

THE INTERPLAY BETWEEN CROATIA AND THE ICTY REGARDING WAR CRIMES

Signature Mark: gzt375

Date of closure of the manuscript:
2024. 04. 11

2025.

TABLE OF CONTENTS

1. INTRODUCTION	3
2. METHODOLOGY	4
3. HISTORICAL BACKGROUND.....	5
3.1. Prelude	5
3.2. Prosecution of war criminals in Yugoslavia (1945-1991)	6
3.3 The sentence of a war criminal in the former eastern bloc of Europe: The case study of Dinko Šakić	8
3.4. The Balkan conflict (1991 - 1995).....	11
3.4.1. <i>Croatia during the Balkan conflict (1991 - 1995)</i>	13
4. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA..	14
4.1. Completion Strategy	15
4.2. The Tribunal's cooperation with domestic courts.....	16
4.3. The Tribunal's work with the State of Croatia.....	17
4.4. Political problems of Croatia with the ICTY.....	19
4.5. Problems regarding command responsibility	23
4.5.1. <i>Legal challenges concerning command responsibility</i>	25
4.6. International reviews of Croatia	25
4.7. The effect of the Tribunal on Croatia regarding prosecution.....	27
4.8. The obligations of Croatia to the Tribunal.....	29
4.9. Reports of the representatives of the Tribunal on Croatia	31
4.10. The need for international intervention and the pressure on the leaders of Croatia	33
4.11. Cases referred to Croatia.....	37
5. CONCLUSION.....	41
6. BIBLIOGRAPHY	43
6.1. Appendix:	53

1. INTRODUCTION

The prosecution of war crimes and crimes against humanity have been a heavily researched subject, especially since the end of World War Two. There is no doubt that international crimes and related provisions are important in upholding human rights, ensuring accountability, and preventing future violations of international humanitarian law. Today, the relevance of the topic especially in light of recent armed conflicts and international crimes committed over the course of these conflicts cannot be denied. In the analysis of war crimes and crimes against humanity, the legacy of international tribunals holds great importance. The international community established international tribunals in order to bring justice and individual criminal responsibility for the gravest crimes committed. The International Criminal Tribunal for the former Yugoslavia (hereinafter ICTY) as the first tribunal of the United Nations played a pivotal role in addressing war crimes, crimes against humanity and grave breaches of international humanitarian law committed during the Balkan conflict of 1991. Out of the countries of this conflict, the case of the Republic of Croatia (hereinafter Croatia) as now member of the European Union gives an in-depth knowledge what challenges and problems the international Tribunal and the former countries of Yugoslavia had to face during the period of their cooperation. This research explores the multifaceted influence of the ICTY on Croatia's approach to war crimes, focusing on areas such as accountability, challenges, political willingness, legal barriers, international cooperation, approach of the public, and the tribunal's legacy. By analysing the evolution of legal mechanisms, domestic and international collaboration, and societal attitudes, this study provides a comprehensive understanding of how the ICTY contributed to justice, reconciliation, and the prevention of war crimes in Croatia and shows the country's willingness to prosecute its own war criminals in the standards of international law. The findings underscore the significance of international criminal tribunals in addressing atrocities and promoting accountability within the framework of international law. During my research the author worked with four research questions: (1) To what extent was Croatia willing to prosecute its own war criminals? (2) Did Croatia have the legal capacity to prosecute war criminals on its own? (3) To what extent Croatia cooperated with the ICTY? (4) How did the Tribunal change the ability and willingness of Croatia to prosecute war criminals? In this paper the author would like give answers to these questions and examine whether Croatia met the commitments of the obligations of the ICTY in its actuality or not. The author will assess the political, legal, and social barriers in the course of cooperation of the country with the Tribunal. Moreover, this study's goal is to highlight the legal amendments and changes in Croatia's approach to the International Tribunal in order to address the willingness of the

country to prosecute war criminals. Gaining a clear understating on this, the author would like to investigate the transferred cases of the Tribunal, whether the Croatian domestic court were able to prosecute the individuals indicted by the Tribunal up to international standards. With this the author would like to give an understanding on how successful the prosecution of war criminals can be in national level and to what extent the Tribunal was able to make a change in the process of prosecuting a country's own war criminals. Examining the indictments and the reviews of Non-Governmental Organizations (hereinafter NGOs) and the legal persons of the Tribunal, the author seek to find out whether Croatia could change its approach in prosecuting war criminals in the course of cooperation with the ICTY. This study shows that Croatia's cooperation with the Tribunal in most cases was only successful due to external pressure, thus creating setbacks in the Tribunal's work. Focusing on the challenges, unfulfilled obligations and the need for international pressure shows that Croatia's political and social climate was not ready to bring its own war criminals to justice. This paper confirms that even though the Tribunal made steps to renovate the Croatian judiciary for a more efficient process of prosecuting war criminals, the country lacked sufficient political and social willingness to cooperate during the work of the Tribunal.

