PROSECUTIONS AND SENTENCING IN THE WESTERN BALKANS

BY YAËL RONEN, WITH THE ASSISTANCE OF SHARON AVITAL AND OREN TAMIR

DOMAC/4, FEBRUARY 2010
ABOUT DOMAC

THE DOMAC PROJECT focuses on the actual interaction between national and international courts involved in prosecuting individuals in mass-atrocity situations. It explores what impact international procedures have on prosecution rates before national courts, their sentencing policies, award of reparations and procedural legal standards. It comprehensively examines the problems presented by the limited response of the international community to mass-atrocity situations, and offers methods to improve coordination of national and international proceedings and better utilization of national courts, inter alia, through greater formal and informal avenues of cooperation, interaction and resource sharing between national and international courts.

THE DOMAC PROJECT is a research program funded under the Seventh Framework Programme for EU Research (FP7) under grant agreement no. 217589. The DOMAC project is funded under the Socio-economic sciences and Humanities Programme for the duration of three years starting 1st February 2008.

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ACKNOWLEDGEMENTS

The report was prepared under the supervision of Prof. Yuval Shany. We are indebted to Robert Mrjić for collecting the data in Croatia; to Yaël Vias for her work on previous drafts; and to Ivan Jovanović, Jelena Stevancević and Zarko Marković for their useful comments on previous drafts. We are indebted to Bogdan Ivanišević and to Judge Vojislav Dimitrijević of the Supreme Court of the Republika Srpska, Bosnia and Herzegovina, for assistance in obtaining updated data. We are also grateful to participants in the Seminar on the Impact of International Courts of Domestic Proceedings held in Belgrade on 19-20 November 2009 for their comments on the draft report. Responsibility for any errors or omissions remains with the authors.

This paper represents not the collective views of the DOMAC Project but only the views of its authors.
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<th>Abbreviation</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for Yugoslavia</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>RS</td>
<td>Republika Srpska</td>
</tr>
<tr>
<td>SRSG</td>
<td>Special Representative of the UN Secretary General</td>
</tr>
<tr>
<td>UNMIK</td>
<td>United Nations Mission in Kosovo</td>
</tr>
<tr>
<td>UNSCR</td>
<td>United Nations Security Council Resolution</td>
</tr>
<tr>
<td>WCC</td>
<td>War Crimes Chamber within the District Court in Belgrade</td>
</tr>
</tbody>
</table>

### WORKING DEFINITIONS

**Classification of crimes:** Where a person was convicted of more than one type of international crime, the case was classified according to the most severe crime convicted, with genocide regarded as the most severe crime, followed by crimes against humanity, and finally war crimes.¹

**Ethnicity:** The interest in ethnicities focuses on the ethnicities identified with the countries involved in the break-up conflict in the former Yugoslavia, indictees and defendants are classified as Serb, Bosnian, Croat, Kosovar or ‘other’. ‘Serb’ indicates ethnic Serbs whether in Serbia or elsewhere (e.g. in Republika Srpska), ‘Bosnian’ indicates Muslim Bosnians, whether or not identifying themselves as Bosniak.

**Withdrawals:** Withdrawals take place at various stages of the process, although mostly after indictment and prior to trial judgment. Because of withdrawals, there may be a large gap between the number of indictments and the number of trial judgements.

**Sentencing:** the information on sentencing includes the most recent information available, whether or not the sentence is final or still pending appeal.

**Date of sentencing:** Where a conviction and a sentence were upheld by the appellate instance, the date of sentencing was recorded as the date of the appeal, rather than as the date of the original sentence.

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¹ The international criminal tribunals have frequently insisted that there is no hierarchy among the crimes within their jurisdiction. However, their sentencing policy is such that genocide consistently attracts a more serious penalty, see table 6.4.3. The prosecutors have reached several plea agreements with defendants involving admission of guilt for crimes against humanity in exchange for withdrawal of genocide charges, suggesting a perception by both the prosecutors and the accused that genocide is the more serious crime. William Schabas, ‘Genocide’, in Rudolf Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2008) para. 31 online edition, <http://www.mpepil.com>. 

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1. INTRODUCTION

This paper is to provide the empirical basis for assessing the impact of international courts on the functioning of domestic courts in criminal prosecutions in mass-atrocity situations and vice versa, i.e. whether the conduct of international criminal proceedings encourages or discourages the operation of domestic courts; whether such an effect is dependent on the size of the international case load; and whether sentencing policies of the two sets of tribunals are compatible with one another.

The present report provides data on prosecutions and sentencing with respect to war-related crimes\(^2\) in domestic courts in the Western Balkans. Four jurisdictions were chosen as case studies: Bosnia and Herzegovina, Croatia, Serbia\(^3\) and Kosovo. For each country, the report contains three sections:

1. Description of judicial bodies which adjudicate war-related crimes institutions.
2. Data on prosecutorial and judicial activities.
3. Domestic and international events (‘landmarks’) that may have influenced the prosecutorial and judicial policies concerning war-related crimes.

In addition, the report presents data on the ICTY according to the same parameters as that provides for the domestic jurisdiction, as a benchmark for assessing policies and trends.

The data is divided into sections on indictments, trials, appeals and sentencing. Since the primary aim of the report is to enable the assessment of trends in domestic policies through time, all data is presented by annual breakdown. The volume of domestic activity is reflected in the overall numbers of indictments (1.1), trial judgements (2.1), appeal submissions (3.1) and appeal decisions (3.3). In order to assess the quality of domestic prosecutions, we provide data on convictions and acquittals (2.3), as well as on the outcome of appeals on each of those, namely whether the appeal was upheld, reversed or sent to retrial (3.5). To provide a more nuanced picture, we examined the ethnic distribution of indictees (1.2), defendants (2.2) and appellants (3.2, 3.4), as well as the link between ethnicity and the outcome of the judgment (2.4) and appeal (3.6, 3.7).

The data on sentencing is likewise presented by reference to year. The information is broken down according to the type of international crime of which the defendant was convicted or to the international crime to which the facts correspond most closely (4.3). Here too we provide an ethnic

\(^2\) In this report the term “war-related crimes” refers to crimes committed during the conflicts related to the breakup of Yugoslavia by State or non-State agents representing de jure or de facto authorities, that meet the international definitions of genocide, crimes against humanity and war crimes. The selection of cases was made regardless of whether the indictment was by reference to international crimes or ordinary, domestic ones; rather, the criterion for choosing the cases was mainly the conflict-context in which they occurred.

\(^3\) For convenience, the report refers to ‘Serbia’ throughout, including with respect to the period when it was designated ‘Federal Republic of Yugoslavia’ or ‘Serbia and Montenegro’.
breakdown (4.2). Since the number of cases in all four countries is not high, and in some cases very small, all data is provided in absolute numbers.

The report does not purport to provide a detailed account of individual cases, international or domestic, since it is geared towards identification of general trends. It is premised on the reader’s acquainted with major events in the ICTY which are mentioned as potentially impacting domestic policies.

The report is based on Information available on FBiH, Republika Srpska and Brčko District as of 31 December 2009, and on other jurisdictions as of 30 September 2009. Citations to web addresses are correct as of February 15th 2010.
2. BOSNIA AND HERZEGOVINA

2.1 BOSNIA AND HERZEGOVINA INSTITUTIONS

The state of Bosnia and Herzegovina (BiH) comprises two administrative divisions (‘Entities’), the Bosnian/Croat Federation of Bosnia and Herzegovina (‘FBiH’) and the Bosnian-Serb Republika Srpska (‘RS’); and the internationally-supervised Brčko district in northeastern BiH. The division of competences between the Entities and the State is stipulated in the Constitution of BiH. The Brčko district was established following an arbitral award by a 1997 Tribunal for Dispute over Inter-Entity-Boundary in Brčko Area, and was formally inaugurated on 8 March 2000. It remains under international supervision until the Entities have fully complied with their obligations to facilitate the establishment of the District institutions as described in the Tribunal’s Final Award of 1999 and such institutions function effectively and apparently permanently.

At the BiH level, war-related crimes are prosecuted in the War Crimes Chamber which was formally established within the Court of Bosnia and Herzegovina (‘State Court’) on 6 January 2005 and which began operating on 9 March 2005, at the same time as the Department for War Crimes of the Prosecutor of BiH. Its jurisdiction encompasses genocide, crimes against humanity and war crimes. The State Court also issues practice directions on the application of the substantive criminal law of BiH falling within its jurisdiction.

Appeals on judgments of the War Crimes Chamber are heard by the Appellate Division within the State Court. The appellate instance may uphold a judgment, reverse it or sent the case to be retried.

Initially both trial and appeal panels in the State Court were composed of one national judge and two international judges. National judges (including the Court President) lay judges and reserve judges are by law appointed by the High Judicial and Prosecutorial Council. International judges are appointed by a three-member commission of the High Judicial and Prosecutorial Council, consisting of BiH citizens and international members. It is intended that by the end of 2009 there will no longer be any international judges within the State Court. By mid-2008, all first-instance panels were still composed of one international judge and two national judges, who rotate as presiding judges. A proposal to extend the mandate of international judges and prosecutors

5 BIRN, ‘Pursuit of Justice, Guide to the War Crimes Chamber of the BiH Court’ vol. II (undated) 7.
until 2012 was rejected by the BiH Parliament in September 2009, following opposition mainly from RS.\(^9\)

In the FBiH, jurisdiction over war-related crimes lies with 10 cantonal courts. In RS it lies with 5 district courts and 19 basic courts, and in Brčko District it lies with the Basic Court. Appeals on these courts’ judgments are heard by the Supreme Court in the respective Entity and by the Brčko Appellate Court. Each Entity and the Brčko district has its own prosecutor’s office.\(^10\)

Cases are channelled to the State Court or to Entity courts according to their sensitivity. Highly sensitive cases, to be tried by the State Court, include those which concern genocide, extermination, mass killings, rapes and other forms of sexual abuse as a part of organised criminal undertakings, plunder, torture, widespread, systematic forced evictions and large-scale detentions in concentration camps. They also include cases involving former or current high-ranking military officers, political leaders, and State officials, extremely violent individuals and perpetrators of mass rapes; cases where there is a risk of tampering with evidence; and cases for which there is a credible fear that the local authorities may be interested in protecting the suspects.\(^11\)

Petitions of defendants against violations of the right to a fair trial, and against failure by state authorities to investigate and prosecute are heard by the BiH Constitutional Court.


2.2 BOSNIA AND HERZEGOVINA PROSECUTIONS AND SENTENCING

2.2A STATE COURT OF BOSNIA AND HERZEGOVINA

2.2A.1 INDICTMENTS

2.2A.1.1 Indictments by year

2.2A.1.2 Indictments by ethnicity and year
2.2A.2 TRIAL AND RETRIAL JUDGMENTS

2.2A.2.1 Trial and retrial judgments by year

2.2A.2.2 Trial and retrial judgments by ethnicity and year
2.2A.2.3 Trial and retrial judgments by outcome and year

The outcome of one judgement given in 2009 with respect to a Serb defendant is unknown.

2.2A.2.4 Trial and retrial judgments by outcome and year – by ethnicity

2.2A.2.4A Trial and retrial judgments by outcome and year - Serbs
2.2A.2.4B Trial and retrial judgments by outcome and year - Bosnians

2.2A.2.4C Trial and retrial judgments by outcome and year – Croats
2.2A.3 APPEALS

2.2A.3.1 Appeals submitted by year

![Bar chart showing appeals submitted by year from 2005 to 2009 (30 sept).]

