain similarities or differences to establish norms or trends. All of this information has been collected from the ICTY official online court databases and case collection.<sup>33</sup>

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<sup>32</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 “Updated Statute of the International Criminal Tribunal for the Former Yugoslavia”

<sup>33</sup>“The Cases” International Criminal Tribunal for the Former Yugoslavia.

<http://www.icty.org/en/action/cases/4>; “ICTY Court Records” United Nations ICTY

<http://icr.icty.org/>

Various issues affect an analysis the effect of the ICTY on international law and the nations of the former Yugoslavia. For example, the ICTY has not yet completed prosecuting indicted individuals. At the date of writing, the accused Ratko Mladic, the Bosnian Serb general whose troops conducted genocide of Bosnian Muslims at Srebrenica in 1995, is still in the trial process and judgement is expected in November 2017.<sup>34</sup> Eight individuals are also still on appeal and three contempt cases are currently at the pre-trial phase. The outcome of these criminal appeal cases may have an effect on the conclusions of this work. Furthermore, it has been 10 years since the United Nations International Court of Justice has ruled that Serbia was not directly responsible for genocide and the only count of genocide was the Srebrenica massacre. This means Bosnia is now able to appeal the decision and seeks to do so.<sup>35</sup>

This uncertainty surrounding the future of international law as it relates to the former Yugoslavia will be taken into consideration, but cannot be accurately addressed or commented on until after the rulings have been made. Therefore, the discussion about the sentencing and court rulings will only consider cases that have been completed. In addition, while fighting and warfare within the region have, for the most part, ceased, the region is still experiencing turmoil and ethnic tensions. The wounds and memories of the traumatic event are still fresh and the highly personal and emotional aspect of the conflict has made the job of reconciliation even more difficult for the ICTY.

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<sup>34</sup> Communications Service of the International Criminal Tribunal for the Former Yugoslavia “(IT-09-92) RATKO MLADIĆ – Case Information Sheet” United Nations International Criminal Tribunal for the Former Yugoslavia.

[http://www.icty.org/x/cases/mladic/cis/en/cis\\_mladic\\_en.pdf](http://www.icty.org/x/cases/mladic/cis/en/cis_mladic_en.pdf)

<sup>35</sup> "Bosnia appeals against UN court's Serbia genocide ruling." BBC News. February 23, 2017. <http://www.bbc.com/news/world-europe-39072830>.

## *Chapter Two: Inheritance of the ICTY*

Some public and academic circles that have criticized the ICTY have accused the tribunal of failing in the same ways that the Nuremberg Trials failed. The ICTY has used the Nuremberg Trials as the basis of much of its structure and, as a successor to the IMT, some have contended that the ICTY inherited the same fundamental issues. Some critics argue that the ICTY is another *ex post facto* application of the law.<sup>36</sup> The tribunal was established after the start of the breakup of Yugoslavia and did not exist at the time many of the atrocities were committed. Though it is unfair to retroactively apply the law, in the case of the ICTY there is no instance of an *ex post facto* application of the law.<sup>37</sup>

The ICTY is a creation of the United Nations, an organization established for nearly 50 years by the time of the Yugoslav conflicts. The rules defining what constituted a war crime existed in the form of the Geneva Conventions likewise for more than half a century. Furthermore, the nation of Yugoslavia was a member state, so the argument that the United Nations' was over reaching its authority by establishing a court separate from a national one has little basis. Perhaps the only angle from which this argument can be seen as valid is if one sees the state of Yugoslavia ceasing to exist when the breakup began. If Yugoslavia ceased to exist, then its successor states would need to re-affiliate themselves with the United Nations and accept its laws and authority. While nations such as Bosnia and Herzegovina and Croatia joined the

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<sup>36</sup> Michael P. Scharf, "A Critique of the Yugoslavia War Crimes Tribunal" 305

<sup>37</sup> Rachel Kerr, "International Judicial Intervention: The International Criminal Tribunal for the Former Yugoslavia" *International Relations* 15 no. 2 (2002) 17-18 DOI: <https://doi-org.ezproxy.library.uvic.ca/10.1177/0047117800015002003>



United Nations in 1992, Serbia only did so in 2000.<sup>38</sup> Arguably, the United Nations had no right to exert authority over Serbia in the 1990s. That would be the case had the atrocities of the breakup taken place on Serbian soil or the territory of another non-United Nations territory. However, a staggering majority of the war crimes committed were on the territories of Bosnia and Herzegovina, Croatia, and the disputed territory of Kosovo. Thus, the international scale and involvement of two United Nations member states gave the United Nations authority over the conflict. In addition, the United Nations made sure to remind the nations of the former Yugoslavia that they were expected to uphold both the laws of war and humanitarian law throughout the conflict in its early stages.<sup>39</sup>

There have been other controversies surrounding the authority of the ICTY as well. Slobodan Milosevic, the Serbian president after 1991, when asked if he truly wished to refuse his right to counsel, responded to Judge Richard May, "I consider this Tribunal a false Tribunal and the indictment a false indictment. It is illegal being not appointed by the UN General Assembly, so I have no need to appoint counsel to illegal organ."<sup>40</sup> It may appear to be a desperate attempt by an indicted to defend himself, however, other prominent members of the public have raised the issue. Scholar and president of the International Progress Organization, Hans Köchler, submitted a memorandum to the the President of the Security Council in 1999 that argued,

According to the provisions of the U.N. Charter, the Council has no competence whatsoever in judicial matters. The provisions of Chapter VII determine the Council's competence in matters of international security but not in matters of criminal justice or

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<sup>38</sup> "Member States." United Nations. <http://www.un.org/en/member-states/>

<sup>39</sup> Michael P. Scharf, "A Critique of the Yugoslavia War Crimes Tribunal" 305-6

<sup>40</sup> *Prosecutor v. Milošević, Slobodan* (IT-02-54) ITCY July 3, 2001.

[http://www.icty.org/case/slobodan\\_milosevic/4#trans](http://www.icty.org/case/slobodan_milosevic/4#trans)

other judicial matters. The sole authority in international judicial matters rests with the International Court of Justice.<sup>41</sup>

Perhaps this argument holds more traction than an *ex post facto* application of the law.

The ICTY and United Nations Security Council were arguably justified under Article 39 of the United Nations Charter. It states, “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”<sup>42</sup> If the United Nations truly saw the war in Yugoslavia as an international threat, the Security Council would have the authority to “take measures”. As aforementioned, the breakup of Yugoslavia can undoubtedly be seen as an international conflict if one assumes that the break up of Yugoslavia immediately resulted in multiple unrecognized ethnic states. However, Article 39 of the United Nations requires the actions of the Security Council to be “in accordance with Articles 41 and 42.”<sup>43</sup> These articles permit “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”<sup>44</sup> And “demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.” However, they are not explicitly the only actions the UNSC can take. The Charter uses the terms “may include” and “may take such action” implying that the outlined actions are not binding.

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<sup>41</sup> Hans Köchler, “Memorandum on the Indictment of the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia and Other Officials of Yugoslavia by the ‘International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991’ International Progress Organization. May 1999. <http://i-p-o.org/yu-tribunal-memo1999.htm>

<sup>42</sup> United Nations. “Chapter VII” of the *Charter of the United Nations*. Signed on 26 June 1945. <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

This ambiguity allows the UNSC “wobble room” to interpret the Charter, for better or worse, based on the specific situation.