2. METHODOLOGY

As the project aims at analysing the complex impact of the ICTY upon Croatia, in perspective of the domestic war crime proceedings of the country and its political and social willingness to cooperate after the Balkan conflict, a variety of research methods have been used. In this study secondary analysis of previous qualitative research, published studies and international agreements, combined with qualitative research of the author in the field and inductive research has provided a reliable and convincing basis for analysis. A combination of expert reviews and studies of Non-Governmental Organizations, State bodies were concluded in the research. Professional interviewees and discussants of legal persons were applied who were concerned in the prosecution of war crimes and crimes against humanity committed during said conflict. Under this category fall the review of decisionmakers such as lawyers, representatives of national administrations, the Prosecutor of the Tribunal and opinions of journalists, representatives of the non-governmental and international organisations. Two formal and structured interviews were conducted during the research. One of the interviews was with Efraim Zuroff the representative of a Non-Governmental Organisation, the Simon Wiesenthal Centre, and it took place in Jerusalem, Israel. The second interview was with József Padányi a Hungarian officer serving in Croatia and Bosnia Hercegovina in 1997 and the

interview was held in Budapest, Hungary. Both interviews were conducted in 2023. The findings of these interviews are presented in detail in this study. The interviews were recorded and transcribed. During the interviews, notes were taken and were subsequently analysed. These notes cannot be taken as a source of quotations, but they do serve to confirm the arguments of this research. There were attempts to conduct interviews with Croatian representatives about the impact of the Tribunal, but the relatively brief timeframe of the project and the unavailability of the concerned individuals has not allowed to conduct these interviews about the impact of the Tribunal. However, it was possible to study the opinions of Croatian legal persons and representatives, as well as the variety of different discourses, in the course of the fieldwork.

3. HISTORICAL BACKGROUND

3.1. Prelude

When we talk about international criminal law as the prosecution of individuals for crimes which are affecting the international community, then there were no such laws until the 20th century.¹ The traditionally known war crimes were included in the so-called Hague Rules of the Hague conventions,² but as the judges of Nuremberg said in 1946, ‘The Hague Convention nowhere designates such practices methods of waging war) as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders.’³ After World War Two, the tribunal of Nuremberg as the first international tribunal for war crimes, provided individual criminal liability. Members of the Nazi regime and German officers committing atrocities, massacres, executions with no specific geographic locations, were sent back to the countries where said offenses happened and were judged and sentenced according to the laws

¹ This study will refer to the description of ‘war crimes’ of Article 6. of the Charter of the International Military Tribunal which categorizes as offences ‘related to serious violations of the rules of international customary and treaty law concerning international humanitarian law. Namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.’

United Nations, Charter of the International Military Tribunal, London, 1945.

Can be accessed:https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf [last accessed: 6 November 2023]

² The Hague Convention and the Rules of Land Warfare, adopted during the First and Second Peace Conferences in 1907 and 1899.

³ Philippe Sands, *From Nuremberg to The Hague: The Future of International Criminal Justice*, Cambridge University Press, 2003, p. 31.

of said liberated countries.⁴ Making international intervention possible, categorizing and defining the prosecuted offenses within its jurisdiction in the matters of war crimes, crimes against peace and crimes against humanity by which they convicted the individuals.⁵ Assessing the unique policy of mass murder committed and the planned, mechanical form of genocide, the International Military Tribunal of Nuremberg took a law-improving step by mathematically summing up the victims of this tragedy, according to which the German perpetrators committed acts on a wide scale that show the characteristics of war crimes and crimes against humanity.⁶ However, the responsibility of the officers and leaders of the occupied countries has neither been considered nor examined.⁷ Thus, the countries of the responsible individuals were free to prosecute their war criminals on their own terms, willingness, and jurisdiction. However, they often fell short in the face of international criminal law, especially countries liberated by communist forces including Croatia within the reunited Yugoslavia.