2.2A.3.2 Appeals submitted by ethnicity and year

![Bar chart showing appeals submitted by ethnicity and year from 2005 to 2009 (30 sept).]
2.2A.3.3 Appeals decided by year

![Bar chart showing appeals decided by year from 2005 to 2009 (30 sept)].

2.2A.3.4 Appeals decided by ethnicity and year

![Bar chart showing appeals decided by ethnicity and year from 2005 to 2009 (30 sept)].
2.2A.3.5 Outcome of appeals on conviction by year

There have been no reversals of convictions.

2.2A.3.6 Outcome of appeals on conviction by ethnicity and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb</th>
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<th>Bosnian</th>
<th>Upheld</th>
<th>Sent to Retrial</th>
<th>Croat</th>
<th>Upheld</th>
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<td>Sent to Retrial</td>
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</tr>
</tbody>
</table>

2.2A.3.7 and 2.2A.3.8 Outcome of appeals on acquittal by ethnicity

There have been 3 appeal decisions on acquittals. The acquittal of a Serb defendant was upheld in 2007. The case of a Bosnian defendant was sent for retrial in 2008. The case of a Croat defendant was sent to retrial in 2009.

There are 8 appeals on acquittal still pending.
2.2A.4 SENTENCES

2.2A.4.1 Judgements by year (convictions and acquittals)

![Bar chart showing judgements by year (convictions and acquittals) for years 2006 to 2009 (30 Sept)].

2.2A.4.2 Average sentence by year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Average sentence</th>
<th>No. of sentences</th>
</tr>
</thead>
<tbody>
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<td>2007</td>
<td>18</td>
<td>9</td>
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<tr>
<td>2008</td>
<td>18.6 (S.d 14.5)</td>
<td>27</td>
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<td>2009 (30 Sept)</td>
<td>14 (S.d 6.1)</td>
<td>14</td>
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<tr>
<td>Multi-Year</td>
<td>17.2 (S.d 11.5)</td>
<td>53</td>
</tr>
</tbody>
</table>

S.d (standard deviation) indicates the dispersion of data around the average.
2.2A.4.3 Average sentence by ethnicity and year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb</th>
<th>Bosnian</th>
<th>Croat</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average sentence</td>
<td>No. of sentences</td>
<td>Average sentence</td>
</tr>
<tr>
<td>2006</td>
<td>22</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>2007</td>
<td>16.6</td>
<td>8</td>
<td>30</td>
</tr>
<tr>
<td>2008</td>
<td>21.6 (S.d 15.7)</td>
<td>20</td>
<td>8.3</td>
</tr>
<tr>
<td>2009 (30 Sept)</td>
<td>15 (S.d 6.6)</td>
<td>11</td>
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<td>18.8 (S.d 12.2)</td>
<td>41</td>
<td>12</td>
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</table>

2.2A.4.4 Average sentence by crime and year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Genocide</th>
<th>Crimes Against Humanity</th>
<th>War Crimes</th>
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<tr>
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<td>22</td>
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<td>2007</td>
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<td>18.3</td>
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<tr>
<td>2008</td>
<td>40.6</td>
<td>7</td>
<td>11.3</td>
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<tr>
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<td>8</td>
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<td>Multi-Year</td>
<td>40.6</td>
<td>7</td>
<td>14.4 (S.d 7.4)</td>
</tr>
</tbody>
</table>

2.2A.4.5 Plea bargains

In 2008 there were 6 convictions on the basis of plea bargains, of 2 Serb defendants, 2 Bosnian defendants and 2 Croat defendants.
2.2B COURTS OF THE FEDERATION OF BOSNIA-HERZEGOVINA (FBIH)

2.2B.1 INDICTMENTS

In addition to the above, one indictment is with other ethnicity in 2007, and another indictment with unknown ethnicity in 2006.
2.2B.1.3 Withdrawals

Nine indictments were withdrawn before trial: 2 in 1996 against Croats, 2 in 1997, against a Bosnian defendant and against a Serb defendant; three in 2000 against Bosnians, and 1 in 2003, against a Serb defendant.

2.2B.2 TRIAL AND RETRIAL JUDGMENTS

2.2B.2.1 Trial and retrial judgments by year

In addition there have been 47 convictions of Serb defendants before military courts (at unknown dates in the years 1993-1996).
2.2B.2.2 Trial and retrial judgments by ethnicity and year

In addition there have been 47 convictions of Serb defendants before military courts (at unknown dates in the years 1993-1996).

2.2B.2.3 Trial and retrial judgments by outcome and year

In addition there have been 47 convictions of Serb defendants before military courts (at unknown dates...
2.2B.2.4 Trial and retrial judgments by outcome and year - by ethnicity

2.2B.2.4A Trial and retrial judgments by outcome and year - Serbs

In addition 47 other Serb defendants have been convicted by military courts at unknown dates in the years 1993-1996.

2.2B.2.4B Trial and retrial judgments by outcome and year - Bosnians
2.2B.2.4C Trial and retrial judgments by outcome and year – Croats

2.2B.2.5 Withdrawal at trial stage

In 2000, three cases were withdrawn after judgment, all of Bosnian defendants. In 2002 a case against a Serb defendant was withdrawn after retrial. One indictment against a Serb defendant was withdrawn before the beginning of retrial in 2002.

2.2B.3 APPEALS

2.2B.3.1 Appeals submitted by year
2.2B.3.2 Appeals submitted by ethnicity and year

2.2B.3.3 Appeals decided by year
2.2B.3.4 Appeals decided by ethnicity and year

2.2B.3.5 Outcome of appeals on conviction by year
### 2.2B.3.6 Outcome of appeals on conviction by ethnicity and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb Upheld</th>
<th>Serb Sent to Retrial</th>
<th>Bosnian Upheld</th>
<th>Bosnian Sent to Retrial</th>
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</table>

S.d (standard deviation) indicates the dispersion of data around the average.

There have also been two reversals of convictions, in 2008, of a Croat defendant and of a defendant of another ethnicity.

### 2.2B.3.7 Outcome of appeals on acquittal by year

![Graph showing outcomes of appeals on acquittal by year]
### 2.2B.3.8 Outcome of appeals on acquittal by ethnicity and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb Upheld</th>
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<th>Bosnian Upheld</th>
<th>Bosnian Sent to Retrial</th>
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In three cases acquittals were reversed: two of Serb defendants (in 1997 and in 2006); and one of a Bosnian defendant (in 2008).
2.2B.4 SENTENCES

2.2B.4.1 Judgments by year (convictions and acquittals)

In addition there have been 34 sentences (at unknown dates) of Serbs defendants indicted in the years 1993-1996 (in military courts).

2.2B.4.2 Average sentence by year (convictions only)

<table>
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<tr>
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<th>No. of sentences</th>
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### 2.2B.4.3 Average sentence by year and ethnicity (convictions only)

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<th>No. of sentences</th>
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In addition there have been 34 unknown sentences (at unknown dates) of Serb defendants indicted in the years 1993-1996 (in military courts)
2.2B.4.4 Average sentence by crime and year (convictions only)

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</table>

Multi-year 14.7 4 9.6 (S.d 6.2) 78 3 1

There have been no convictions for crimes against humanity.

2.2B.4.5 Plea bargains

One Serb defendant and 2 Bosnian defendants have been convicted, and 1 Serb defendant was acquitted, on the basis of plea bargains (at unknown dates).
2.2C COURTS OF REPUBLIKA SRPSKA

2.2C.1 INDICTMENTS

2.2C.1.1 Indictments by year

2.2C.1.2 Indictments by ethnicity and year

2.2C.1.3 Withdrawals

One indictment against a Serb defendant was withdrawn prior to trial (at an unknown date).
2.2C.2 TRIAL AND RETRIAL JUDGMENTS

2.2C.2.2 Trial and retrial judgments by ethnicity and year

[Bar charts showing trial and retrial judgments by year and by ethnicity.]
2.2C.2.3 Trial and retrial judgements by outcome and year

2.2C.2.4 Trial and retrial judgments by outcome and by year - by ethnicity

2.2C.2.4A Trial and retrial judgments by outcome and by year - Serbs

2.2C.2.4B Trial and retrial judgments by outcome and by year – Bosnians

There have been 2 convictions of Bosnian defendants in 2009.

2.2C.2.4C Trial and retrial judgments by outcome and by year - Croats

There has been one conviction of a Croat defendant in 1997.
2.2C.3 APPEALS

2.2C.3.1 Appeals submitted by year

![Bar chart showing appeals submitted by year from 1992 to 2009. The chart indicates the number of appeals each year, with a peak in 2004 with 11 appeals.]

2.2C.3.2 Appeals submitted by ethnicity and year

![Bar chart showing appeals submitted by ethnicity and year from 1992 to 2009. The chart indicates the number of appeals submitted by Serb, Bosnian, and Croat, with a peak in 2004 with 11 appeals for Serbs.]

Legend:
- Serb
- Bosnian
- Croat
2.2C.3.3 Appeals decided by year


2.2C.3.4 Appeals decided by ethnicity and year

![Bar chart showing appeals decided by ethnicity and year from 1992 to 2009. The chart includes data for Serb, Bosnian, and Croat appeals. The years 1998 and 2005 have a significant number of Serb appeals, with peaks at 11 in 1998 and 2005.]

Legend:
- **Blue**: Serb
- **Red**: Bosnian
- **Green**: Croat
2.2C.3.5 and 2.2c.3.6 Outcome of appeals on conviction by ethnicity and year

The conviction upheld in 1997 was of a Croat defendant. All other convictions upheld or sent to retrial were of Serb defendants.

2.2C.3.7 and 2.2C.3.8 Outcome of appeals on acquittal by ethnicity and year

All appeals on acquittal concerned Serb defendants.
2.2C.4 SENTENCES

2.2C.4.1 Judgments by year (convictions and appeals)

2.2C.4.2 and 2.2C.4.3 Average sentence by year and ethnicity

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb Average sentence</th>
<th>Serb No. of sentences</th>
<th>Bosnian Average sentence</th>
<th>Bosnian No. of sentences</th>
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S.d (standard deviation) indicates the dispersion of data around the average.
2.2C.4.4 Average sentence by crime and year (convictions only)

All convictions were of war crimes. The average sentence is 10.4 years (S.d – 5.2).

2.2D COURT OF BRČKO DISTRICT

One Serb defendant was indicted in Brčko in 2005 for war crimes. He was convicted on the basis of a plea bargain in 2005 and was sentenced to 6 years’ imprisonment. There was no appeal.

Three Serb defendants were indicted in Brčko in 2006 for war crimes. In 2007 two were acquitted and one was convicted and sentenced to 15 years’ imprisonment. All cases were appealed and decided in 2007. The judgments were upheld.

One Croat defendant was indicted in 2007 for war crimes. He was acquitted in 2007.

One Bosnian defendant and one Serb defendant were indicted in 2008 for war crimes. They were both convicted and sentenced to 6 years’ imprisonment. Their appeals, submitted in 2009, were decided on the same year. The conviction of the Bosnian defendant was reversed, the conviction of the Serb defendant was upheld.
2.3 BOSNIA AND HERZEGOVINA LANDMARKS

1992

March 3: BiH declares independence. War breaks.

February 21: UNSCR 743(1992) establishes UNPROFOR.

April 5: Siege of Sarajevo begins.