The ICTY has, however, denied some of the rights of the accused during trial, similar to the IMT.<sup>45</sup> The most prominent example is hiding the identity of witnesses via *ex parte* statements.<sup>46</sup> As earlier discussed, this deprives the accused of the right to confront those who testify against him or her. The ICTY Statute has made it clear that, above all else, it respects and will uphold the rights of the accused in court to preserve a fair trial. Article 20 of the ICTY statute states “The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.”<sup>47</sup> The phrasing of this article suggests that, as a whole, the ICTY set out to favour the rights of the defendant. In some cases, the right of the accused to confront those who testify against him or her carried less weight than ensuring the safety and protection of the witness.

Multiple cases within the ICTY have used various methods of concealing the identity of witnesses to testify against the accused. The ICTY Rules of Procedures and Evidence list methods by which witnesses can testify in court without revealing their identity:

- (i) measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as:
  - a. expunging names and identifying information from the Tribunal’s public records;
  - b. non-disclosure to the public of any records identifying the victim or witness;

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<sup>45</sup> Thomas Krueßmann, *ICTY: Towards a Fair Trial?* Wien: Neuer Wissenschaftlicher Verlag, 2008, p. 25.

<sup>46</sup> Michael P. Scharf, "A Critique of the Yugoslavia War Crimes Tribunal" 307

<sup>47</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 “Updated Statute of the International Criminal Tribunal for the Former Yugoslavia”

- c. giving of testimony through image- or voice- altering devices or closed circuit television; and
- d. assignment of a pseudonym;<sup>48</sup>

The ICTY has deemed these “appropriate measures for the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the accused.”<sup>49</sup> Although this has been disputed, as mentioned earlier, common practices of witness protection in the ICTY have been protections from the public and media by withholding names and images. The ICTY presents many videos (edited to preserve the witness’ privacy) on its website, most of whom were young or under aged.<sup>50</sup> The case against Dusko Tadic, a Bosnian Serb paramilitary, saw the identities of some witnesses withheld from the defence and his counsel throughout the entirety of the trial.<sup>51</sup> The *Tadic* Chamber maintained that,

“The right of the accused to examine, or have examined, the witnesses against him, is laid down in Article 21(4) of the Statute of the International Tribunal. Anonymity of a witness does not necessarily violate this right, as long as the defence is given ample opportunity to question the anonymous witness. Witness anonymity will restrict this right to the extent that certain questions may not be asked or answered but, as noted above and as is evidenced in national and international jurisdictions applying a similar standard, it is permissible to restrict this right to the extent that is necessary.”<sup>52</sup>

Vengeance is well-respected within the Balkan context, dating back to the medieval era of culturally established revenge killings. These have persisted into the modern day with

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<sup>48</sup> International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 “Rules of Procedure and Evidence” July, 2015

[http://www.icty.org/x/file/Legal%20Library/Rules\\_procedure\\_evidence/IT032Rev50\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf)

<sup>49</sup> Ibid;

<sup>50</sup> “Voice of the Victims.” International Criminal Tribunal for the Former Yugoslavia.

<http://www.icty.org/en/sid/105>

<sup>51</sup> Michael P. Scharf “A Critique of the Yugoslavia War Crimes Tribunal” 307-8

<sup>52</sup> *Prosecutor v. Dusko Tadic AKA “DULE”* “Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses” International Criminal Tribunal for the Former Yugoslavia. 10 August 1999. 67 <http://www.icty.org/x/cases/tadic/tdec/en/100895pm.htm>

recorded incidents taking place during and after the conflicts in the former Yugoslavia.<sup>53</sup> Furthermore, violent revenge for atrocities remained a constant during the break up of Yugoslavia. Additionally, the Court is not able to grant protection to the family and friends of witnesses that remain in the region of the former Yugoslavia. In some particular instances, family members and friends of the witnesses remained in enemy prisons, further increasing the likelihood of violent retributive acts. The ICTY has evidently made it clear in the case of Dusko Tadic that ,beyond the physical borders of the tribunal itself, it “has no police force that can care for the safety of witnesses” and that “the International Tribunal has no long-term witness protection programme nor the funds to provide for one.”<sup>54</sup> This police force, in theory, would also only extend to protect the witness and not his or her family. It is apparent that in the eyes of the ICTY, the protection of the witness is, at times, treated with more than just “due regard” however there is no way to ensure both the rights of the accused and the safety of the witness are protected given the tribunal’s budget, resource, and authority restrictions. In the future, should a tribunal or court seek to balance the two responsibilities, more resources would need to be available. However, given the extended period of time that the tribunal operates and the even longer period of time a witness protection program would need to be sustained, it would be an

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<sup>53</sup> Tina Rosenberg, "Trying to Break the Cycle of Revenge in Bosnia." The New York Times. November 21, 1998. <http://www.nytimes.com/1998/11/22/opinion/editorial-observer-trying-to-break-the-cycle-of-revenge-in-bosnia.html>; Carol J. Williams "Bosnian War Stirs Desire for Revenge." Los Angeles Times. February 15, 1993. [http://articles.latimes.com/1993-02-15/news/mn-169\\_1\\_bosnian-war](http://articles.latimes.com/1993-02-15/news/mn-169_1_bosnian-war); "Three Muslim murderers 'launched knife attack on Bosnian-Serb general in British prison as revenge for war atrocities'" Daily Mail Online. February 07, 2011. <http://www.dailymail.co.uk/news/article-1354576/3-Muslim-murderers-revenge-knife-attack-Bosnian-Serb-general-UK-prison.html>.

<sup>54</sup> *Prosecutor v. Dusko Tadic AKA “DULE”* “Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses”

expensive endeavour. No matter how much the tribunal seeks to maintain and uphold these protective responsibilities, money and resources are essential.

The most important parallel drawn between Nuremberg and the ICTY is the issue of “victor’s justice”. The United Nations, and specifically the wing that founded the ICTY, the Security Council, was not a neutral party in the Yugoslavian conflict. UNPROFOR was created by the United Nations Security Council Resolution 743; it then went into Croatia to protect a cease fire and to Bosnia and Herzegovina to preserve life.<sup>55</sup> The United Nations likewise placed sanctions and embargos against Serbia throughout the course of the break up of Yugoslavia. The UNPROFOR in Bosnia and Herzegovina maintained border control, maintained “safe areas”, protected humanitarian aid, established a no-fly zone and provided aid to Sarajevo during its siege. All of these efforts were in hopes of creating stability within the region and eventually reach and maintain a ceasefire.<sup>56</sup> The Bosnian Serb forces resisted, they attacked UN “safe-areas” and continued in the siege and attacks on UNPROFOR forces. The United Nations did not act alone during this peacekeeping operation; they were aided by North Atlantic Treaty Organization (NATO) forces particularly with air support.<sup>57</sup> 1995 saw extensive air strikes carried out on Serbian targets in a strategic attempt to break the army and force negotiations in Operation *Deliberate Force*. NATO airstrikes resumed in 1999, this time without the authorization or support of the United Nations Security Council.