3.2. Prosecution of war criminals in Yugoslavia (1945 – 1991)

This chapter demonstrates the legislation of the communist regime of Yugoslavia leaded by Josip Broz Tito and the limitations of local war crimes prosecutions in the region, which influenced the legislation of Croatia in the case of war crimes even after its independence. Thereby showing the need for the reform of the domestic judiciary and the creation of the ICTY. After World War Two by 1945, in the reformed Yugoslavia similarly to the communist regimes of the Soviet Block, on the grounds of criminal responsibility anti-communists and nazi collaborates were hunted down, arrested, and tried for war crimes and crimes against humanity committed during World War Two. The formation of the state introduced retroactive laws

⁴ Agreement of the establishment of an international military tribunal, Article 1, London, 1945
See: The Judgment and Charter of the Nuremberg Tribunal – History and Analysis, United Nations - General Assembly International Law Commission, New York, 1949, pp. 89–90.

Can be accessed: https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf [last accessed: 30 October 2023]

⁵ This study will refer to the description of ‘war crimes and crimes against humanity’ of Article 6. of Charter of the International Military Tribunal which categorizes offences: ‘namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.’ United Nations, Charter of the International Military Tribunal, London, 1945.

Can be accessed: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf [last accessed: 6 November 2023]

⁶ Tamás Hoffmann, International and Hungarian legal regulation of crimes against humanity, Law and Political Science / Az emberiség elleni bűncselekmények nemzetközi és magyar jogi szabályozása, Állam és Jogtudomány, Volume 58, Issue 1, 2017, p. 35

⁷ United Nations, Charter of the International Military Tribunal, London, 1945.

Can be accessed: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf [last accessed: 6 November 2023]

concerning war crimes. The ‘Laws on Crimes against the People and the State’ in Article 136 of the Criminal Code of the Socialist Federal Republic of Yugoslavia, which was approved on August 15, 1945, and amended on July 9, 1946, rejected the usual procedures and guarantees of contained in previous legislation.⁸ They were conceived along strongly political and communist lines and were put into effect after the alleged crimes committed by the alleged perpetrator. Anyone could be declared a war criminal, or an enemy of the people based on a verbal complaint alone.⁹ The organs of the State War Crimes Commission received 938,825 complaints and, on that basis, 66,420 people were declared war criminals nationwide during the communist regime including Croatia. The indicted individuals were arrested and tried *ex post facto*, for offences which were not criminal in the code in existence at the time of their supposed commission. In the federal constitution of Yugoslavia, the basic universally recognised guarantees and rights given to any prosecuted were violated by the authorities in multiple occasions even on cases which were in the interest of the international community.¹⁰ ¹¹ During the leadership of Josip Broz Tito in Yugoslavia, thousands of people - guilty and innocent alike - fell to be a victim of violations of basic human and civil rights, wrongful accusations and executions without trial under the conviction of war crimes.¹²

⁸ Yugoslavia: Criminal Code of the Socialist Federal Republic of Yugoslavia, 1977.

Can be accessed: <https://www.refworld.org/docid/3ae6b5fe0.html> [last accessed: 15 March 2024]

⁹ World Peace Foundation, Yugoslavia: post World War II, Mass atrocities ending, August 2015.

Can be accessed: <https://sites.tufts.edu/atrocityendings/2015/08/07/yugoslavia-post-wwii-assaults/#Notes> [last accessed: 30 October 2023]

¹⁰ For example, Articles 23–29 of the Constitution of the Federal Republic of Yugoslavia.

The Federal Chamber of the Assembly of the Socialist Federal Republic of Yugoslavia, Constitution of the Federal Republic of Yugoslavia, 1992.

Can be accessed: <https://www.refworld.org/docid/3ae6b54e10.html> [last accessed: 1 November 2023]

¹¹ See: Pattee Richard, The case of Cardinal Aloysius Stepinac, 1953

¹² The United Nations War Crimes Commission and the Prosecution of War Criminals in Yugoslavia, Sabina Ferhadbegović, 373–390, Journal of the History of International Law, 2022

Can be accessed: https://brill.com/view/journals/jhil/24/3/article-p373_5.xml [last accessed: 15 March 2024]