1993

May 25: UNSCR 827(1993) establishes the ICTY.

1994

July 8: UNSCR 936(1994) appoints Richard Goldstone Prosecutor of the ICTY.

August 15: Richard Goldstone takes up position of Prosecutor of the ICTY.12

November 4: The ICTY issues its first indictment (Dragan Nikolić, Kosovo Serb).13

1995

July 11-20: Srebrenica massacre.14

October 11: Fighting in Bosnia and Herzegovina ends.15 UNPROFOR monitors the ceasefire.

December 14: The Dayton Accords are signed.16

December 20: NATO-led IFOR replaces UNPROFOR.17


1996

February 18: The Rules of the Road procedure is adopted, requiring authorities in BiH to receive ICTY Prosecutor authorization prior to the arrest and indictment of individuals not previously indicted before the ICTY. The procedure is in place until October 2004.18

February 29: UNSCR 1047(1996) appoints Louise Arbour Prosecutor of the ICTY.

March: A Human Rights Chamber begins operating in BiH Constitutional Court.19

May 7: First ICTY trial begins (Duško Tadić, Bosnian Serb).20

July 11: ICJ rejects Federal Republic of Yugoslavia’s objections to the admissibility of BiH’s application in the case concerning the application of the Genocide Convention.21

September 13, 14: General Elections in BiH.22

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October 1: Louise Arbour takes up the position of Prosecutor of the ICTY.

November 27: First ICTY judgment (Dražen Erdemović, a soldier in the Bosnian Serb Army).23

December 20: NATO-led IFOR is replaced by NATO-led SFOR.24

1997

April 29: The European Council defines the Stabilisation and Association Process (SAP) conditionalities, including co-operation with the ICTY and Regional co-operation.25

November 22, 23: National Assembly Election in RS.26

1998

September 12, 13: General Elections in BiH.27

November 16: First ICTY conviction of Bosnian Muslims and Croat defendants (Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnil Delalić, Čelebići Case).

December 12: FBiH parliament confirms inauguration of the Government of FBiH.28

1999

May 26: The European Commission proposes the creation of a SAP for the Western Balkan countries, offering them for the first time the prospect of EU integration.29

August 11: UNSCR 1259(1999) appoints Carla del Ponte Prosecutor of the ICTY.

September 15: Carla del Ponte takes up the position of Prosecutor of the ICTY.30

December 3: FBiH adopts Law on Amnesty for crimes committed between 1 January 1991 and 22 December 1995, excluding crimes against humanity and international law, crimes defined under the ICTY Statute, and other specified crimes.31

2000

June 19, 20: The European Council declares BiH a potential candidate for EU membership.32

November 11: Presidential and National Assembly elections in RS, parliamentary elections in FBiH.33 In RS the Serb nationalist party forms a coalition government.34

2001

March 12: FBiH Parliament confirms the appointment of the Government of the FBiH.35

August 2: ICTY sentences Bosnian Serb Gen Radislav Krstić to 46 years for his role in the massacre in Srebrenica. The sentence is later reduced by the Appeals Chamber to 35 years (Srebrenica-Drina Corps Case).36

November 22: Initial ICTY indictment against Slobodan Milošević for crimes in BiH.37

2002

April 24: BiH joins the Council of Europe.38

July 3: BiH parliament adopts the Law establishing the State Court of BiH.39

July 12: BiH accedes to the European Convention on Human Rights.40

October 5: Federation, parliamentary and local elections.41 Nationalists take the lead at all three levels.42

2003

January 1: EU Police Mission takes over from UNMIBH.43

February 1: FBiH Parliament confirms the appointment of the Government of the FBiH.44

March 1: BiH Criminal Code enters into force.45

April 2: EU High Representative amends the constitutions of RS and FBiH to remove references to statehood.46

August 28: UNSCR 1503(2003) endorses the ICTY's completion strategy and calls on BiH and on RS to intensify cooperation with and render all necessary assistance to the ICTY, particularly in bringing all indictees to the ICTY.

October 2: General Elections in BiH.47

November: The European Commission produces a feasibility study assessing BiH’s capacity to implement a Stabilisation and Association Agreement (SAA).48

2004

June 14: The EU decides on the first European Partnership for BiH.49

December 2: NATO-led SFOR is replaced by EU-led EUFOR.50

2005

January 6: Legislation setting up the Special War Crimes Chamber in the State Court of BiH enters into force.51

January 21: Chief Prosecutor of BiH and State Attorney of Croatia sign a protocol which establishing direct cooperation on prosecutorial matters in the pre-trial stage.52

51 BIRN, Pursuit of Justice, Guide to the War Crimes Chamber of the BiH Court, vol. II (undated) 7.
March 9: War Crimes Chamber in the State Court of BiH begins to work.53

July 1: Public Prosecutor’s Office of the Republic of Serbia and the Prosecutor’s Office of BiH sign an Agreement/Memorandum on Realization and Enhancement of Co-operation in Fighting all Forms of Grave Crimes.54

September 29: First transfer of indictee from the ICTY to BiH (State Court) under Rule 11bis (Radovan Stanković, a Bosnian Serb militia man, Foča Case).55

November 25: SAA negotiations open in Sarajevo.56

2006

February 26: The ICJ begins hearings in Genocide Case brought by BiH against Serbia and Montenegro.57

Early June: EU officials agree that the Office of the High Representative to BiH begin preparations to close by 30 June 2007.58

October 1: General Elections in BiH.59

November 8: European Commission Report on Enlargement Strategy 2006-2007 notes the need for further action to locate indictees remaining at large; progress in the prosecution of war crimes by the Court of BiH; and the need to improve prosecution at Entity-level.60

November 14: The State Court of BiH renders its first judgment in a case transferred by the ICTY under Rule 11bis (Stanković, sentenced to 16 years’ imprisonment).61

December 14: NATO admits BiH to its Partnership for Peace programme,62 after overturning a decision to exclude it because of its failure to apprehend Radovan Karadžić.63

2007

February 26: ICJ rules that Serbia has not committed genocide but has violated its obligations under the Genocide Convention to prevent genocide and to arrest and transfer Mladić to the ICTY.64

1 June: Zdravko Tolimir (Commander in the Bosnian Serb Army (Srebrenica case) is arrested and transferred to the ICTY.65

November 6: European Commission Report on Enlargement Strategy 2007-2008 notes that BiH still needs to achieve full cooperation with the Tribunal.66

November 28: UNSCR 1786(2007) appoints Serge Brammertz Prosecutor of the ICTY.

December 4: The SAA between BiH and the EU is initialed.67
2008

January 1: Serge Brammertz take up the position of Prosecutor of the ICTY.68

February 20: BiH and the EU sign the IPA (Instrument for Pre-Accession Assistance) Framework Agreement.69

February 26: EU Enlargement Commissioner Olli Rehn announces that BiH might be able to sign the SAA at the end of April.70

February 27: The mandate of the Office of the High Representative in BiH is extended until political benchmarks are met, including entrenchment of the rule of law, demonstrated inter alia through adoption of a national strategy for dealing with war crimes.71

April 3: NATO invites BiH to ‘intensified dialogue’ towards membership.72

April 10: BiH Parliament adopted two police reform bills.73

June 16: BiH sign the SAA74 and an Interim Agreement on Trade and Trade-Relations Issues.75

June 21: Former Bosnian Serb chief of regional security services center, Stojan Zupljanin, is transferred to the ICTY.76

July 21: Former Bosnian Serb leader Radovan Karadžić is arrested in Serbia

July 30: Former Bosnian Serb leader Radovan Karadžić is transferred to the ICTY.77

July 31: BiH and the EU sign the financing agreement for the IPA 2007 National Programme78

November 5: European Commission Report on Enlargement Strategy 2008-2009 notes that BiH has maintained satisfactory cooperation with the ICTY.79

2009

September: BiH Parliament rejects a proposal to extend the mandate of international judges and prosecutors until 2012.80

3. CROATIA

3.1 CROATIA INSTITUTIONS

In Croatia, twenty-one county courts (zupanijski sudovi) have first instance jurisdiction over crimes punishable by over ten years' imprisonment,\(^1\) including war-related crimes. Appeals are heard by the Supreme Court. The Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts against the International Law on War and Humanitarian Law (ICC Law), enacted in October 2003, grants non-exclusive jurisdiction over international crimes to the County Courts in Osijek, Rijeka, Split and Zagreb, alongside courts with ordinary territorial jurisdiction.\(^2\) These four courts benefit from special institutional resources, such as expert judges and criminologists.\(^3\) Appeals on judgments of the county courts are heard by the Supreme Court.

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\(^3\) ICC Law, art 13.
3.2 CROATIA PROSECUTIONS AND SENTENCING

3.2.1 INDICTMENTS

3.2.1.1 Indictments by year

Since 2005 there have been 22 withdrawals of indictments.

3.2.1.2 Indictments by ethnicity and year
3.2.2 TRIAL AND RETRIAL JUDGMENTS

3.2.2.1 Trial and retrial judgments by year

3.2.2.2 Trial and retrial judgments by ethnicity and year
3.2.2.3 Trial and retrial judgements by outcome and year

![Graph showing trial and retrial judgements by outcome and year]

3.2.2.4 Trial and retrial judgments by outcome and year – by ethnicity

3.2.2.4A Trial and retrial judgments by outcome and year – Serbs

![Graph showing trial and retrial judgements by outcome and year for Serbs]
3.2.2.4B Trial and retrial judgments by outcome and year – Bosnians
In 2009 one Bosnian defendant was acquitted and another was convicted.

3.2.2.4C Trial and retrial judgments by outcome and year – Croats

3.2.2.4D Trial and retrial judgments by outcome and year – Kosovars
One Kosovar defendant was acquitted in 2008.
3.2.3 APPEALS

3.2.3.1 Appeals submitted by year

3.2.3.2 Appeals submitted by ethnicity and year
3.2.3.3 Appeals decided by year

![Bar graph showing appeals decided by year from 2002 to 2009 (30 Sept).](image)

3.2.3.4 Appeals decided by ethnicity and year

![Bar graph showing appeals decided by ethnicity and year from 2002 to 2009 (30 Sept). The categories are Serb, Bosnian, Croat, Kosovar, and Other.](image)
3.2.3.5 Outcome of appeal on conviction by year

![Graph showing outcome of appeals on conviction by year]

3.2.3.6 Outcome of appeals on conviction by ethnicity and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb</th>
<th></th>
<th>Croat</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Upheld</td>
<td>Sent to Retrial</td>
</tr>
<tr>
<td>2002</td>
<td>6</td>
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<tr>
<td>2003</td>
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<tr>
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<td>6</td>
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<tr>
<td>2006</td>
<td>6</td>
<td></td>
<td>10</td>
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</tr>
<tr>
<td>2007</td>
<td>3</td>
<td></td>
<td>10</td>
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</tr>
<tr>
<td>2008</td>
<td>7</td>
<td></td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>2009 (30 Sept)</td>
<td>1</td>
<td></td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Multi-year</td>
<td>17</td>
<td>26</td>
<td>16</td>
<td>--</td>
</tr>
</tbody>
</table>

There were no appeals on convictions by defendants of other ethnicities.
3.2.3.7 and 3.2.3.8 Outcome of appeals on acquittal by ethnicity and year

There have been 17 appeal decisions on acquittal. Two acquittals of Serb defendants were upheld in 2008 and 2 more in 2009. The case of 1 Croat defendant was sent to retrial in 2005, and the cases of 12 more were sent to retrial in 2007.