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<sup>55</sup> Department of Public Information, United Nations. "UNTED NATIONS PROTECTION FORCE." United Nations Peace Keeping. September 1996.  
[http://www.un.org/en/peacekeeping/missions/past/unprof\\_b.htm](http://www.un.org/en/peacekeeping/missions/past/unprof_b.htm).

<sup>56</sup> Department of Public Information, United Nations. "UNTED NATIONS PROTECTION FORCE."

<sup>57</sup> Ibid.

Some speculate that the United Nations' involvement in the conflict has compromised the ICTY's ability to function impartial body and heavily favours Bosniaks and Croats over Serbians.<sup>58</sup> It appears a reasonable assumption. Out of the 112 criminal cases completed at the ICTY, in 73 of the indicted were Serbian. In other words, 65% of the ICTY cases were against Serbians.<sup>59</sup> In only four cases was the defendant found not guilty, and in six the defendant died before the trial could be completed. Approximately 94% of all Serbians charged were found guilty before the court. Comparatively, only 9 Bosniak cases were brought to the court. In one case the accused died before the trial was complete and 3 defendants were found not guilty.<sup>60</sup> Here, 63% of all Bosniaks at the ICTY were found guilty of their crimes; 20 Croatsians were put on trial at the ICTY with a 57% guilty rate. Additionally, in total, 957 years (plus five life sentences) were dealt to ethnic Serbians and 7.5 years were given to Montenegrins. Only 41.5 years were given in total to Bosniaks, 150 years to Croatsians, 12 years to Macedonians and 13 years to Albanians.<sup>61</sup> Excluding life sentences, 81% of all jail time was given to Serbians when only 65% of the cases were Serbian to begin with. The percentage of jail time is only higher if Serbian life sentences are taken into account. Certainly there seems to be a heavy lean towards prosecuting ethnic Serbs. While this could be indicative of tribunal bias, it is more likely that Serbians perpetrated more crimes and more serious ones throughout the Yugoslav wars.

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<sup>58</sup> "General jailed for Dubrovnik role." BBC News. January 31, 2005.

<http://news.bbc.co.uk/2/hi/europe/4222749.stm>.

<sup>59</sup> See Appendix 1 A. and B.

<sup>60</sup> See Appendix 1 A. and B.

<sup>61</sup> See Appendix 1 A and B.

### *Chapter Three: Culpability*

The ICTY has not regarded the notion of culpability in the same way as in the case of Yamashita at the IMTFE. As mentioned, the ICTY has recognized two different modes of responsibility under Article 7 of the ICTY statute. An accused person can be held either individually responsible or responsible under his duty as a commander. In other words, an individual can either be criminally responsible for a war crime or can have failed his or her duty as a commander to punish or prevent his or her troops who have committed a war crime. However, it has been debated whether the ICTY has remained consistent or has maintained this nuance.

Though the ethical debate surrounding liability and command responsibility will not be discussed in extensive detail, it is important to understand this substantial issue that many scholars have with the ICTY stance on individual and command responsibility.<sup>62</sup> In a typical non-military criminal court culpability is often a very binary answer of “yes” or “no”, however the uniqueness of military structures adds a dimension of complexity as it concerns the roles of commanders and subordinates. It is important for a tribunal to recognize the specific relationship a commander has with his or her subordinates, but it is a complex question. It is perceived that the ICTY has not recognized the military structures that make the responsibility for a war crime so difficult to ascertain.

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<sup>62</sup> Amy J. Sepinwall, "Failures to Punish," 251-304; Janina Dill, "Should International Law Ensure the Moral Acceptability of War?" *Leiden Journal Of International Law* 26, no. 2 (2013) 253-270; Dingwall and Hillier, "The Banality of Punishment," 18



Are commanders an extension of their troops and liable? Or are they simply a leader? If a commander is an extension of his or her troops, then he or she must be criminally responsible for the actions of their troops. If they are simply the leader, then he or she can only be expected to punish or prevent war crimes when it is reasonably possible to do so. This distinction is dependent on various factors such as rank of the commander, his or her position, varying military structure, and cultural understandings within a military. Each way, there are advantages and disadvantages to a tribunal viewing it one way or another.

If a commander is an extension of his or her troops and liable for their actions, then his or her failure to punish or prevent a war crime is considered a “mode of liability”.<sup>63</sup> The prominent issue with the “mode of liability” view is that a commander may then be able to throw his or her troops under the proverbial bus. If a commander is able to order an action that constitutes a war crime and hide the evidence of administering that order, he or she can then punish the troops within a national military legal system and eliminate his or her culpability for the crime. The situation could also unfairly reverse and echo the Yamashita case. Troops could commit a war crime and the commander could be held individually responsible if it can be established that he or she had reason or means to know of the crime. This can occur despite the fact the commander may not have know or have been able to know, such as Yamahita.<sup>64</sup> However, this “mode of liability” view recognizes the complex relationship a commander has with his or her troops and also holds the structure and institution of a military itself directly culpable for war crimes, possibly reducing instances of violations.

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<sup>63</sup> Amy J. Sepinwall, "Failures to Punish," 255-256

<sup>64</sup> Amy J. Sepinwall, "Failures to Punish," 262-263

However, if a commander has a responsibility to punish or prevent war crimes and fails to do so it is considered a separate offense: dereliction of duty. While this option does not recognize a military's structure as a contributing factor to the committing of violations against the laws of war, it does keep responsibility of the crime in the hands of those who directly ordered or executed it. In this regard, it can be seen as the more 'just' option as it separates the responsibility for atrocity into separate parts--those who execute and those who failed to prevent or punish—and one is not equally responsible for the actions of another.

Though there is some criticism of the ICTY for favouring the view of a failure to punish or prevent as a dereliction of duty rather than a mode of liability, the main concern is that the ICTY has not been consistent in its rulings. While the ICTY Statute outlines a clear distinction between the two under Article 7, the outcome of certain cases has suggested a dissenting or varying opinion within the Court. Amy J Sepinwall, a scholar of law and philosophy, has presented an in-depth analysis of the ICTY's stance on a commander's responsibility and the ambiguity within the court.

Sepinwall notes that “in *Blaškić* the ICTY appeals chamber found that it is duplicative to convict a commander both for ordering or instigating an offense (a violation of Article 7(1)), as well as failing to prevent or punish that offense (a violation of Article 7(3))”<sup>65</sup> This implies that at this stage in the ICTY's history, it perceived individual responsibility and command responsibility to be both directly responsible for a crime. After all, the only way for the ICTY's statement of duplicity to be true is if Article 7(3) truly did intend for a commander's dereliction of duty to punish or prevent to be a mode of liability for the crime itself.