3.3 The sentence of a war criminal in the former eastern bloc of Europe:

The case study of Dinko Šakić

After the dictatorial regime of Tito and the strategic but unjust process of prosecution of war criminals, the political leaders of the newly created democratic state were united on one thing: the country has already done its obligations in prosecuting its own war criminals. This common understanding was concluded from the general approach of the political leadership of Croatia, at the time. Concerning the first democratically elected president of Croatia, Franjo Tudjman's accountability, lawyer Ante Nobile, one of the best-known Croatian lawyers criticized the president's approach to war crime prosecutions.¹³ Noting that Tudjman left war crimes committed in Croatia unpunished, which signalled to everyone that those who are committing similar crimes will not be punished. He highlighted that as an outcome the unpunished crimes will stimulate new crimes.¹⁴ Thus, the consequences of the newly elected leadership will burden the state as a whole. Regarding the much-needed legal actions against war criminals and people who committed crimes against humanity since 1939, after its independence the Croatian government was unwilling to examine its wartime record, mostly prosecuting Croatian Serbs for alleged war crimes.¹⁵ Efraim Zuroff, a member the Simon Wiesenthal Centre reported and analysed the unprosecuted war criminals in Croatia and actively took part in the first prosecution of war criminals in the former eastern bloc in democratic conditions for crimes committed during World War Two. Based on an interview with Efraim Zuroff conducted for this research, the convicted, Dinko Šakić expected his country's judicial system to give him favourable treatment due to the approach of the political actors of the country to prosecuting their own war criminals.¹⁶ This was a result of Franjo Tudjman's presidency who was open to hand over Bosnian Croats indicted by the ICTY for war crimes, but did not allow investigations and arrests being made for suspected violations in Croatia.¹⁷ While after 1993 the ICTY held most of the trials concerning war crimes and crimes against humanity the Croatian court in 1998 for the first time prosecuted in democratic circumstances

¹³ Ante Nobile, a highly experienced and excepted lawyer in international humanitarian law in Croatia gives a legitimate point of view on the approach of the President of that time in Croatia regarding war crimes.

¹⁴ Vjeran Pavlakovic, *Better the Grave than a Slave: Croatia and the International Criminal Tribunal for the Former Yugoslavia, Croatia Since Independence: War, Politics, Society, ...*, 2008 *pp.*16–17. Can be accessed: https://www.academia.edu/544619/Better_the_Grave_than_a_Slave_Croatia_and_the_International_Criminal_Tribunal_for_the_Former_Yugoslavia [last accessed: 30 October 2023]

¹⁵ International volume of the red cross, *Responsibility for war crimes before national courts in Croatia*, Volume 88 Number 861, 2006, endnote 7., *p.* 150.

¹⁶ The author of this thesis conducted the interview with Efraim Zuroff in the course of the research for this study. The transcript of the interview held on 23 April 2023, can be accessed from the author.

¹⁷ C. Lamont, *International Criminal Justice and the Politics of Compliance*, Farnham, 2010, *pp.* 48–51.

a war criminal for crimes committed during World War Two. Dinko Šakić the Nazi concentration camp commander was found guilty of crimes against humanity in October, 1998. He was a member of the 'Ustasha Defence' in the early 1940s and was responsible for the murder of more than 2000 people at the biggest camp in the territory of Croatia.^{18 19} The significance of his trial was undeniable from international aspect as well, since this was the first time where an individual responsible for war crimes and crimes against humanity was judged and sentenced in the former eastern bloc of Europe under democratic and fair circumstances.²⁰ The US government – which actively helped with the prosecution of nazi war criminals all around the world – remarked in connection with the trial that 'the international reputation of Croatia would be on the line here and that it would certainly be in the interest of the Croatian authorities to make sure that this trial is up to muster under international standard.'²¹ The concern arose in the first place for this because Croatia was not the one initiating the arrest of Dinko Šakić. After the independence of Croatia, Franjo Tudjman contrary to his anti-Ustasha stand during World War Two, adopted an extremist nationalist line which showed the Ustasha regime in a more positive light and he had more than one antisemitic and anti-Serb expression during the early years of the democratic state which made the diplomatic relations with countries especially Israel difficult.²² Efraim Zuroff recorded multiple hostile reactions to the prosecution of Šakić and other war criminals in Croatia from political and public figures as well during his stay in the country.²³

Given this pattern, the question arose whether if Tudjman Government's were willing and able to conduct a fair and justful prosecution. The opinion of the political elite and the

¹⁸ The Ustasha Defence was in charge of organising military units to secure the camps and their surrounding area during the fascist regime of Croatia.

¹⁹ International Crime Database, Case of Dinko Ljubomir Sakic, K-242/98.

Can be accessed: [https://internationalcrimesdatabase.org/Case/1182/%C5%A0aki%C4%87-\(Dinko-Ljubomir\)/](https://internationalcrimesdatabase.org/Case/1182/%C5%A0aki%C4%87-(Dinko-Ljubomir)/) [last accessed: 30 October 2023]

²⁰ Vesna Peric Zimonjic, Inter Press Service News Agency, Rights-Balkans: Husband And Wife War Crimes Suspects Face Trial, 1998.