3.2.4 SENTENCES

3.2.4.1 Judgments by year (convictions and acquittals)

3.2.4.2 Average sentence by year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Average sentence</th>
<th>No. of cases</th>
</tr>
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<tbody>
<tr>
<td>2002</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>2003</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>2004</td>
<td>--</td>
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<tr>
<td>2005</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>2006</td>
<td>9.25</td>
<td>8</td>
</tr>
<tr>
<td>2007</td>
<td>6.7 (S.d 3.5)</td>
<td>17</td>
</tr>
<tr>
<td>2008</td>
<td>7.5 (S.d 5.1)</td>
<td>12</td>
</tr>
<tr>
<td>2009 (30 Sept)</td>
<td>7.1 (S.d 4.2)</td>
<td>42</td>
</tr>
<tr>
<td>Multi-Year</td>
<td>7.4 (S.d 4.3)</td>
<td>83</td>
</tr>
</tbody>
</table>

S.d (standard deviation) indicates the dispersion of data around the average.
3.2.4.3 Average sentences by ethnicity and year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb</th>
<th></th>
<th>Croat</th>
<th></th>
<th>Other</th>
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<tr>
<td></td>
<td>Average sentence</td>
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<td>Average sentence</td>
<td>No. of sentences</td>
<td>Average sentence</td>
<td>No. of sentences</td>
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<tr>
<td>2003</td>
<td>7</td>
<td>3</td>
<td>--</td>
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<td></td>
</tr>
<tr>
<td>2004</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>--</td>
<td>15</td>
<td>1</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>9.25</td>
<td>8</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>10</td>
<td>3</td>
<td>6 (S.d 3.2)</td>
<td>14</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>7.5 (S.d 5.1)</td>
<td>12</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>2009 (30 Sept)</td>
<td>6.1 (S.d 3.8)</td>
<td>23</td>
<td>8.3 (S.d 4.6)</td>
<td>18</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Multi-Year</td>
<td>7.3 (S.d 4.4)</td>
<td>49</td>
<td>7.5 (S.d 4.3)</td>
<td>33</td>
<td>7</td>
<td>1</td>
</tr>
</tbody>
</table>

3.2.4.4 Average sentence by crime and year (convictions only)

All defendants were convicted for war crimes.
3.3 CROATIA LANDMARKS

1991

June 25: Croatia declares independence. War breaks out in Croatia.

1992

Croatia becomes involved in the war in BiH.

August: Franjo Tudjman is re-elected president of Croatia.84

1993

April: Croatian Criminal Code is adopted, containing prohibitions on war crimes and genocide but not on crimes against humanity.85

May 25: UNSCR 827(1993) establishes the ICTY.

1994

July 8: UNSCR 936(1994) appoints Richard Goldstone Prosecutor of the ICTY.

August 15: Richard Goldstone takes up position of Prosecutor of the ICTY.86

November 4: The Tribunal issues its first indictment (Dragan Nikolić, Kosovo Serb).87

1995

1-3 May: The Croatian Army launches Operation Flash, designed to remove Serb forces from the self-declared Republic of Krajina. The offensive is the precursor for Operation ‘Storm’.

August 5: The Croatian Army launches Operation Storm, an offensive to retake the Krajina region, which had been controlled by separatist ethnic Serbs since early 1991. 250,000 Croatian Serbs are estimated to flee to Serbia and to BiH.88

November 12: Erdut Agreement signed by Croatia and Serbia on the reintegration of Eastern Slavonia into Croatia.89

December 14: Dayton Accords are signed.90

1996

February 29: UNSCR 1047(1996) appoints Louise Arbour Prosecutor of the ICTY.

April 19: Croatia adopts the Constitutional Law on the Cooperation of the Republic of Croatia with the ICTY91 and establishes (July 4) the Office of the Government for cooperation with the International Court of Justice and International Criminal Courts.

May 7: First ICTY trial begins (Duško Tadić, Bosnian Serb, ‘Prejidor’ case).92

September 25: entry into force of amnesty law for crimes committed during the 1991-1995 war. The amnesty excludes ‘perpetrators of the most serious violations of humanitarian law having the character of war crimes’, including acts of genocide.93

85 Thierry Cruvellier and Marta Valinas, Croatia: Selected Developments in Transitional Justice (ICTJ, 2006) 14
88 UNHCR, ‘Home again, 10 years after Croatia’s Operation Storm’ (5 August 2005), <http://www.unhcr.org/42f38b084.html>.
93 Law concerning abolition of criminal prosecutions and procedures for criminal acts committed in armed conflict and in the war against the Republic of Croatia, RC Official Gazette No. 58/92, replaced by the Law on General Amnesty, 5 October 1996, HRV-110, translation available at <http://www.unhcr.org/refworld/docid/3ae6b4de2c.html>. The exemption from benefit noted above appears in section 3 of the 1996 law but existed in some form previously (original not found).
October 1: Louise Arbour takes up the position of Prosecutor of the ICTY. 94
November 6: Croatia joins the Council of Europe. 95
November 27: First ICTY judgment ( Dražen Erdemović, a soldier in the Bosnian Serb Army). 96

1997
April 29: The European Council defines the Stabilisation and Association Process (SAP) conditionalities, including co-operation with the ICTY and Regional co-operation. 97
June 15: Presidential elections. 98 Tudjman re-elected as president. The EU decides not to invite Croatia to start membership talks, criticising the Tudjman regime’s authoritarian tendencies. 99
November 5: Croatia accedes to the ECHR. 100

1998
November 16: First ICTY conviction, of Bosnian Muslims and Croat defendants (Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnil Delalić, Ćelebići Case).

1999
May 26: The Commission proposes the creation of a SAP for the Western Balkan countries, offering them for the first time the prospect of EU integration. 101
August 11: UNSCR 1259(1999) appoints Carla del Ponte Prosecutor of the ICTY.
September 15: Carla del Ponte takes up position of Prosecutor of the ICTY. 102
December 10: President Tudjman dies. 103

2000
January 2, 3: Parliamentary elections. 104 The Social Democrats and Social Liberals establish a coalition government. 105
January 24 and February 7: Extraordinary presidential elections. Stjepan Mesić of the Croatian People’s Party (HNS) is elected president.
May 24: The European Commission proposes the opening of negotiations for a Stabilisation and Association Agreement (SAA). 106
June 19, 20: The European Council states that Croatia is a potential candidate for EU membership. 107
September 18: Croatia begins to benefit from the autonomous trade measures granted unilaterally by the EU to the countries of the SAP. 108

2001

**February 21**: Mirko Norac gives himself up to a Croatian court on the understanding that he would not be extradited to the ICTY.\(^{109}\)

**May 14**: The SAA between Croatia and the EU is initialled.\(^{110}\)

**July**: Prime Minister Račan survives a no-confidence vote following his decision to comply with an ICTY request for the extradition of Rahim Ademi and Ante Gotovina.

**July 25**: Rahim Ademi surrenders to the ICTY.\(^{111}\) Ante Gotovina goes into hiding.\(^{112}\)

**October 8**: Initial ICTY indictment against Slobodan Milošević for crimes committed in Croatia.\(^{113}\)

**October 29**: Croatia and the EU sign the SAA.\(^{114}\)

2002

**11 July**: Croat Chief State Prosecutor instructs the Justice Department to review approximately 1,850 cases where indictments had not yet reached the trial phase, in order to ensure that the evidentiary standards used in these cases conformed to international standards.\(^{115}\)

2003

**February 21**: Croatia presents its application for EU Membership.\(^{116}\)

**March 24**: Norac sentenced by the Rijeka County Court to 12 years (*Gospić Massacre Case*).\(^{117}\)

**August 28**: UNSCR 1503(2003) endorses the ICTY’s completion strategy and calls on Croatia to intensify cooperation with and render all necessary assistance to the ICTY, particularly in bringing Ante Gotovina and all other indictees to the ICTY.

**October 1**: Croatia adopted the Law on Witness Protection.\(^{118}\)

**November 4**: Croatia adopts the Law on the Application of the Statute of the ICC and on the Prosecution of Criminal Acts against the International Law on War and Humanitarian Law (ICC Law).\(^{119}\)

**November 23**: Parliamentary elections.\(^{120}\) Ivo Sanader of the Croatian Democratic Union (HDZ) subsequently leads a minority government.\(^{121}\)

2004

**March 26**: UNSCR 1534(2003) reiterates the call on Croatia to bring Ante Gotovina and all other indictees to the ICTY.

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April: The ICTY Prosecutor states that Croatia is co-operating fully with ICTY, but needs to take all necessary steps to ensure that remaining indictee (Gotovina) is located and transferred to ICTY.  

April 20: The European Commission issues a positive opinion on Croatia’s application for EU membership.  

May 21-22: Representatives of the ICTY take part in the first session of a training programme for Croatian Judges and Prosecutors involved in war crimes cases.

June 17, 18: The European Council confirms Croatia as candidate country.

August 5: The UN Security Council calls upon Croatia to intensify its co-operation with ICTY and in particular to surrender indicted fugitive General Ante Gotovina to the Tribunal.

September 2: The ICTY Prosecutor files a motion for referral of the case against Ademi and Norac to Croatia under rule 11bis.

October 17: Croatia adopts ICC Law.

December: Parliament adopts the Law on International Legal Assistance in Criminal Matters, setting out procedures for various forms of legal assistance between Croatian and foreign judicial organs.

December 13: EU Council decides on the first European Partnership for Croatia, and the The European Council and Commission both approve the SAA.

December 16, 17: The European Council sets 17 March for opening accession negotiations with Croatia, conditional upon Croatia’s full cooperation with the ICTY.

2005

January 2, 15: Presidential elections. Stjepan Mesić is re-elected.

January 21: Croatia and BiH sign a protocol establishing a mechanism for direct cooperation on prosecutorial matters in the pre-trial stage.

February 1: The SAA enters into force.

February 5: Serb Public Prosecutor and War Crimes Prosecutor sign with Croatian Chief Prosecutor an Agreement Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes.