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<sup>65</sup> *Blaškić* refers to the case of *Prosecutor vs. Tihomir Blaškić*. Blaškić was a colonel in the Croatian Defence Council. Amy J. Sepinwall "Failures to Punish," 269

However, in the case of Bosniak commander Enver Hadzihasanovic, he found guilty for “failure to prevent or punish cruel treatment at the Zenica Music School from 8 May 1993 to 20 August 1993 or 20 September 1993, in addition to failure to punish cruel treatment at the Zenica Music School from 26 January 1993 to 8 May 1993”.<sup>66</sup> The ICTY had ruled about his failure to adequately address the murder by pursuing a criminal prosecution that made him responsible not for the crime itself but for failing to punish or prevent under Article 7(3). For the chamber presiding over Sefer Halilović, a former commanding officer of the Army of the Republic of Bosnia, this was also the case. The law was interpreted so that “a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed.”<sup>67</sup> Sepinwall also notes that the case of Naser Orić, and officer in the Army of the Republic of Bosnia and Herzegovina, the *Orić* Chamber ruled against the prosecution’s recommendation that “urged a mode of liability”.<sup>68</sup> This distinction between failure to punish or prevent as a separate crime or as a mode of liability has resulted in lighter sentences. Those charged with murder and cruel treatment under Article 7(3) have all been recieved sentences under 10 years, most under 5 years. However, all charged with the same or similar crimes under Article 7(1) have all been given sentences over 10 years, a majority over 15.<sup>69</sup> It may be argued this disparity in sentences does not adequately recognize the commander’s hand in punishing and preventing war crimes.

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<sup>66</sup> Communications Service of the International Criminal Tribunal for the Former Yugoslavia "Case Information Sheet - "(IT-01-47) HADŽIHASANOVIĆ & KUBURA" International Criminal Tribunal for the Former Yugoslavia.

[http://www.icty.org/x/cases/hadzihasanovic\\_kubura/cis/en/cis\\_hadzihasanovic\\_kubura\\_en.pdf](http://www.icty.org/x/cases/hadzihasanovic_kubura/cis/en/cis_hadzihasanovic_kubura_en.pdf)

<sup>67</sup> *Prosecutor v. Sefer Halilović* “Judgement” International Criminal Tribunal for the Former Yugoslavia. 16 November 2005 <http://www.icty.org/x/cases/halilovic/tjug/en/tcj051116e.pdf>

<sup>68</sup> Amy J. Sepinwall "Failures to Punish," 270

<sup>69</sup> See Appendix 1 A and B.

Similar issues have also been raised about the culpability of a soldier under duress.<sup>70</sup> Military service personnel are placed under extreme circumstances in which they may not act as they normally would. Emotional; stress, physical and mental exhaustion, exposure to propaganda, exposure to trauma, and PTSD are all factors to consider. The ICTY has not explicitly recognized the reduced culpability of an individual under duress. Milan Simić, a Bosnian Serb who was charged with torture as a crime against humanity, pled guilty to his crime, explaining that he was under extreme duress after his best friend had been killed and he was drunk--likely as self-medication for the stress--that led him to torture and beat several Bosniak men.<sup>71</sup> The ICTY and Simić noted that the mitigating factors did not relieve him of his responsibility for the crime and he received a standard sentence of 5 years. Dražen Erdemović, another Bosnian Serb charged with murder as a violation of the laws or customs of war, likewise pled guilty. In his statement of guilt he revealed that he was under extreme duress and feared punishment by execution had he not carried out the orders to kill 70 Bosniaks at Pilica Farm.<sup>72</sup> The *Erdemović* Chamber likewise emphasized that despite the defendant's situation and threat to his life, he was just as responsible for the crime and sentenced to 5 years in prison. Some suggest that doling out lighter sentences for accused persons under duress could cause more to claim duress and enter a guilty plea if they thought it the best option.<sup>73</sup>

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<sup>70</sup> Dingwall and Hillier, "The Banality of Punishment" 14-15

<sup>71</sup> "Milan Simić." International Criminal Tribunal for the former Yugoslavia.  
<http://www.icty.org/en/node/8364>.

<sup>72</sup> Communications Service of the International Criminal Tribunal for the former Yugoslavia .  
"Case Information Sheet - "PILICA FARM" (IT-96-22) DRAŽEN ERDEMOVIĆ." International Criminal Tribunal for the Former Yugoslavia.  
[http://www.icty.org/x/cases/erdemovic/cis/en/cis\\_erdemovic\\_en.pdf](http://www.icty.org/x/cases/erdemovic/cis/en/cis_erdemovic_en.pdf)

<sup>73</sup> "Ten Years In Prison for Miroslav Deronjic." SENSE Agency News. March 30, 2004  
[http://www.sense-agency.com/icty/ten-years-in-prison-for-miroslav-deronjic.29.html?cat\\_id=1&news\\_id=8520](http://www.sense-agency.com/icty/ten-years-in-prison-for-miroslav-deronjic.29.html?cat_id=1&news_id=8520); Janine Natalya Clark "Pleas Bargaining at the ICTY:

The ICTY's inconsistencies in culpability and its failure to adequately address unique environments of the military and wartime have been criticised and debated by a large portion of the academic community and these criticisms certainly have merit. As a pioneer, the ICTY has a responsibility to establish strong historical precedent for future tribunals, but has only left confusion as it concerns culpability of the commander. However, the ICTY has consistently indicated that duress does not effect the culpability for a crime, though this decision has remained controversial.

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Guilty Pleas and Reconciliation” *European Journal of International Law* 20 no. 2 415-436 (2009) 415-436 DOI: <https://doi.org/10.1093/ejil/chp034>

## *Chapter Four: Pleas and Punishment*

Questions have also arisen concerning plea bargains.<sup>74</sup> Critics of the plea bargain have suggested that those who have committed crimes they believe are likely to be proven in court will attempt to bargain for a lower sentence. Additionally, two people charged with the same crime may have completely different sentences because one pled guilty and one did not. To evaluate this issue, comparative data on like-cases can lead to establishing whether or not the ICTY gives those who have pled guilty lesser sentences than those who pleaded not guilty.

Out of the 112 individuals put on trial, only 17% (or 19 individuals) pled guilty to the charges.<sup>75</sup> This analysis indicated that the option of pleading guilty was not a popular one. When comparing all cases in which the accused was charged with persecutions on political or religious grounds as a crime against humanity, there seemed to be little to no difference between sentencing. Some varied by two or three years for similar cases, but there was no stand-out trend. It was expected that this research and comparable data would illuminate the situation, however there was simply not enough like cases to compare and simply not enough individuals pleading guilty to establish any trends.

There was, however, a different trend. Nearly all who plead guilty did so to only one or two crimes.<sup>76</sup> Furthermore, those indicted for four or more crimes who entered a guilty plea were charged with only one or two of the crimes with which they were indicted. This means that out of the 19 who entered a guilty plea six or 31% were able to reduce the number charges from the

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<sup>74</sup> Janine Natalya Clark “Pleas Bargaining at the ICTY”

<sup>75</sup> See Appendix 1 A and B.

<sup>76</sup> Ibid.

indicted by one-half or far more. Every other individual either pleaded to more than half of the charges of their indictment or all of the charges.