Can be accessed: <https://www.ipsnews.net/1998/08/rights-balkans-husband-and-wife-war-crimes-suspects-face-trial/> [last accessed: 30 October 2023]

²¹ U.S. Department of State, 54th Daily Press Briefing DPB, Washington, D.C, 1998. Can be accessed: <https://1997-2001.state.gov/briefings/statements/1998/ps980501.html> [last accessed: 30 October 2023]

²² On multiple occasions he minimized the responsibility of the Ustasha regime and in one of his books stated that the numbers of victims of the Holocaust were exaggerated. In one of his speeches, Mr. Tudjman emphasised: 'Thank God, my wife is neither a Serb nor a Jew.'

International Criminal Tribunal for the former Yugoslavia, transcript of the case of Goran Hadzic (IT-04-75-T), the Hague, the Netherlands, 2014, p. 9294.

Can be accessed: <https://www.icty.org/x/cases/hadzic/trans/en/140703ED.htm> [last accessed: 27 March 2024]

²³ Efraim Zuroff, Operation Last Chance: One Man's Quest to Bring Nazi Criminals to Justice, 2011, pp. 143–150.

Croatian public was that these criminals were national heroes who fought against oppression for their country, which influenced the approach to their still living suspected war criminals and their prosecution. These patterns before and after the extradition of Šakić made it harder to achieve the possibility for a fair trial and to hold responsible the commander of Jasenovac. While, states are dependent on other countries obtaining the surrender of criminals who have fled abroad, in order for a prosecution to take place, at the time none of the countries concerned wanted to request his extradition.²⁴ Thus, Efraim Zuroff requested in letter for the arrest of Dinko Šakić and Croatia to seek his extradition in order to put him on trial.²⁵ It should be considered that although Dinko Šakić as a citizen, did not have a permanent residence in Croatia, he visited the country during his hiding in 1995 and even held connections with its president.²⁶

As a result, Croatia to keep the good relations with Israel and due to pressure from Yugoslavia, started an investigation of the crimes Šakić was accused with. The Croatian Ministry of Justice submitted a request seeking Šakić's extradition resulting in the successful arrest of the convicted commander.²⁷ They pronounced Dinko Šakić a war criminal for crimes committed during his commandship of the Jasenovac camp during 1941 to 1942 and who was responsible for murdering more than 2000 people.²⁸ When carrying out the final verdict the court of Croatia, took into consideration the provisions of international law and declared the final decision accordingly and sentenced Šakić to 20 years in prison for crimes against humanity.²⁹ At the time when the defendant allegedly committed the acts per the time of the indictment, killing and violence of any form directed against the civilian population, were punishable under international law. Based on the provisions of Hague Convention IV, these crimes under Article

²⁴ This affected three countries in particular since the Jasenovac concentration camp was in Croatia and the Serbian enclave of Bosnia and Herzegovina, and Yugoslavia whose citizens had been murdered there. (Belgrade, Serbia)

²⁵ Efraim Zuroff, *The Auschwitz of the Balkans: The Croatian concentration camp Jasenovac is the site of fierce ongoing controversy, muddled by extremists and cover-ups, about the extent of its horrors*, Tablet Magazine, 2022. Can be accessed: <https://www.tabletmag.com/sections/history/articles/auschwitz-balkans-jasenovac> [last accessed: 30 October 2023]

²⁶ Efraim Zuroff, *Operation Last Chance: One Man's Quest to Bring Nazi Criminals to Justice*, 2011, pp. 138–140.

²⁷ *Ibid.* pp. 143–150.

²⁸ Slavenka Drakulic, *Croatia Puts Itself on Trial*, Section A, *The New York Times*, 1999, p. 27. Can be accessed: <https://www.nytimes.com/1999/03/16/opinion/croatia-puts-itself-on-trial.html> [last accessed: 30 October 2023]

²⁹ Based on Section 1 of Article 158 of the Penal Code in force at the time, long-term imprisonment for war crimes was the severest penalty.

120 of the Croatian Basic Penal Code were punishable at that time.³⁰ Both international and domestic legislation imposed restrictive measures and sanctions for the violation of said laws.³¹

Thus, at the time when the accused committed the acts, he could have been prosecuted in Croatia during his stay in Croatia in 1995. The overall standing point of the country on their own war criminals brought a setback to the prosecution in Šakić's case and the future war crime cases in Croatia. This trial showed the legal capacity and political will of Croatia to hold its own war criminals responsible and the possible need for international intervention in war crime trials in the country.³² The process of the trial represented well the barriers of the prosecution of the accused and the reason why Croatia was reluctant to hold responsible their own war criminals. International pressure was the only thing breaking through the lack of political and overall national will to punish the war criminals of Croatia which inhibited the full enforce of justice in the country for the crimes committed. The influence of the international community was a recurring necessity while prosecuting crimes against humanity and war crimes in Croatia. In future cases dealing with the crimes of the Balkan conflict of the former Yugoslavian countries, the approach of the prosecution of war criminals followed a pattern similar to the case of Dinko Šakić and widely effected Croatia's relationship with the ICTY.