131 Brussels European Council (16, 17 December 2004) Presidency Conclusions, 16238/1/04 REV 1, para 5.


March: ICTY Chief Prosecutor concludes that Croatia is no longer fully cooperating with the Tribunal.136

March 16: The European Council decides to postpone the start of accession negotiations with Croatia but adopts a framework for negotiations.137

February 9: ICTY Prosecutor files a motion for referral under Rule 11bis of the Vukovar Case to Serbia or Croatia.138

June 9: The ICTY Prosecutor files motion for withdrawal of the motion of referral of the Vukovar Case.139

June 30: The ICTY grants the motion for withdrawal of motion for referral of the Vukovar Case.140

September 14: The Referral Bench renders its decision to refer Norac and Ademi (Medac Pocket Case) to Croatia.141

October 3: ICTY Chief Prosecutor assesses that Croatian cooperation with the ICTY is full.142

October 3: EU-Croatia accession negotiations begin.143 The Council agrees that less than full cooperation with ICTY at any stage would affect the overall progress of negotiations and could be grounds for their suspension.144

November 1: The ICTY refers Norac and Ademi (Medac Pocket Case) to Croatia under Rule 11bis.145

November 9: European Commission issues Croatia 2005 Progress Report.146

December 10: Ante Gotovina is arrest in Spain and transferred to the ICTY.147

2006

July 28: Croatia and Montenegro sign an Agreement on Cooperation in Prosecution of War Crimes, Crimes against Humanity and Genocide.148

October 13: Croatia and Serbia sign an Agreement on Cooperation in Criminal Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide.149

November 8: European Commission Report on Enlargement Strategy 2006-2007 notes that Croatia’s full cooperation with the ICTY continues. Prosecution of war crimes in Croatia continues to improve, but bias against Serb defendants still needs to be fully addressed.150

2007


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138 Prosecutor v. Mile Mrkić, Miroslav Radić, Veselin Šljivančanin (Referral Bench Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis) ICTY-IT-95-13/1-PT (30 June 2005).
139 Prosecutor v. Mile Mrkić, Miroslav Radić, Veselin Šljivančanin (Referral Bench Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis) ICTY-IT-95-13/1-PT (30 June 2005).
140 Prosecutor v. Mile Mrkić, Miroslav Radić, Veselin Šljivančanin (Referral Bench Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis) ICTY-IT-95-13/1-PT (30 June 2005).
145 ICTY, ‘The Referral Bench render its decision to refer Norac and Ademi (Medac Pocket Case) to Croatia’.141
cooperation with the ICTY continues. Impartial prosecution of cases transferred from the ICTY to Croatia and of domestically-initiated cases needs to be ensured.\textsuperscript{151}

**November 25**: Parliamentary elections.\textsuperscript{152}

**November 28**: UNSCR 1786(2007) appoints Serge Brammertz Prosecutor of the ICTY.

2008

**January**: Parliament approves an HDZ-led government with Serb Deputy Prime Minister.\textsuperscript{153}

**January 1**: Serge Brammertz takes up the position of Prosecutor of the ICTY.\textsuperscript{154}

**February 12**: The European Council adopts the new Accession Partnership with Croatia.\textsuperscript{155}

**March 11**: Trial of Ante Gotovina, Ivan Cermak and Mladen Markac (Operation Storm case) begins.\textsuperscript{156}

**April**: NATO invites Croatia to start accession talks towards NATO membership.\textsuperscript{157}

**May 30**: The Zagreb District Court sentences Mirko Norac to seven years’ imprisonment. Ademi is acquitted of all charges.\textsuperscript{158}

**July 9**: NATO Allies sign protocol on Croatia’s accession.\textsuperscript{159}

**November 5**: European Commission Report on Enlargement Strategy 2008-2009 notes that the final stage of accession negotiations with Croatia can be reached by the end of 2009, provided that Croatia fulfils all the necessary conditions, including the pursuit of war crime trials and ICTY access to documents.\textsuperscript{160}

2009

**April 1**: Croatia becomes a member of NATO.\textsuperscript{161}


\textsuperscript{153} BBC Timeline: Croatia, <http://news.bbc.co.uk/2/hi/europe/country_profiles/1097156.stm>.

\textsuperscript{154} UN Doc S/RES/1786/2006.


\textsuperscript{156} NATO, ‘NATO’s Relations with Croatia’, <http://www.nato.int/cps/en/natolive/topics_31803.htm>.

\textsuperscript{157} NATO, ‘NATO’s Relations with Croatia’, <http://www.nato.int/cps/en/natolive/topics_31803.htm>.


\textsuperscript{160} NATO, ‘NATO’s Relations with Croatia’, <http://www.nato.int/cps/en/natolive/topics_31803.htm>.
4. SERBIA

4.1 SERBIA INSTITUTIONS

From 1996 until 2003, jurisdiction in Serbia over international war-related crimes lay with 30 district courts. The 2003 Law on Organization and Competence of Government Authorities in War Crimes Proceedings established a special War Crimes Chamber within the District Court (WCC) in Belgrade, which has exclusive first instance jurisdiction over crimes against humanity and international law as defined under Serb law, serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 as stipulated in the Statute of the ICTY; and the crime of aiding a war crimes offender under Serb law. The three-member trial panels of the WCC are composed of professional judges only, as opposed to district courts’ panels which comprise two professional and three lay judges. All judges are Serb nationals.

Appeals on judgments of the districts courts and of the WCC are heard by the Supreme Court. By 2010 an Appellate court system is scheduled to be established, sitting in Belgrade, Kragujevac, Nis, and Novi Sad. With the establishment of the new appellate courts, the Supreme Court of Serbia will function as a court of cassation, rendering decisions on appeals issued by the appellate courts below.

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4.2 SERBIA PROSECUTIONS AND SENTENCING

4.2.1 INDICTMENTS

4.2.1.1 Indictments by year

4.2.1.2 Indictments by ethnicity and year
4.2.2 TRIAL AND RETRIAL JUDGMENTS

4.2.2.1 Trial and retrial judgments by year

The single indictment of a Bosnian is still pending trial.
4.2.2.3 Trial and retrial judgements by outcome and year

Two judgments were given in 1996 in the district courts, the outcome of which is unknown.

4.2.3 APPEALS

4.2.3.1 Appeals submitted by year
4.2.3.2 Appeals submitted by ethnicity and year

![Graph showing appeals submitted by ethnicity and year.]

4.2.3.3 Appeals decided by year

![Graph showing appeals decided by year.]

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DOMAC/4: PROSECUTIONS AND SENTENCING – WESTERN BALKANS

www.domac.is  domac@domac.is
4.2.3.4 Appeals decided by ethnicity and year

4.2.3.5 Outcome of appeals on conviction by year

There have been no reversals of convictions
4.2.3.6 Outcome of appeals on conviction by ethnicity and year

Six convictions by the WCC have been upheld on appeal: one of a Kosovar defendant in 2007, 4 of Serb defendants in 2008 and 1 of a Serb defendant in 2009; the cases of 16 Serb defendants have been sent to retrial, 15 in 2006 and one in 2008.

Seven convictions in the Serb district courts (of Serb defendants) have been upheld (2 in 1998, 4 in 2003 and 3 in 2008); the cases of 10 Serb defendants have been sent to retrial (5 in 2001, 5 in 2004).

4.2.3.7 and 4.2.38 Outcome of appeals on acquittal by ethnicity and year

Two acquittals in the district courts were appealed in 2007. In 2008 the appeal instance sent these cases to retrial.

With regard to acquittals by the WCC: one appeal against the acquittal of a Serb defendant was submitted in 2007 and upheld in 2008. Two appeals against acquittals of Serb defendants were submitted, one in 2006 and one in an unknown dated. Both cases were sent to retrial in 2006. In addition, 6 appeals against acquittals are still pending: one submitted in 2008 regarding a Serb defendant, 4 appeals submitted in 2009 regarding Serb defendants, and 1 appeal submitted in 2009 regarding a Kosovar defendant.
4.2.4 SENTENCES

4.2.4.1 Judgments by year (convictions and acquittals)

4.2.4.2 and 4.2.4.3 Average sentence by year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Average sentence</th>
<th>No. of sentences</th>
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</tr>
<tr>
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</tr>
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<td>1997</td>
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<td>1998</td>
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<td>13</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>16.1 (S.d 11.6)</td>
<td>10</td>
</tr>
<tr>
<td>2009 (30 Sept)</td>
<td>10 (S.d 5.8)</td>
<td>25</td>
</tr>
<tr>
<td>Multi-Year</td>
<td>14.1 (S.d 7.4)</td>
<td>53</td>
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</table>

S.d (standard deviation) indicates the dispersion of data around the average.

All defendants were Serbs except one Kosovar defendant sentenced in 2007.
### 4.2.4.4 Average sentence by crime and year (convictions only)

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<thead>
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<th>Year</th>
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<th>Non-international crimes</th>
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</table>
### 4.3 SERBIA LANDMARKS

#### 1992
The UN imposes sanctions on the Federal Republic of Yugoslavia (FRY). The FRY adopts the SFRY’s Criminal Code as its own Basic Criminal Code.

#### April 27: Constitution of the FRY is adopted.

#### May 25: UNSCR 827(1993) establishes the ICTY.

#### 1993

- **April 27**: Consitution of the FRY is adopted.
- **May 25**: UNSCR 827(1993) establishes the ICTY.

#### 1994

- **July 8**: UNSCR 936(1994) appoints Richard Goldstone Prosecutor of the ICTY.
- **August 15**: Richard Goldstone takes up the position of Prosecutor of the ICTY.
- **November 4**: The Tribunal issues its first indictment (Dragan Nikolić, Bosnian Serb).

#### 1995

- **November 22**: UNSCR 1022(1995) lifts sanctions off FRY.
- **December 14**: The Dayton Accords are signed.

#### 1996

- **February 29**: UNSCR 1047(1996) appoints Louise Arbour Prosecutor of the ICTY.
- **May 7**: First ICTY trial begins (Duško Tadić, Bosnian Serb).
- **July 11**: The ICJ rejects Serbia’s objections to the admissibility of BiH’s application on the application of the Genocide Convention.
- **October 1**: Louise Arbour takes up the position of Prosecutor of the ICTY.
- **November 27**: First ICTY judgment (Dražen Erdemović, Bosnian Serb).

#### 1997

- **April 29**: The European Council defines the Stabilisation and Association Process (SAP) conditionalities, including co-operation with the ICTY and Regional co-operation.
- **September 21, October 5**: Parliamentary and presidential elections.
- **December 7, 21**: Rerun of presidential elections. Milutinović is elected president of Serbia. Milošević becomes president of the Federal Republic of Yugoslavia.

169 UNHCR, ‘Home again, 10 years after Croatia’s Operation Storm (5 August 2005), <http://www.unhcr.org/42f38b084.html>.
1998

Escalation of the conflict between Kosovo Liberation Army and Serb forces. Serb forces launch brutal crackdown. Hundreds of thousands of Kosovo Albanians flee.\(^{179}\)

**November 16:** First ICTY conviction of Bosnian Muslims and Croat defendants (Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnil Delalić, Čelebići Case).