While it is unclear whether or not entering a guilty plea gave accused individuals a lesser sentence for specific crimes, it is clear that there exists a trend in the ICTY of only charging indicted with the crimes to which they pled guilty, opening up the possibility of a kind of ‘fraud’ that has been criticised. The ICTY Outreach Programme has released a statement concerning the topic. The ICTY has argued that one of the prime purposes of the tribunal is to foster healing, retribution, and reconciliation. The admission of guilt and an apology is a powerful force in reconciliation. It can give closure to victims and the family of victims and provide a sense of vindication.<sup>77</sup> To see someone take responsibility for their actions can foster reconciliation between peoples at odds with one another. A plea bargain can also provide the court with more evidence or information on a certain case or situation that they would be unable to obtain without the accused’s testimony, admission of guilt, and cooperation with the court and chamber. This can speed up the process of the court and ensure more accurate judgements on the part of the tribunal.<sup>78</sup> Regarding admissions of guilt as a method of healing and retribution, the plea must then be honest and sincere. An obviously faked apology or a sloppy admission of guilt exclusively for the purpose of reducing the charges will do no good in the eyes of the victims and the families of the victims. However, some scholars have suggested that the “truth” established by a guilty plea hinders reconciliation and vindication. Critics suggest by accepting an admission of guilt, the Tribunal becomes the sole historical record of the event and established the one

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<sup>77</sup> “Views from The Hague – Debate on Guilty Pleas” *Balkan* December 3, 2003. 6  
[http://www.icty.org/x/file/Outreach/view\\_from\\_hague/balkan\\_031203\\_en.pdf](http://www.icty.org/x/file/Outreach/view_from_hague/balkan_031203_en.pdf)

<sup>78</sup> *Ibid*;

“truth”.<sup>79</sup> This truth has not been “accepted and internalized” by the former Yugoslavia and therefore does not serve the purpose of reconciliation. This is flawed as it suggests that an admission of guilt and end of a trial is also the end of the reconciliation process. It will take time for guilty parties and institutions to accept the past. It is possible that further study and discussion of the crimes and atrocities can better illuminate the issues and foster understanding and further the process of internalization, vindication, and reconciliation.

There were certain crimes to which individuals were more likely to plead guilty. Persecutions on political or religious grounds as a crime against humanity was the most popular by far with 10 individuals pleading guilty to the charge. Nine individuals who pleaded guilty to persecutions solely faced charges of that count.<sup>80</sup> In other words, just over one-half of all pleas included persecutions with 90% of those resulting in a sentence that exclusively included that crime. The next most common crime of guilty pleas was murder (either as violation of the laws of war or crime against humanity). Additionally, every single defendant who pled guilty was charged with the crime under individual responsibility.<sup>81</sup> This suggests that those who accepted culpability committed a crime by their own hands and felt the need to plead guilty and acknowledge their actions. This is coupled with the honest admissions of guilt recorded by the ICTY. Videos of every statement of guilt translated and dubbed in English as well as videos with the original audio are available on the ICTY website, court documents, and YouTube page.<sup>82</sup> A thorough review of these statements in their original and translated forms shows that every single admission of guilt appears genuine. It is clear that given the in-depth statements revealing details

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<sup>79</sup> Janine Natalya Clark, “Pleas Bargaining at the ICTY”

<sup>80</sup> See Appendix 1 A and B.

<sup>81</sup> Ibid;

<sup>82</sup> ICTYtv. “International Criminal Tribunal for the former Yugoslavia (ICTY).” YouTube. <http://www.youtube.com/user/ICTYtv>.



of the crimes, these men were acknowledging guilt for the crimes they had committed and felt extreme remorse. Every individual who pled guilty recognized the importance of their admission to the victims and their families.

Victims and their families are not always satisfied with the work of the ICTY. Many have expressed dismay and have felt as though justice was not served. For many, the ICTY is far too lenient and the sentences are far too short given the gravity of these crimes.<sup>83</sup> In this regard, the ICTY truly has failed expectations. In Canada, the sentence for first degree murder committed by an adult is life in prison, or typically 25 years until parole.<sup>84</sup> In the United Kingdom murder is likewise punishable by a life sentence. Rape, in France, when accompanied by “torture or acts of barbarity” sees punishment by life in prison.<sup>85</sup> Torture in Canada is punishable by a maximum of 14 years in prison.<sup>86</sup> Manslaughter in Germany is punishable by 5 to 15 years in prison.<sup>87</sup> These domestic laws are far more firm than the sentencing of the ICTY. Johan Tarčulovski was convicted of murder, cruel treatment, and devastation not justified by military necessity based on

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<sup>83</sup> "Ten Years In Prison for Miroslav Deronjic." SENSE Agency News. March 30, 2004 [http://www.sense-agency.com/icty/ten-years-in-prison-for-miroslav-deronjic.29.html?cat\\_id=1&news\\_id=8520](http://www.sense-agency.com/icty/ten-years-in-prison-for-miroslav-deronjic.29.html?cat_id=1&news_id=8520); Mark B. Harmon and Fergal Gaynor “Ordinary Sentences for Extraordinary Crimes” *Journal of International Criminal Justice* 5 no.3 (2007) 683-712 DOI: <https://doi.org/10.1093/jicj/mqm025>; “ICTY: Jokic to be Release from Prison” Balkan Insight. January 14, 2010. <http://www.balkaninsight.com/en/article/icty-jokic-to-be-released-from-prison/1458/131>; Marko Attila Hoare “From Nuremberg to the International Criminal Tribunal for the Former Yugoslavia” Bosnian Institute. December 24, 2008. [http://www.bosnia.org.uk/news/news\\_body.cfm?newsid=2530](http://www.bosnia.org.uk/news/news_body.cfm?newsid=2530)

<sup>84</sup> Criminal Code of Canada (R.S.C., 1985, c. C-46) 235 Available at <http://laws-lois.justice.gc.ca/eng/acts/C-46/section-235.html#docCont>

<sup>85</sup> Fr. C. pén. art. 222-26. Available at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719&dateTexte=20120308> (French) and <https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations> (English)

<sup>86</sup> Criminal Code of Canada (R.S.C., 1985, c. C-46) 269

<sup>87</sup> German Criminal Code (1998) S. 126 Available at [http://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#StGB\\_000P227](http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGB_000P227)

personal responsibility was given a 12-year prison sentence.<sup>88</sup> Ranko Češić was convicted of murder and rape on the basis of personal responsibility was given an 18-year sentence. Dražen Erdemović was sentenced to only 5 year of prison after being charged with murder on the basis of personal responsibility. Dario Kordić was charged with 12 different crimes including but not limited to murder, torture, and wilful killing, again as personal responsibility, received only 25 years in prison. In a domestic court in Canada or the United Kingdom simply one charge of murder would constitute life in prison. The disparity between the ICTY and domestic court is why so many victims feel they betrayed and angry with the ICTY.<sup>89</sup> Some have felt like restitution or catharsis has been denied.

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<sup>88</sup> See Appendix 1 A and B.

<sup>89</sup> "Ten Years In Prison for Miroslav Deronjic." SENSE Agency News. March 30, 2004. [http://www.sense-agency.com/icty/ten-years-in-prison-for-miroslav-deronjic.29.html?cat\\_id=1&news\\_id=8520](http://www.sense-agency.com/icty/ten-years-in-prison-for-miroslav-deronjic.29.html?cat_id=1&news_id=8520); "Justice on Trial." The Economist. February 28, 2004. <http://www.economist.com/node/2460574>.

## *Chapter Five: Conclusion*

The ICTY has faced major blunders and heavy critique since its founding. It was the first of its kind in almost half a century and was constructed largely from scratch to fit the modern world which it was expected to handle. It is understood to have unexpected flaws. On top of the issues surrounding efficiency and funding,<sup>90</sup> the ICTY also was required to justify itself as an authority and perform to a standard that would ensure the healing and reconciliation the states of the former Yugoslavia desperately need.