3.4. The Balkan conflict (1991 - 1995)

After the end of World War Two the Socialist Federal Republic of Yugoslavia (also known as the former Yugoslavia) appeared on the world map as a non-aligned federation of six republics: Croatia, Serbia, Bosnia and Herzegovina, Slovenia, Macedonia, and Montenegro. Due to the immense national differences, the country was under continuous political and economic crisis. By 1991, Slovenia and Croatia were considered separatists and hostile towards the strengthening Serb presence in the Government. On 25 June 1991, Croatia and Slovenia declaring independence, actively ended the Socialist Federal Republic of Yugoslavia's existence. By April 1992, further declarations of independence inchoated an almost immediate Ethnic-based conflict, mainly caused by Serb minorities resisting against independence in Croatia. These groups were mostly the victims of the unjust and atrocities of World War Two

³⁰ Indictment of Dinko Sakic, Office of the County Prosecutor in Zagreb, legal-tools.org (online), 1998
Can be accessed: <https://www.legal-tools.org/doc/f662d2/> [last accessed: 30 October 2023]

³¹ James P. Rubin, Press Statement: United States Commends Outcome of the Trial of World War II War Criminal Dinko Sakic, U.S. Department of State, Office of the Spokesman, 1999.
Can be accessed: <https://1997-2001.state.gov/briefings/statements/1999/ps991004c.html> [last accessed: 8 November 2023]

³² This study does not analyze the prosecution of war criminals of other Balkan countries.

and Ustasha terror which sharpened the need of the Serbian community for an independent state.³³

The lack of prosecution and the injustice in the examination of war crimes strengthened the conflicts between the ethnic groups within Croatia and worsened the already sensitive relationship with neighbouring countries. As it was seen many times throughout history, an extreme form of injustice similarly to the course of World War Two was followed by an act of revenge. The conflict of the Balkans in 1991 was in this sense also a sign of revenge from the Serbian and other ethnicities to seek justice for the atrocities committed in World War Two by Croatia.³⁴ In effect, the lack of justice in prosecuting the countries' own war criminals contributed and played a big part in the conflict of the Balkans starting in 1991. Resulting the Serb minorities to seek not just an independent state of their own but to have the long-standing goal to create a 'ethnically homogenous Serbian state' similarly to the Ustasha regime of Croatia during World War Two.³⁵ Thus, the disintegration of the ununified federation of Yugoslavia started a series of conflicts in which a number of crimes were committed, specifically a new series of war crimes, crimes against humanity and genocide after World War Two.³⁶

³³ Pandora's War: The Multi-Dimensional Nature of the Yugoslav Conflicts, Slobodan Drakulic, Special Issue on the Former Yugoslavia, *Refuge: Canada's Journal on Refugees*, Vol. 14, No. 3, 1994, *pp.* 5–7

Can be accessed: <https://www.jstor.org/stable/45412364?seq=3> [last accessed: 15 March 2024]

³⁴ This is also true for the crimes carried out by other ethnicities during World War Two.

³⁵ Roger Cohen, The World; From 'Greater Serbia' to Lesser Serbs: A War Turns, *The New York Times*, Section 4, 1995, *p.* 1

Can be accessed: <https://www.nytimes.com/1995/08/20/weekinreview/the-world-from-greater-serbia-to-lesser-serbs-a-war-turns.html> [last accessed: 31 March 2024]

³⁶ Article 4 of the ICTY Statute incorporating Articles 2 and 3 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, constitutes acts as genocide described as offences 'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'.

United Nations Convention on the Prevention and Punishment of the Crime of Genocide, New York, 1951.