**November 17:** UNSCR 1207(1998) condemns Serbia for failing to execute three arrest warrants.

1999

**January:** conflict in Kosovo flares up again.\(^{180}\)

**March 24:** NATO bombing campaign against Serb military and security targets ('Operation Allied Force') begins.\(^{181}\)

**May 24:** Initial ICTY indictment against Slobodan Milošević for crimes committed in Kosovo.\(^{182}\)

**May 26:** The European Commission proposes the creation of a SAP for the Western Balkan countries, offering for the first time a prospect of EU integration.\(^{183}\)

**June 9:** Military Technical Agreement ('Kumanovo Agreement') is signed between NATO-led KFOR and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, concluding the 'Kosovo War'.\(^{184}\)

**August 11:** UNSCR 1259(1999) appoints Carla del Ponte Prosecutor of the ICTY.

**September 15:** Carla del Ponte takes up the position of Prosecutor of the ICTY.\(^{185}\)

2000

**June 19, 20:** The European Council states that Serbia is a potential candidate for EU membership.\(^{186}\)

**September 24:** Federal (presidential and parliamentary) and local elections.\(^{187}\)

**October 6:** Milošević quits presidency after being accused of rigging presidential election.\(^{188}\)

Koštunica sworn in as President.\(^{189}\)

**November 1:** Serbia (Federal Republic of Yugoslavia) admitted to the UN.\(^{190}\)

**November:** Serbia signs the Framework Agreement Federal Republic of Yugoslavia-EU for the Provision of Assistance and Support by the EU to the Federal Republic of Yugoslavia. Serbia benefits from Autonomous Trade Preferences from the EU.\(^{191}\)

**December 23:** Parliamentary elections.\(^{192}\) Reformist alliance wins. Zoran Đindić becomes Serb Prime Minister.\(^{193}\)

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190 UN Doc A/RES/55/12.  
2001

March 29: Serb President Koštunica establishes a Truth Commission, which is met with distrust by human rights groups in Serbia.194

April 1: Milošević is arrested in Belgrade and charged with misuse of state funds and abuse of office.195

June 28: Serb government headed by PM Đinđić decides to extradite Milošević to the ICTY.196

June 29: Slobodan Milošević is transferred to the ICTY.197

March: Serb authorities issue arrest warrants for Serb President Milutinović and three other top high-ranking officials. One of them, former Interior Minister Stojiljković, commits suicide.198

2002

February 12: The Milošević trial begins at the ICTY.199

September 29, October 13, December 8: Presidential elections.200

2003

February 12: The Truth Commission, which has never functioned, is dissolved.201

January 20: Former Serb president Milutinović surrenders to the ICTY.202

March 12: Serb Prime Minister Djindjić is assassinated by members of the Special Operations Unit in Belgrade.203

April 3: Serbia joins the Council of Europe.204

30 May, June 11: Jovica Stanišić and Franko Simatović, former top two Serb security service officials, are transferred to the ICTY.205

July 1: Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes is enacted, establishing the War Crimes Chamber of the District Court of Belgrade (WCC) and the Office of the War Crimes Prosecutor, both of which have exclusive jurisdiction over war crimes cases.206

August 28: UNSCR 1503(2003) endorses the ICTY’s completion strategy and calls on Serbia to intensify cooperation with and render all necessary assistance to the ICTY, particularly in bringing Karadžić, Mladić and all other indictees to the ICTY.

October 2003: The WCC is set up.207

November 26: Presidential elections.208

December 28: Parliamentary elections.209

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202 "Former Serbian President Surrenders to ICTY" (January 21, 2003), <http://www.unwire.org/unwire/20030121/31532_story.asp>.
2004

March 3: Serbia ratifies the European Convention on Human Rights.210
March 26: UNSCR 1534(2003) reiterates the call on Serbia to bring Karadžić and Mladić and all other indictees to the ICTY.
March 3: Koštunica becomes prime minister of Serbia in centre-right coalition government which relies on support of Socialist Party.211
March 9: Serbia's first major war crimes trial (Vukovar Case) opens in Belgrade before the WCC.212
June 13, 27: Presidential elections.213 Democratic Party leader Tadić is elected President.214
June 14: The EU decides on the first European Partnership for Serbia.215
October 2004: European Council conclusions open up a process for a Stabilisation and Association Agreement (SAA) with Serbia.216

2005

February 5: Serb Public Prosecutor and War Crimes Prosecutor sign with Croatian Chief Prosecutor an Agreement/Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes.217
July 1: Public Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of BiH sign an Agreement Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes.218
February 9: ICTY Prosecutor files a motion for referral under Rule 11bis of the Vukovar Case to either Serbia or Croatia.219
June 9: The ICTY Prosecutor files motion for withdrawal of the motion of referral of the Vukovar Case.220
June 30: The ICTY grants the motion for withdrawal of motion of referral of the Vukovar Case.221
September: Serb Law on Witness Protection is adopted.222
October: Launch of the negotiations for an SAA with Serbia.223

219 Prosecutor v. Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin (Referral Bench Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis) ICTY-IT-95-13/1-PT (30 June 2005).
220 Prosecutor v. Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin (Referral Bench Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis) ICTY-IT-95-13/1-PT (30 June 2005).
221 Prosecutor v. Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin (Referral Bench Decision on Prosecutor’s Motion to Withdraw Motion and Request for Referral of Indictment under Rule 11bis) ICTY-IT-95-13/1-PT (30 June 2005).
2006

January 1: New Serb Criminal Code enters into force, including crimes against humanity. The new offense applies only prospectively.

February 26: ICJ begins hearings in Genocide Case (BiH v. Serbia and Montenegro).

March 11: Milošević dies in his cell in the Hague.

May 3: SAA negotiations called off due to lack of progress on Serbia's co-operation with the ICTY.

June 4: Montenegro declares independence.

October 13: Serb War Crimes Prosecutor and Croatian Chief State Prosecutor sign an Agreement on Cooperation in Criminal Prosecution of Perpetrators of War Crimes, Crimes Against Humanity and Genocide.

November 8: European Commission Report on Enlargement Strategy 2006-2007 notes that Serbia has not yet met its international obligation to fully co-operate with the ICTY, which is the condition for resuming the SAA negotiations.

November 17: First referral from the ICTY to Serbia under Rule 11bis (Vladmir Kovačević, Serb, Dubrovnik Case).

December 14: NATO admits Serbia to its Partnership for Peace programme, despite having earlier expressed reservations over the failure to apprehend war crime suspects.

2007

January 21: Parliamentary elections. The right-wing Serb Radical Party (SRS) makes gains but fails to win enough seats to form a government.

February 26: ICJ rules that the Serbia has not committed genocide but has violated its obligations under the Genocide Convention to prevent genocide and to arrest and transfer Mladić to the ICTY.

March 26: UN Secretary General Ban Ki-moon forwards to the UN Security Council the Comprehensive Proposal for the Kosovo Status Settlement.

June 13: SAA negotiations with Serbia resume.

June 17: Former Serb Police General Vlastimir Đorđević is arrested in Montenegro and transferred to the ICTY.

November 7: The SAA with Serbia is initialed.

Notes:
225 Serb Criminal Code, art 371.
**November 6:** European Commission Report on Enlargement Strategy 2007-2008 notes that Serbia had achieved early positive results on cooperation with the ICTY, which enabled the Commission to finalise negotiations on an SAA. Serbia still has to meet its international obligation to fully cooperate with the ICTY before the SAA can be signed.  

**November 28:** UNSCR 1786(2007) appoints Serge Brammertz Prosecutor of the ICTY.

**2008**

**January 1:** Serge Brammertz take up the position of Prosecutor of the ICTY.

**January 20 and February 3:** Presidential elections. Democratic Party leader Boris Tadić re-elected president.

**February 17:** Kosovo declares independence. Serbia regards the declaration as illegal.

**March 9:** Serb Prime Minister Koštunica resigns following internal controversy over Kosovo’s declaration of independence.

**April 29:** The EU and Serbia sign the SAA and the Interim Agreement on Trade and Trade-related issues.

**May 11:** Parliamentary elections.

**June 12:** Former Bosnian Serb police chief Zupljanin is arrested in Serbia and transferred to the ICTY.

**July:** Mirko Cvetković sworn in as new Prime Minister, leading a coalition government of the pro-EU Democratic Party and the Socialist Party.

**July 30:** Serbia transfers Karadžić to the ICTY.

**September 9:** Serb parliament ratifies the SAA.

**November 5:** European Commission Report on Enlargement Strategy 2008-2009 notes that Serbia needs to build on positive developments through full cooperation with ICTY. It should be possible to grant candidate status to Serbia in 2009, if this and other conditions are met.

**2009**

**March:** Serbia concludes an agreement on its first Individual Partnership Programme with NATO.

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246 UN Doc S/2008/103.


5. KOSOVO

5.1 KOSOVO INSTITUTIONS

From the cessation of hostilities in June 1999 until 2008 Kosovo was administered by the United Nations Mission in Kosovo (UNMIK), an international civil administration and military security presence, authorized under UNSCR 1244(1999) and headed by the Special Representative of the UN Secretary General (SRSG). On 4 February 2008, shortly prior to the Kosovo independence declaration in 17 February 2008, the European Council established EULEX, an EU operation set up to monitor, mentor and advise whilst retaining a number of limited executive powers. On 9 December 2008, UNMIK transferred powers to EULEX, which works under the general framework of United Nations Security Resolution 1244(1999). The judiciary structure was not changed under EULEX auspices. Security in Kosovo is administered by the NATO Kosovo Force (KFOR).

Prosecution of war-related crimes in Kosovo is carried out in 5 district courts, located in each of Kosovo’s 5 regional capitals (Pristina, Gjilan, Peja, Prizren, and Mitrovica). These courts have jurisdiction over criminal offenses punishable by more than 5 years’ imprisonment. District trial panels are composed of one professional judge and 2 lay judges, or 2 professional judges and 3 lay judges when hearing cases punishable by imprisonment of more than 15 years. Appeals are heard by the Supreme Court. The Supreme Court of Kosovo operates as a court of appeal on decisions of the district courts. It is also charged with ensuring uniform application of the law by all courts and it may give instructions to lower courts. The Supreme Court generally operates in panels of 3 professional judges; however, 5-judge panels hear cases punishable by more than 15 years’ imprisonment.

When UNMIK arrived in Kosovo in June 1999 the SRSG appointed the Joint Advisory Council on Provisional Judicial Appointments (JAC) to recommend the provisional appointment of judges and prosecutors for an emergency justice system. The SRSG later replaced the JAC by the Advisory Judicial Commission (AJC). By June 2000, after a selection and appointment procedure, a regular and functional criminal court system was put in place throughout Kosovo.

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260 The AJC was dissolved on 28 June 1999, the JAC began operating on 27 October 1999.
The low level of participation of minority community members – particularly Kosovo Serbs – in the justice system, in combination with the continuing climate of ethnic conflict, had given rise to much concern of actual or perceived bias towards the Serb community, particularly in investigating and trying minority community members implicated in crimes committed between autumn 1998 and spring 1999. To address such concerns and also in response to public unrest and violence in Mitrovica in February 2000, the SRSG passed UNMIK Regulation 2000/6 providing for the appointment of an international judge and an international prosecutor to Mitrovica. On 29 May 2000, the SRSG passed UNMIK Regulation 2000/34 that extended the power to appoint international judges and prosecutors to the whole territory of Kosovo. The role of international judges and prosecutors was reinforced by UNMIK regulation 2000/64, which granted the SRSG the authority to appoint a special panel of three judges with international majority (‘Regulation 64 panel’) *proprius motu*, or upon the request of a competent prosecutor, the defendant or defense counsel, if this is ‘necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice’. International judges could also take cases at their own discretion. By the end of 2000 all war crimes cases were supposed to be handled by international prosecutors and heard by Regulation 64 panels. In 2006, UNMIK relocated all international judges back to Pristina, from where they are to handle cases from around Kosovo.

Until 2004, the applicable law in Kosovo was the criminal code of the FRY. This code incorporated only war crimes and genocide, while it did not recognize crimes against humanity. A new Provisional Criminal Code was introduced in April 2004, which maintains the previous definition of crimes and jurisdictions.

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263 UNMIK Regulation 2000/6 ON THE Appointment and Removal from Office of International Judges and International Prosecutors.
265 Regulation No. 2000/64 on the Assignment of International Judges/Prosecutors and/or Change of Venue.
267 However, this is not the case in practice. Amnesty International, ‘Kosovo (Serbia): The challenge to fix a failed UN justice mission Source’ (28 January 2008) 15, AI Index: EUR 70/001/2008.
5.2 KOSOVO PROSECUTIONS AND SENTENCING

5.2.1 INDICTMENTS

5.2.1.1 Indictments by year

5.2.1.2 Indictments by ethnicity and year
5.2.1.3 Withdrawals

There have been 25 withdrawals of indictments: 18 indictments against Serbs were withdrawn, 17 of them before the trial judgment and 1 before the retrial judgment. Fifteen of the pre-trial withdrawals followed the escape of the indictees. Six cases against Kosovars were withdrawn before the trial judgment. One case against a Roma was withdrawn before the retrial judgment.