Critics have largely been concerned about the fairness of the ICTY. The faults of the tribunal's predecessors, the IMT and the IMTFE, have been perceived as carrying onto the next generation. While perhaps unfair or unfounded, critically looking at the work of the ICTY is important in establishing the right and wrong ways to prosecute war crimes. It is not an easy task, and the ICTY has not been perfect in delivering justice to foster reconciliation and deterrence to committing future crimes.

The authority of the ICTY and the United Nation's Security Council's authority to establish the ICTY is certainly a point of contention. Ultimately, the law is ambiguous and though there has been much discourse on the subject, no clear answer has been found. Furthermore, the issue of tribunals as a retroactive organization is one that is legally and ethically dubious. In the future, a permanent court must be established rather than an *ad hoc* tribunal. It should not be associated with the United Nations or any organization that can and does involve itself with conflicts. The United Nations' partial stance in conflicts raises far too much concern

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<sup>90</sup> Justice on Trial." The Economist. February 28, 2004.  
<http://www.economist.com/node/2460574>.

over “victor’s justice”. A court independent of the UNSC and UN itself is a strong contender for the best solution. This court would require far more resources than the ICTY and other tribunals like it. Establishing a police force that can better apprehend fugitives or those indicted would speed up the process of prosecution. Furthermore, resources would likewise need to go into better witness protection programs so that both the safety of the witness and the defendant’s right to confrontation can be preserved.

An international court or tribunal must be consistent in its rulings and be better prepared to address the unique situations that individuals are faced with in the extreme stress of war. A better recognition of the military structure and military institution’s role in the perpetration of war crimes can work to solve the issues of culpability and command responsibility. Better addressing the commanders’ role in forcing his or her troops’ hands, or their role in punishing and preventing these crimes, can better prevent them in the future. Critically looking at the different levels of control and responsibility can also better allow international criminal law to work towards consistency in the application of the law. Additionally, holding guilty individuals more responsible and having them answer for their crimes with sentences that reflect the domestic norm for similar offenses can contribute to the adequate prosecution of crimes and preventing them in the future. It is also important to the victims and their families. To feel that justice has been served and to feel as though the court had defended their right to restitution is of the utmost importance if reconciliation and healing is to be achieved.

**Appendix 1 A. Completed Criminal Cases from the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>91</sup>**

Name	Basis of Indictment	Indicted	Convicted	Basis of Conviction	Plead Guilty	Crimes Plead	Years	Ethnicity	Appeal ?	Years Before
ALEKSOVSKI	701 703	202 203 321	322	701 703	No	0	7	Serbian	Yes	2.5
BABIĆ	701	508 322 323 312 314	508	701	Yes	508	13	Serbian	Yes	13
BANOVIĆ	701	508 509 506 322 323	508	701	Yes	508	8	Serbian	No	8
BLAGOJEVIĆ	701 703	435 502 501 508	501 508 509 323	2002 701 701 2002	No	0	15	Serbian	Yes	18

<sup>91</sup> Total list of completed criminal cases as of March 25, 2017. Data was taken from ICTY court collections: “The Cases” International Criminal Tribunal for the Former Yugoslavia. <http://www.icty.org/en/action/cases/4>; “ICTY Court Records” United Nations ICTY <http://icr.icty.org/>. Each number and abbreviation is a stand-in ‘code’. For the legend related to this table, see the following table. (Appendix 1 B.)

		509									
		322									
JOKIĆ	701	502	508	2002	No	0	9	Serbian	Yes	9	
		501		701							
		508	323								
		322									
BLAŠKIĆ	701	201	202	701	No	0	9	Croatian	Yes	45	
		203	323	703							
		204		2002							
		202									
		208									
		312									
		325									
		313									
	703	314									
		323									
		326									
		508									
BOBETKO	701	508	1004					Croatian			
		322									
	703	315									
		312									
BOŠKOSKI	701	322	1005					Macedonian			
		312									
		323									
TARČULOVSKI	701	322	322	701	No	0	12	Macedonian	Yes	12	
		312	312								
		323	323								
BRALO	701	207	322	701	No	0	20	Croatian	Yes	20	

		202	505							
		322	328							
		321	202							
		329	321							
		328	329							
		505								
BRĐANIN	701	431	508	2002	No	0	30	Serbian	Yes	32
		435	506	701						
		508	504							
		506	509							
		504	312							
	703	509	314							
		312	201							
		314	202							
		201								
		202								
		502								
ČEŠIĆ	701	322	322	701	Yes	322	18	Serbian	No	
		331	331			331				
		501	501			501				
		507	507			507				
DELIĆ	703	322	323	2003	No	0	3	Bosnian	No	
		323								
		329								
DERONJIĆ	701	508	508	701	Yes	508	10	Serbian	No	
DOKMANOVIĆ	701	201	1004					Serbian		
	703	203								
		322								
		323								
		501								

		509									
DORĐEVIĆ	701	504	504	701	No	0	18	Serbian	Yes	27	
	703	509	509								
		501	501								
		508	508								
		322	322								
ĐUKIĆ	701	509	1004					Serbian			
		332									
ERDEMOVIĆ	701	322	322	701	Yes	322	5	Serbian	Yes	10	
		501				501					
FURUNDŽIJA	701	328	328	701	No	0	10	Croatian	Yes	10	
		321	321								
		329	329								
GALIĆ	701	501	333	701	No	0	9999	Serbian	Yes	20	
	703	509	501								
		333	509								
		325									
GOTOVINA	701	508	0	701	No	0	0	Croatian	Yes	24	
	703	504		JCE							
		509									
		315									
		312									
		322									
		501									
		323									
	ČERMAK	701	508	1005					Croatian		
		703	504								
		509									
		315									
		312									
	322										



		501								
		323								
MARKAČ	701	508	1005		No			Croatian	Yes	18
	703	504								
		509								
		501								
		315								
		322								
		509								
		323								
HADŽIĆ	JCE	508	1004		No		0	Serbian		
	703	502								
		502								
		505								
		506								
		509								
		504								
		509								
		322								
		328								
		323								
		312								
		314								
		315								
HADŽIHASANO VIĆ	703	322	323	703	No	0	3.5	Bosnian	Yes	5
		323								
		312								
		315								

		314								
KUBURA	703	322	315	703	No	0	2	Bosnian	Yes	2.5
		323								
		312								
		315								
ALAGIĆ	?	322	1004					Bosnian		
		327								
		323								
		312								
		315								
		314								
		204								
		202								
		207								
		204								
HALILOVIĆ	703	322	1005		No	0	0	Bosnian	Yes	0
HARADINAJ	701	511	1005		No	0	0	Albanian	Yes	0
	JCE	506								
		504								
		501								
		507								
		323								
		322								
		328								
		329								
BALAJ	701	511	1005	0	No	0	0	Albanian	Yes	0
	JCE	506								
		504								
		501								
		507								
		323								

		322								
		328								
BRAHIMAJ	701	511	1005	0	No	0	0	Albanian	Yes	6
	JCE	506								
		504								
		501								
		507								
		323								
		322								
JELISIĆ	701	421	501	701	Yes	501	40	Serbian	Yes	40
		322	509			509				
		323	322			322				
		312	323			323				
		501	312			312				
		509								
JOKIĆ	701	322	322	701	Yes	322	7	Serbian	Yes	7
	703	323	323	703		323				
		325	325			325				
		312	312			312				
		313	313			313				
		314	314			314				
KORDIĆ	701	201	201	701	0	0	25	Croatian	Yes	25
	703	203	202							
		207	207							
		208	325							
		204	313							
		325	312							
		313	315							
		322	314							
		327	508							
		323	501							