Can be accessed: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf [last accessed: 30 October 2023]

3.4.1. Croatia during the Balkan conflict (1991 - 1995)

The ethnic Serb minority of Croatia openly rejected the new Croatian state's authority and started armed conflicts in the area. Closely, a third of Croatia's territory was declared with the goal to be an independent Serb state. The Serb minorities in the country following the ruthless methods of World War Two, expelled Croats and other non-Serbs from the declared territory during campaign of ethnic cleansing.³⁷ As a result, Croatian forces followed suit in the Croatian controlled areas starting to destroy the Serb population living in the east part of the newly created state.³⁸

No. 1. Map:

In red: Areas of Croatia occupied and ethnic cleansed by Serb forces (1991 – 1995)



(<https://wwiiafterwwii.wordpress.com/2020/02/09/m18-hellcats-in-yugoslavia-after-wwii-the-krajina-express/>)

Although the armed conflict ceased fire which the UN monitored in early 1992, Croatia was determined to have authority over the whole country and decided to equip its armed forces furthermore.³⁹ As a result, two offensives happened in 1995, in order to Croatia could regain a small area of the country.⁴⁰ The war effectively ended in Croatia in the middle

³⁷ In this study the Serbian responsibility will not be examined or analysed further.

³⁸ Pandora's War: The Multi-Dimensional Nature of the Yugoslav Conflicts, Slobodan Drakulic, Special Issue on the Former Yugoslavia, Refuge: Canada's Journal on Refugees, Vol. 14, No. 3, 1994, pp. 7–9
Can be accessed: <https://www.jstor.org/stable/45412364?seq=3> [last accessed: 15 March 2024]

³⁹ United Nations Security Council, Resolution 713, New York, 1991

Can be accessed: <https://digitallibrary.un.org/record/126827?ln=en&v=pdf> [last accessed: 15 March 2024]

⁴⁰ The territory of Eastern Slavonia

of 1995 and the authority over the entire territory was regained. The transition to peace followed after some time under UN-administration.⁴¹

4. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

After the tribunals and the developments in international criminal law followed by World War Two, the national judiciaries were still not prepared to prosecute perpetrators responsible for the crimes committed during the conflicts. Thus, the suffering of thousands of people caused by the conflict, affected the UN in 1992 to set up a Commission of Experts to examine the backlash of the wars in the Balkans. It reported torture, rape, massacres of civilians, immersive destruction of cities under siege and hundreds of thousands expelled from their homes and grand evidence of violations of international humanitarian law.⁴² The Secretary-General of the UN was provided by the Commission's report with evidence of grave breaches of the Geneva Conventions and violations of international humanitarian law.⁴³ Its findings of the atrocities of the early years of the conflict prompted the creation of the UN's first war crimes court and the first international war-crimes court since 1946. On 25 May 1993, Resolution 827 passed by the Security Council of the UN established the International Criminal Tribunal for the former Yugoslavia, also known as the ICTY.⁴⁴ This resolution stated within the Statute of the ICTY the Tribunal's organisational structure, criminal procedure, and jurisdiction. By the decision that the countries of the broken-up Yugoslavia did not have the capacity and legal mechanism to deal with the legal parts of the conflicts. The new court seated in Hague was given authority to prosecute individuals responsible for crimes violating international humanitarian law, war crimes, genocide and crimes against humanity to provide justice for victims and safeguard international peace and security.⁴⁵ The Tribunal was given concurrent

⁴¹ Bosnia Fact Sheet: Chronology of the Balkan Conflict, Bureau of Public Affairs, U.S. Department of State, Washington, D.C, 1995

Can be accessed: https://1997-2001.state.gov/regions/eur/bosnia/balkan_conflict_chron.html [last accessed: 15 March 2024]

⁴² United Nations Security Council, Resolution 780., Report of the Commission of Experts, New York, 1992. Can be accessed: <https://digitallibrary.un.org/record/151310?ln=en> [last accessed: 30 October 2023]

⁴³ United Nations Security Council, Resolution 780., Report of the Commission of Experts, New York, 1992. Can be accessed: <https://digitallibrary.un.org/record/151310?ln=en> [last accessed: 30 October 2023]

⁴⁴ International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), established by United Nations Security Council, UN Security Council Resolution 827, New York, 1993.

Can be accessed: https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf [last accessed: 30 October 2023]

⁴⁵ Article 1 of the Statute of the ICTY states that 'The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute'.

and primary jurisdiction to prosecute the responsible individuals for crimes committed since January 1991 in the territory of the former Yugoslavia.⁴⁶ Thus, the court can launch its own process over a process of a domestic court and can exclude said courts from the on-going proceedings. Within its jurisdiction the ICTY's work was centred around the prosecution of senior leaders responsible for crimes committed. In November 1994, the ICTY handed down its first indictment. As of September 1997, the ICTY indicted a total of 78 individuals. Its first sentence was Dražen Erdemović in November 1996, a Croat who was sentenced to ten years in prison for his role in a massacre (namely the 'Srebrenica massacre') against Serbs.⁴⁷ As of December 2005, 161 individuals had been indicted by the ICTY and 131 had already stood before the court.⁴⁸ Domestic prosecutors and Courts could initiate cases if the Tribunal transferred cases against lower and intermediate level individuals to competent domestic jurisdictions. The Tribunal successfully referred 13 individuals to national courts with contiguous supervision. Also, the Tribunal referred to Croatia a case of two Croatian commanders.⁴⁹