5.2.2 TRIAL AND RETRIAL JUDGMENTS

5.2.2.1 Trial and retrial judgments by year
5.2.2.2 Trial and retrial judgments by ethnicity and year

5.2.2.3 Trial and retrial judgements by outcome and year
5.2.2.4 Trial and retrial judgments by outcome and year – by ethnicity

5.2.2.4A Trial and retrial judgments by outcome and year – Serbs

5.2.2.4B Trial and retrial judgments by outcome and year - Kosovars

5.2.2.4C Trial and retrial judgments by outcome and year - Others

In 2000 a Roma defendant was convicted.
5.2.3 APPEALS

5.2.3.1 Appeals submitted by year

5.2.3.2 Appeals submitted by ethnicity and year
5.2.3.3 Appeals decided by year

![Bar chart showing appeals decided by year for the years 2000 to 2009.](chart1)

5.2.3.4 Appeals decided by ethnicity and year

![Bar chart showing appeals decided by ethnicity and year for the years 2000 to 2009.](chart2)

Legend:
- **Serb**
- **Kosovar**
- **Other**
5.2.3.5 Outcome of appeals on conviction by year

There have been no reversals of acquittals.

5.2.3.6 Outcome of appeals on conviction by ethnicity and year

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In addition to the above, in 2001 the case of 1 convicted Roma defendant was sent to retrial. The case was withdrawn in 2002.

5.2.3.7 and 5.2.3.8 Outcome of appeals on acquittal by ethnicity and year

The acquittal of one Serb defendant was sent to a second retrial in 2003.
5.2.4 SENTENCES

5.4.4.1 Judgments by year (convictions and acquittals)

5.2.4.2 Average sentence by year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
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S.d (standard deviation) indicates the dispersion of data around the average.
5.2.4.3 Average sentence by year and ethnicity (convictions only)

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<th>Year</th>
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<th>Kosovar No. of sentences</th>
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In addition, in 2000, a Roma defendant was sentenced to 10 years’ imprisonment.

5.2.4.4 Average sentence by crime and year (convictions only)

<table>
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<tr>
<th>Year</th>
<th>War Crimes Average sentence</th>
<th>War Crimes No. of sentences</th>
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<th>Non-International Crimes No. of sentences</th>
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<td>17</td>
<td>11.5</td>
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</table>

There have been no convictions for genocide or for crimes against humanity.
5.3 KOSOVO LANDMARKS

1998
Escalation of the conflict between Kosovo Liberation Army and Serb forces. Serb forces launch brutal crackdown. Hundreds of thousands of Kosovo Albanians flee.268

1999

January: Conflict in Kosovo flares up again.269
February 6: The Rambouillet peace talks convened.270
March 19: Rambouillet peace talks break down.271
March 24: NATO bombing campaign against Serb targets begins ('Operation Allied Force').272

June 12: NATO-led KFOR enters Kosovo.273

July 16: First meeting of the Kosovo Transitional Council towards development of self-government in Kosovo.274

September 4: UNMIK Regulation 1999/05 on the Establishment of an Ad Hoc Court of Final Appeal and an Ad Hoc Office of the Public Prosecutor.275

September 7: UNMIK Regulation 1999/07 on the Appointment and Removal from Office of Judges and Prosecutors.276

November 4: The ICTY issues its first indictment (Dragan Nikolić, Kosovo Serb).277

December 12: UNMIK Regulation 1999/24 on the Law Applicable in Kosovo.278

December 22: UNMIK Regulation 1999/26 on the Extension of Periods of Pre-Trial Detention.279

2000

February 3: Riots begin in Mitrovica.280

February 15: UNMIK Regulation 2000/6 allows the appointment of international judges in Mitrovica.281

May 27: UNMIK Regulation 2000/34 allows appointment of international judges throughout Kosovo.

December 15: UNMIK Regulation 2000/64 authorizes the SRSG to assign an international judges-majority panels to particular cases.282

270 Security Council Report, Kosovo Historical Chronology, <http://www.securitycouncilreport.org/site/c.giKWLemTIS/g/b.2693009/k.2A9E/Kosovobr_Historical_Cho time>
273 On the Establishment of an Ad Hoc Court of Final Appeal and an Ad Hoc Office of the Public Prosecutor.
274 On Appointment and Removal from Office of Judges and Prosecutors.
276 On the Law Applicable in Kosovo.
277 On the Extension of Periods of Pretrial Detention.
279 Regulation No. 2000/6 on the Appointment and Removal From Office of International Judges and International Prosecutors.
280 Regulation No. 2000/64, on the Assignment of International Judges/Prosecutors and/or Change of Venue.
2001

January 12: UNMIK Regulation 2001/1 prohibiting trials in absentia for serious violations of international humanitarian law.283

January 12: UNMIK Regulation 2001/2 allows international prosecutors to take up cases abandoned by Kosovar prosecutors without recourse to procedures required by Kosovo law.284


May 15: UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-Government.286

November 17: Kosovo holds general elections.287

2002

February 28: Main Kosovo Albanian parties sign agreement on the identity of the president and composition of the government of Kosovo.288

March 4: Kosovo provisional self government formed, headed by President Ibrahim Rugova (Democratic League of Kosovo, LDK).289

2003

July 6: UNMIK Regulation 2003/25 on the Provisional Criminal Code of Kosovo.290


December 12: The Security Council endorsed Standards for Kosovo.292

2004

March 17-20: Riots led by Kosovar Albanians break out against Serb, Roma and Ashkali communities.293

March 31: UNMIK releases the ‘Standards Implementation Plan’.294

November 17: New coalition government formed, headed by Ramush Haradinaj (Alliance for the Future of Kosovo, AAK).295

November 30: UN Secretary-General Annan endorses Special Envoy Eide’s recommendation to replace the ‘Standards before Status’ policy by a priority-based standards policy aimed at facilitating orderly future status discussions.296

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283 On the Prohibition of Trials in Absentia for Serious Violations pf International Humanitarian Law


286 UNMIK Regulation 2001/9 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo.


291 UNMIK Regulation 2003/26 on the Provisional Criminal Procedure Code of Kosovo


2005

March 8: Kosovar Prime Minister Haradinaj resigns and voluntarily surrenders to the ICTY.297

March 23: The Kosovo Assembly elects a new government, headed by Bajram Kosumi (AAK).298

October 24: The Security Council declares it is time to begin the political process to determine the future status of Kosovo.299

November 10: UN Secretary-General Annan appointed Martti Ahtisaari as Special Envoy to Kosovo for status talks.300

2006

January 21: Kosovar President Ibrahim Rugova dies.301

February 10: Fatmir Sejdiu (LDK) is elected President.302

February 20: Negotiations on the future status of Kosovo begin under UN auspices.303

March: UNMIK Department of Justice transfers responsibility over prosecutions to a new Ministry of Justice within the Provisional Institutions of Self-Government (PISG), composed of local personnel.

March 1: Prime Minister Kosumi resigns following international criticism his failure to create a multi-ethnic political entity.304

March 10: Parliament elects Agim Çeku as Prime Minister.305

July 24: First direct talks since 1999 between ethnic Serb and Kosovar leaders on future status of Kosovo take place in Vienna.306

October 28-29: A referendum in Serbia approves a new constitution which declares that Kosovo is an integral part of the country. Kosovo's Albanian majority boycotts the ballot and UN sponsored talks on the future status of Kosovo continue.307


2007

March 26: UN Secretary General Ban Ki-moon forwards to the UN Security Council the Comprehensive Proposal for the Kosovo Status Settlement prepared by Special Envoy Ahtisaari.309

November 17: Elections are held in Kosovo. The Democratic Party of Kosovo (PDK) wins 35% of the votes.310


November 6: European Commission Report on Enlargement Strategy 2007-2008 highlights a considerable backlog of cases in Kosovo, including cases related to the March 2004 riots, and notes that some progress was achieved as regards cooperation with the ICTY but that witness intimidation continues.  

December 10: The EU/US/Russia troika inform the Security Council that negotiations to settle the Kosovo status dispute have failed.  

December 14: The EU underlines its readiness to play a leading role in implementing a settlement defining Kosovo’s future status and to assist Kosovo in the path towards stability.

2008

January 9: Hashim Thaçi is elected Prime Minister of Kosovo.

February 4: The EU establishes the EU Rule of Law Mission (EULEX) to provide support for Kosovo.

February 17: Kosovo declares independence. Serbia regards the declaration as illegal.

February-March: Serb opponents of independence seize a UN courthouse in Mitrovica, and more than 100 people are injured in subsequent clashes with UN and NATO forces. A UN police officer is killed.

April 9: The Kosovo Assembly adopts a new constitution.

June 15: The Constitution of Kosovo enters into force.

June 20: UN Secretary General Ban Ki-moon acknowledges the need for the UN to reconfigure the international presence in Kosovo and for the EU to deploy a European Security and Defence Policy (ESDP) rule of law mission.

October 3: UNMIK announces the reopening of the Mitrovica District Court.

October 8: The UN General Assembly votes (77-6-74) to request the ICJ to give an advisory opinion on the legality of Kosovo’s unilateral declaration of independence.


December 9: EULEX replaces UNMIK.

2009

February 26: ICTY acquits former Serb President Milutinović of all charges with regard to a campaign of terror against Kosovo Albanians in the 1990s.
March 4: In the first war crimes trial held under EULEX auspices, defendant Gani Gashi is sentenced to 17 years in jail.\textsuperscript{327}

April 17: Time limit for presenting written statements to the ICJ on the question of the legality of Kosovo's declaration of independence.\textsuperscript{328}

6. ICTY

6.1 INDICTMENTS

6.1.1 Indictments by year

6.1.2 Indictments by ethnicity and year

\textsuperscript{327} EULEX, 'EULEX's first war crimes trial', <http://www.eulex-kosovo.eu/?id=8&n=73>.

6.1.3 Withdrawals
Since 1994 there have been 37 withdrawals of indictments.

6.1.4 Transfers under Rule 11bis
The indictments of 13 defendants have been transferred under Rule 11bis: 10 to BiH (2 in 2005, 7 in 2006, 1 in 2007), 2 to Croatia in 2005, and 1 to Serbia in 2006.

Two indictees remain at large.

6.2 TRIAL AND RETRIAL JUDGMENTS
6.2.1 Trial and retrial judgments by year
6.2.2 Trial and retrial judgments by ethnicity and year

![Graph showing trial and retrial judgments by ethnicity and year.]

6.2.3 Trial and retrial judgements by outcome and year

![Graph showing trial and retrial judgments by outcome and year.]