		326	509							
		312	505							
		315								
		314								
		508								
		501								
		509								
		505								
ČERKEZ	701	201	508	701	0	0	6	Croatian	Yes	15
	703	203	501	703						
		207	509							
		208	505							
		204	201							
		325	202							
		313	207							
		322	208							
		327	325							
		323	313							
		326	312							
		312	314							
		315								
		314								
		508								
		501								
		509								
		505								
KOVAČEVIĆ	701	431	1004					Serbian		
	703	432								
		502								
		508								
		506								

		504								
		322								
		323								
		328								
		312								
		201								
		202								
		203								
		207								
		204								
KRAJIŠNIK	701	431	508	701	No	0	20	Serbian	Yes	27
	703	435	504	703						
		508	509	JCE						
		502								
		501								
		504								
		509								
		322								
KRNOJELAC	701	334	323	701	No	0	15	Serbian	Yes	7.5
	703	323	508	703						
		508	328							
		509	322							
		503	508							
		505								
		322								
		328								
		506								
		501								
KRSTIĆ	701	431	505	701	No	0	35	Serbian	Yes	46
	703	435	50							
		501	322							

		502	501	2002							
		508	322								
		504									
		509									
		322									
KUNARAC	701	507	506	701	No	0	28	Serbian	Yes	28	
	703	506	507								
		503	328								
		329	329								
		328									
		321									
KOVAČ	701	329	329	701	No	0	20	Serbian	Yes	20	
		321	321								
		503	503								
		507	507								
VUKOVIĆ	701	506	328	701	No	0	12	Serbian	Yes	12	
		507	329								
		329									
		328									
JOSIPOVIĆ	701	508	508	701	No	0	12	Croatian	Yes	15	
		501	509								
		509	501								
		322									
		323									
ŠANTIĆ	701	508	508	701	No	0	18	Croatian	Yes	25	
		501	509								
		509	501								
		322									
		323									
Z KUPREŠKIĆ	701	508	1005	0	No	0	0	Croatian	Yes	10	
		509									

		501								
		332								
		323								
M KUPREŠKIĆ	701	508	1005	0	No	0	0	Croatian	Yes	8
		509								
		501								
		323								
V KUPREŠKIĆ	701	508	1005	0	No	0	0	Croatian	Yes	6
		501								
		509								
		322								
		323								
PAPIĆ	701	508	1005	0	No	0	0	Croatian	No	
		501								
		509								
		322								
		323								
KVOČKA	701	321	508	JCE	No	0	7	Serbian	Yes	7
	703	322	322	701						
		328	328							
		323								
		508								
		509								
		501								
		506								
PRCAĆ	701	328	508	701	No	0	5	Serbian	Yes	5
	703	323	322							
		322	328							
		321								
		508								
		509								

		501								
		506								
KOŠ	701	321	508	701	No	0	6	Serbian	No	
	703	322	501							
		323	509							
		328	322							
		508	328							
		509								
		501								
		506								
RADIĆ	701	328	508	701	No	0	20	Serbian	Yes	20
	703	321	501							
		322	509							
		323	322							
		508	328							
		509								
		506								
		507								
ŽIGIĆ	701	328	322	701	No	0	25	Serbian	Yes	25
		322	323							
		321	508							
		323								
		508								
		509								
		501								
		506								
LIMAJ	701	505	1005	0	No	0	0	Albanian	Yes	0
	703	506								
		509								
		501								
		323								



		328									
		322									
MUSLIU	701	505	1005	0	No	0	0	Albanian	Yes	0	
	703	506									
		509									
		501									
		323									
		328									
		322									
BALA	701	505	323	701	No	0	13	Albanian	Yes	13	
	703	506	328								
		509	322								
		501									
		323									
		328									
		322									
M LUKIĆ	701	508	508	701	No	0	9999	Serbian	Yes	9999	
		501	501								
		509	509								
		502	502								
		323	323								
		322	322								
S LUKIĆ	701	508	509	701	No	0	27	Serbian	Yes	30	
		502	323								
		501	322	2002							
		509	508								
		322	509								
		323	501								
MARINIĆ	701	201	1007	1007	No	0	0	Croatian			
		322									
		203									

		323								
MARTIĆ	701	508	508	701	No	0	35	Serbian	Yes	35
	703	502	501							
		501	322							
		505	505							
		506	506							
		509	509							
		504	328							
		509	322							
		322	504							
		328	509							
		323	321							
		312	314							
		314	325							
		325								
D. MILOŠEVIĆ	701	501	501	701	No	0	29	Serbian	Yes	33
	703	509	509							
		335	335							
		325								
S. MILOŠEVIĆ	701	504	1004		No	0		Serbian		
	703	501								
	JCE	508								
		509								
		322								
		508								
		502								
		501								
		505								
		506								
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			204								
			322								
			328								
			323								
			312								
			314								
			315								
			325								
MRĐA	701	322	509	701	Yes	509	17	Serbian	No		
		509	322			322					
MRKŠIĆ	JCE	508	322	701	No	0	20	Serbian	Yes	20	
	701	501	323								
	703	502	328								
		506									
		509									
		322									
		328									
		323									
RADIĆ	JCE	508	1005					Croatian			
	701	501									
	703	502									
		506									
		509									
		322									
		328									
		323									
ŠLJIVANČANIN	JCE	508	328	701	No	0	10	Serbian	Yes	5	
	701	501								17	
	703	502									
		506									
		509									

		322									
		328									
		323									
MUCIĆ	703	203	203	703	No	0	9	Croatian	Yes	7	
		207	207								
		201	201								
		202	202								
		323									
		322									
		328									
		315									
DELIC	701	201	201	701	No	0	18	Bosnian	Yes	20	
		202	202								
		203	203								
		202	202								
		207									
		322									
		328									
		323									
		315									
LANDŽO	701	322	322	701	No	0	15	Bosnian	Yes	15	
		328	328								
		323	323								
		201	201								
		202	202								
		203	203								
DELALIĆ	703	201	1005	0	No	0	0	Bosnian	Yes	0	
		202									
		207									
		203									
		323									

		322								
		328								
NALETILIĆ	701	508	202	701	No	0	20	Croatian	Yes	20
	703	336	203	703						
		328	207							
		306	336							
		203	312							
		207	315							
		312	508							
		315	506							
MARTINOVIĆ	701	202	202	701	No	0	18	Croatian	Yes	18
	703	203	203	703						
		201	201							
		207	207							
		336	336							
		315	315							
		508	508							
		509	509							
		501	501							
D NIKOLIĆ	701	508	508	701	Yes	508	20	Serbian	Yes	23
	703	501	501	703		501				
		507	507			507				
		506	506			506				
M NIKOLIĆ	701	431	508	701	Yes	508	20	Serbian	Yes	27
		432								
		502								
		501								
		508								
		509								
		322								
OBRENOVIĆ	701	432	508	701	Yes	508	17	Serbian	No	

	703	501		703						
		502		JCE						
		508								
		509								
		322								
ORİĆ	701	312	1005	0	No	0	0	Bosnian	Yes	2
	703									
	703	322								
		323								
PERIŠIĆ	701	501	1005	0	No	0	0	Serbian	Yes	27
	703	509								
		508								
		502								
		322								
		325								
PLAVŠIĆ	701	431	508	701	Yes	508	11	Serbian	No	
	703	432								
		502								
		501								
		508								
		504								
		509								
		322								
POPOVIĆ	701	502	502	701	No	0	9999	Serbian	Yes	9999
		501	501	JCE						
		508	508							
		509	509							
		504	504							
		322	322							
		431	431							
		432	432							

BEARA	701	502	502	701 JCE	No	0	9999	Serbian	Yes	9999
		501	501							
		508	508							
		509	509							
		504	504							
		322	322							
		431	431							
		432	432							
NIKOLIĆ	701	502	502	701 JCE	No	0	35	Serbian	Yes	35
		501	501							
		508	508							
		509	509							
		504	504							
		322	322							
		431	431							
		432	432							
MILETIĆ	701	501	501	701 JCE	No	0	18	Serbian	Yes	19
		508	508							
		509	509							
		504	504							
		322	322							
PANDUREVIĆ	701	502	502	703 701 JCE	No	0	13	Serbian	Yes	13
		501	501							
		508	508							
		509	509							
		504	504							
		322	322							
		431								
432										
BOROVČANIN	701	502	502	701 703	No	0	17	Serbian	No	
		501	501							



		508	508	JCE						
		509	509							
		504	504							
		322	322							
		431								
		432								
GVERO	701	501	501	701	No	0	5	Serbian		
		508	508	JCE						
		509	509							
		504	504							
		322								
RAJIĆ	701	201	201	701	Yes	201	12	Croatian	No	
	703	202	202	703		202				
		204	204			204				
		204	204			204				
		207								
		322								
		321								
		323								
		315								
		312								
ARKAN	701	501	1004					Serbian		
	703	509								
		507								
		322								
		323								
		329								
		203								
		201								
ŠAINOVIĆ	701	504	504	701	No	0	18	Serbian	Yes	22
	703	509	509							

		501	501							
		508	508							
		322	322							
OJDANIĆ	701	504	504	701	No	0	15	Serbian	No	
	703	509	509	2002						
		501	501							
		508	508							
		322	322							
PAVKOVIĆ	701	504	504	701	No	0	22	Serbian	Yes	22
	703	509	509							
		501	501							
		508	508							
		322	322							
LAZAREVIĆ	701	504	504	701	No	0	14	Serbian	Yes	15
	703	509	509							
		501								
		508								
		322								
LUKIĆ	701	504	504	701	No	0	20	Serbian	Yes	20
	703	509	509							
		501	501							
		508	508							
		322	322							
MILUTINOVIĆ	701	504	1005	0	No	0	0	Serbian	No	
	703	509								
		501								
		508								
		322								
SIKIRICA	701	431	508	701	Yes	508	15	Serbian	No	
	703	432		703						
		508								

		501									
		509									
		321									
		322									
		323									
DOŠEN	701	508	508	701	Yes	508	5	Serbian	No		
	703	509		703							
		506									
		321									
		328									
		323									
KOLUNDŽIJA	701	508	508	701	Yes	508	3	Serbian			
	703	509		703							
		501									
		321									
		322									
B SIMIĆ	701	508	508	701	No	0	15	Serbian	Yes	17	
		504	513								
		207	514								
			509								
M TADIĆ	701	508	508	701	No	0	8	Serbian	No		
		504	504								
		207									
ZARIĆ	701	508	508	701	No	0	6	Serbian	No		
		504	512								
		207	506								
			514								
S SIMIĆ	701	506	506	701	Yes	506	5	Serbian	No	5	
STAKIĆ	703	322	322	701	No	0	40	Serbian	Yes	9999	
	701	431	502								
		435	508								

		501	509							
		502	504							
		504								
		508								
		509								
SIMATOVIĆ	703	322	1005	0	No	0	0	Serbian	Yes	0
		501								
		504								
		508								
		509								
J.STANIŠIĆ	703	322	1005	0	No	0	0	Serbian	Yes	0
		501								
		504								
		508								
		509								
ŽUPLJANIN	703	322	322	701	No	0	22	Serbian	Yes	22
	701	323	328							
		328	502							
		501	508							
		502								
		504								
		506								
		508								
		509								
M.STANIŠIĆ	703	322	322	701	No	0	22	Serbian	Yes	22
	701	323	328							
		328	508							
		508								
		502								
		501								
		504								

		506								
		509								
STRUGAR	703	314	314	703	No	0	7.5	Monteneg- rin	Yes	7.5
	701									
D TADIĆ	701	508	508	701	No	0	20	Serbian	Yes	20
		201	323							
		202	201							
		203	202							
		322	322							
TALIĆ	701	431	1004					Serbian		
	703	432								
		433								
		435								
		312								
		313								
		314								
		502								
		504								
		328								
		312								
TODOROVIĆ	701	503	503	701	Yes	503	10	Serbian	No	
TOLIMIR	701	431	431	701	No	0	9999	Serbian	Yes	9999
		432	432							
		501								
		502								
		504								
		508								
		509								
		322								
VASILJEVIĆ	701	501	508	701	No	0	15	Serbian	Yes	20

		502	322							
		508								
		322								
		327								
ZELENOVIĆ	701	329	506	701	Yes	329	15	Serbian	Yes	15
		328	507			328				
		506								
		507								

## Appendix 1 B. Legend to the Criminal Cases from the ICTY<sup>92</sup>

Violations under Article 2 - Grave breaches of the Geneva Convention of 1949 (200)	
201	Wilful killing
202	Torture or inhumane treatment
203	Wilfully causing great suffering or serious injury to body or health
204	Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
207	Unlawful deportation or transfer or unlawful confinement of a civilian
208	Taking civilian hostages
Violations under Article 3 - Violations of the laws or customs of war (300)	
312	Wanton destruction of cities, towns, or villages, or devastation not justified by military necessity
314	Seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.
315	Plunder of public or private property
321	Outrages upon personal dignity
322	Murder
323	Cruel treatment
325	Unlawful attacks on civilians
326	Taking of hostages
327	Violence to life and person
328	Torture
329	Rape or sexual assault
331	Humiliating or degrading treatment
332	Inhumane acts
333	Inflicting terror upon civilians
334	Slavery
335	Terror
336	Unlawful labour
Violations under Article 4 – Genocide (400)	
431	Genocide
432	Conspiracy to commit genocide
433	Direct and public incitement to commit genocide
435	Complicity in genocide
Violations under Article 5 - Crimes against humanity (500)	
501	Murder
502	Extermination

<sup>92</sup> Crimes individuals have been charged and indicted with have been based off of the ICTY statute. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 “Updated Statute of the International Criminal Tribunal for the Former Yugoslavia” September 2009. [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf)

503	Enslavement
504	Deportation
505	Imprisonment
506	Torture
507	Rape
508	Persecutions on political, racial and religious grounds
509	Other inhumane acts
511	Harassment
512	Inhumane treatment
513	Forced labour
514	Inhumane confinement

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Basis of Responsibility under Article 7

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701	Individual, personal criminal responsibility for a crime
703	Command responsibility

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Other

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JCE	Joint Criminal Enterprise
9999	Life sentence



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