Legend:
- Serb
- Bosnian
- Croat
- Kosovar
- Other

Legend:
- conviction
- acquittal
6.2.4 Trial and retrial judgments by outcome and year – by ethnicity

6.1.2.4A Trial and retrial judgments by outcome and year - Serbs

6.1.2.4B Trial and retrial judgments by outcome and year - Bosnians
6.1.2.4C Trial and retrial judgments by outcome and year - Croats

6.1.2.4D Trial and retrial judgments by outcome and year - Kosovars
6.3 APPEALS

6.3.1 Appeals submitted by year

6.3.2 Appeals submitted by ethnicity and year
6.3.3 Appeals decided by year

![Appeals decided by year chart]

6.3.4 Appeals decided by ethnicity and year

![Appeals decided by ethnicity and year chart]
6.3.5 Outcome of appeal on conviction by year

![Outcome of appeal on conviction by year](chart)

6.3.6 Outcome of appeals on conviction by ethnicity and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Serb</th>
<th></th>
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<th>Croat</th>
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</table>

In addition to the above, the conviction of a Kosovar defendant was upheld in 2007.
6.3.7 and 6.3.8 Outcome of appeals on acquittal by ethnicity and year

There have been four decisions on appeals on acquittal. The acquittals of two Bosnian defendants were upheld in 2001 and 2007. The acquittals of two Kosovar defendants were upheld in 2007.

6.4 SENTENCES

6.4.1 Judgments by year (convictions and acquittals)

![Chart showing number of judgments by year]

6.4.2 Average sentence by year (convictions only)

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**Multi-Year** | **15.4 (S.d 8.8)** | **70**

S.d (standard deviation) indicates the dispersion of data around the average.

Two Serb defendants were sentenced to life imprisonment, one in 2006 and one in 2009.
### 6.4.3 Average sentences by ethnicity and year (convictions only)

<table>
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<th>Year</th>
<th>Serb</th>
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<th>Bosnian</th>
<th></th>
<th>Croat</th>
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<td>Average sentence</td>
<td>No. of cases</td>
<td>Average sentence</td>
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<tr>
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<tr>
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<td>--</td>
</tr>
<tr>
<td>2009 (30 Sept.)</td>
<td>19.2</td>
<td>9</td>
<td>14.3 (S.d 6.2)</td>
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<tr>
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<td>52</td>
<td>11.2</td>
<td>4</td>
<td>14.3 (S.d 6.2)</td>
<td>11</td>
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</tbody>
</table>

In addition to the above, in 2007 a Kosovar defendant was sentenced to 13 years’ imprisonment. In 2008, a Kosovar defendant was sentenced to 6 years’ imprisonment and a Macedonian defendant was sentenced to 12 years’ imprisonment. In 2006 and 2009 Serb defendants were sentenced to life imprisonment.
### 6.4.4 Average sentence by crime and year (convictions only)

<table>
<thead>
<tr>
<th>Year</th>
<th>Genocide</th>
<th>Crimes Against Humanity</th>
<th>War Crimes</th>
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<tr>
<td></td>
<td>Average sentence</td>
<td>No. of cases</td>
<td>Average sentence</td>
</tr>
<tr>
<td>1994</td>
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<tr>
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<tr>
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<td>10.8</td>
<td>6</td>
</tr>
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<td>19.1</td>
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<td><strong>35</strong></td>
<td><strong>1</strong></td>
<td><strong>16.4 (S.d 8.7)</strong></td>
</tr>
</tbody>
</table>

In addition to the above, 2006 and in 2009 Serb defendants convicted of crimes against humanity were sentenced to life imprisonment.

### 6.4.5 Plea bargains

There have been 21 convictions on the basis of plea bargains.
7. ANALYSIS

The purpose of this report is to observe whether the ICTY had a noticeable trickle-down effect on the policies of any of the case-study countries, in terms of prosecution and sentencing. The assessment of this effect can be broken into specific questions:

- Have the different countries taken the cue from the ICTY by pursuing perpetrators of international crimes more forcefully or less so?
- Are there any general trends in the sentencing ICTY that are mirrored in the national jurisdictions?
- Has any particular action by the ICTY, such as Rule 11bis referrals or a specific judgment or sentence, caused a change in domestic policies, either increasing law enforcement or reducing it?
- What is the relationship between the sentencing standards of the ICTY and that of the national tribunals? Has the domestic sentencing policy been affected by the practice of the ICTY in any way?

In order to establish whether the ICTY has had an effect on national policies, it was necessary first to assess whether there are discernible trends in the practice of the national jurisdictions, and then consider whether these trends are attributable in any way to interaction with the ICTY. Since national policies may be affected by factors other than the one we are interested in, namely the ICTY, we examine other potentially-impacting factors that may influence national policies. These include both domestic political and personal changes, as well as international factors, such as the relationship between the various countries and the EU. At any rate, one must be careful not to be too quick to jump to conclusion on causal links in complex legal-political environments.

Perhaps the most important finding is the negative one: it is very difficult to make any substantive assessments of trends and linkages, since the number of cases is usually too small for any finding to be statistically significant. In other words, there are no major trends in the national jurisdiction that are identifiable on the basis of numbers alone. This does not imply that there are no trends or policies but only that they are not evident from the volume of cases before the national tribunals.

It is even more difficult to establish a link between apparent trends and external factors such as the work of the ICTY, EU accession negotiations, national politics, etc. Again, this is not to say that there is no such link, but that it cannot be proven by numbers and dates alone. The following are some patterns that are nonetheless discernible.
Rate of indictment: The rate of indictment in the State Court of BiH has remained more or less constant (2.2A.1.1). In FBiH there was a gradual decrease from the termination of the conflict (the same is true for Kosovo, 5.2.1.1). However, in 2006 there was a surge in indictments (2.2B.1.1), which is also visible in RS (2.2C.1.1). This may be a reaction to the completion strategy of the ICTY, which prompted the Entities to demonstrate their capability in addressing international crimes. With respect to FBiH this links with the finding relating to the ethnic distribution of indictees. In Croatia the rate of indictments since 2002 has remained more or less constant (3.2.1.1). In Serbia there has been a rise in indictments since 2003 (4.2.1.1), which may be associated with the establishment of the WCC.

Ethnicity of indictees: In all jurisdictions, indictees (and later defendants) are overwhelmingly Serb (2.2A.1.2, 2.2B.1.2, 2.2C.1.2, 3.2.1.2, 4.2.1.2, 5.2.1.2). This is in line with the situation at the ICTY (6.2.2). A certain trend in the ethnic distribution of indictments through the years is visible in FBiH and Kosovo (2.2B.1.2, 5.2.1.2). An opposite trend is visible in Serbia, namely of a shift form the ethnic Serb majority towards indictment of Kosovars (4.2.1.2). An indication in the same direction may also be discernible in RS (2.2C.1.2)

Outcome of trial judgments: as in the ICTY, in all national jurisdictions the majority of cases conclude in conviction, and the ratio between conviction and acquittal appear more or less steady (2.2A.2.3, 2.2B.2.3, 2.2C.2.3, 3.2.2.3, 4.2.2.3, 5.2.2.3). One exception is Croatia, where there appears to have been a change with respect to Croat defendants. While generally the majority of appeals in Croatia conclude in the upholding of conviction (3.2.3.5), an ethnic distribution reveals a more nuanced picture: convictions of Serbs have more often been sent to retrial on appeal than upheld, while the convictions of Croats have all been upheld (3.2.3.6). This may be related to the previous finding because together they indicate a shift from a prosecution policy that is relatively anti-Serb and pro-Croat, to a more objective and balanced one, in which previous convictions of Serbs are quashed, while not every Croat defendant can expect to be acquitted. Another jurisdiction where retrial is more common than the upholding of a conviction is Kosovo (5.2.3.5). In neither Croatia nor Kosovo, however, is it possible to discern a trend through time in this respect.

In Serbia, too, there is a majority of cases sent to retrial rather than convictions upheld (all Serbs except one Kosovar, 4.2.3.5). However, in Serbia the explanation would be the opposite of
that applicable in Croatia and Kosovo. While in Croatia and Kosovo the sending to retrial of Serb defendants as opposed to Croats or Kosovars, respectively, suggest a less negative bias attitude towards the ethnic minority; in Serbia the sending to retrial of Serb defendants rather than upholding the convictions may suggest some lenience towards the ethnic majority.

Another factor which may affect the ratio between upholding of convictions and resending them to retrial is the structure of the system: in BiH and its entities, retrials are conducted by the appeal court. This may affect the willingness of appeal instances to send a case to retrial rather than uphold the conviction.329

**Sentencing:** The ICTY has rejected the notion of a hierarchy of crimes, although practice suggests that there may be a perception of hierarchy. The single conviction for a genocide-related crime in the ICTY does carry a heavier sentence but is insufficient to establish a pattern.330 In the national jurisdiction, it should be pointed out that only in BiH and FBiH have there been convictions for genocide (in RS, Croatia, Serbia, Kosovo – only war crimes). Interestingly, the hierarchy in sentencing is very apparent in BiH (2.2A.4.4), but not elsewhere (2.2B.4.4). In FBiH, for example, the average sentence for genocide is 14.7 years and for war crimes it is 12. This is a miniscule difference, particularly taking into account the number of sentences given in each category and their distribution. In Serbia and Kosovo, where we also took into account domestic crimes that are substantively related to international crimes, the average sentence for war crimes was even lower than that of the domestic crime (4.2.4.4, 5.2.4.4). With the exception of BiH State Court, the average sentences within each jurisdiction do no seem to be significantly dependent on the crime.

Another factor affecting sentencing may be the sentencing range available to the court. The smaller it is, the less likely it is for significant differences to exist among the sentences associated with different crimes.331 The maximum sentence of life imprisonment in the ICTY allows greater gradation than in jurisdictions where the range between the minimum and the maximum sentence may be as small as 10 or 15 years.

330 Arguably, sentencing reflects the gravity of the acts rather than the formal offense for which a person was convicted, which is often a matter of prosecution-defense negotiations. If one examines at the 10 cases where the defendant was indicted of genocide-related offenses rather than only the one case where the defendant was also accused of such an offense, a hierarchy between the act and the sentence becomes more pronounced: the average sentence for genocide-related acts is 24 years, for crimes against humanity is 16, and for war crimes around 8 years.
Conclusion: There are many difficulties in attempting to identify a link between the national and international tribunals other than the small number of cases. For example, if a change is discernible, to which event, if at all, can it be linked? How much time should be allowed to lapse before a certain event is deemed to have been influential or not? An example is the establishment of the ICTY on the one hand and the completion strategy on the other hand: In some of the countries, there was a long delay before international crimes began to be addressed, or before specialized institutions were put in place to address them (the State Court’s Special Chamber was set up in 2006, the Serb WCC was set up in 2003 and began operating in 2005). Can the same delay be expected with respect to the completion strategy? Probably not, as the completion is linked to national participation. The loose linkage with respect to sentencing is also interesting. Does it reflect a true detachment of the national and international tribunals or does it reflect the different perpetration levels considered at the ICTY and in national tribunals? To answer all these questions, a contextual analysis of the numbers is essential.
8. SOURCES

BiH (including FBiH, RS, Brčko):
5. Original cases from FBiH, RS, Brčko for the years 2007-2009.

Croatia:
Data collated by Robert Mrlijc, PhD candidate, Assistant, Chair of International Law, Faculty of Law, University of Zagreb.

Serbia:
5. OSCE mission to Serbia, Rule of Law and Human Rights Department, War Crimes trial monitoring, June 2009 Update (on file with authors)
6. OSCE mission to Serbia, Rule of Law and Human Rights Department, War Crimes trial monitoring Adjudicated Cases, June 2009 Update (on file with authors)

Kosovo:
2. UNMIK website: http://www.unmikonline.org/.

ICTY:
ALSO AVAILABLE FROM DOMAC


- Comparative Analysis of Prosecutions for Mass Atrocity Crimes in Canada, Netherlands, and Australia, by Antonietta Trapani, DOMAC/1, August 2009.