4.1. Completion Strategy

For the Tribunal to reach the expected objective, the Security Council has decided that the Tribunal must finish its work by 2010, for which the ICTY created the 'Completion Strategy'.⁵⁰ With a three-based-plan focusing only on the highest-ranking individuals responsible for war crimes. The plan envisioned that by the end of 2004 all the investigation would be completed, by 2008 all first instance trials would be finished, and lastly the completion of all work by 2010.⁵¹ By 2003, the Tribunal started to operate at full capacity in coordination with the domestic judicial systems of the region. Unfortunately, the late arrests of

United Nations, Statute of the International Criminal Tribunal for the former Yugoslavia, icty.org (online) 2009. Can be accessed: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf [last accessed: 30 October 2023]

⁴⁶ Ibid., Section 2, Article 9, United Nations, Security Council, 1993

⁴⁷ See: Legacy website of the International Criminal Tribunal for the former Yugoslavia, Annual reports by the President of the ICTY, icty.org (online), 2017.

Can be accessed: <https://www.icty.org/en/documents/annual-reports> [last accessed: 15 March 2024]

⁴⁸ Key Figures, Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 2017

Can be accessed: <https://www.icty.org/> [last accessed: 30 October 2023]

⁴⁹ Transferred cases, Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 2017.

⁵⁰ United Nations Security Council, UN Security Council resolution 1532, New York, 2004. Can be accessed: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/268/48/PDF/N0426848.pdf?OpenElement> [last accessed: 30 October 2023]

⁵¹ Endorsed by UN Security Council resolution 1503 (2003) and 1534 (2004).

Can be accessed: [statute_1503_2003_en.pdf \(icty.org\)](#) [last accessed: 30 October 2023], [statute_1534_2004_en.pdf \(icty.org\)](#) [last accessed: 30 October 2023]

the remaining fugitives and the complexity of the cases, affected the ending date which had to be changed for the sake of procedural fairness. Due to the time-consuming work of the Tribunal and late arrests the ICTY was officially closed on 31 December 2017.⁵² To complete all ICTY appeal proceedings and to protect the victims and witnesses, many of the functions of the Tribunal were transferred to the Residual Mechanism for International Criminal Tribunals established as a subsidiary organ by the Resolution of the UN Security Council with the mandate to continue the 'jurisdiction, rights and obligations, and essential functions' of the ICTY (and also the International Criminal Tribunal for Rwanda) and also to the countries to do the proceedings by their own account on a national level.⁵³

4.2. The Tribunal's cooperation with domestic courts

A major issue of the Balkan conflict (1991 - 1995) was the war crimes committed during the war, which were not dealt with in an appropriate manner by the states. The concerned countries, including the Republic of Croatia, did not prosecute their own war criminals accordingly to the international standards accepted by international law. In most of the cases, the greatest barrier for fair and successful prosecutions were the political unwillingness of said states. The Tribunal's main goals were to establish historical truth, bring justice to the victims and to set up legal and ethical standards for the new democratic societies established on the territory of the former Yugoslavia while not siding with any of the parties to the conflict. For these countries, it held a particular importance to be part of the European integration and for some of the states to be accepted as a member of the European Union. For this, the best example is the relationship of the Republic of Croatia with the ICTY, who's goal was not only to integrate but to get accepted, as a member of the European Union and a democratic state.

For the national courts to be able to hold these trials specialised mechanisms were needed to be set up in Bosnia and Herzegovina, Serbia and Croatia for war crimes trials and prosecution processes. The court provided professional assistance, reforming the relevant legislation needed, in particular areas, like the handling of witnesses and command responsibility. However, the implementation of the needed principles and provisions was much

⁵² Legacy website of the International Criminal Tribunal for the former Yugoslavia, Annual reports by the President of the ICTY, [icty.org](https://www.icty.org) (online), 2017.

Can be accessed: <https://www.icty.org/en/documents/annual-reports> [last accessed: 15 March 2024]

⁵³ United Nations Security Council, UN Security Council resolution 1966: Establishment, Statute, and Transitional Arrangements, New York, 2010.

Can be accessed: [Etpu \(irmct.org\)](https://www.un.org/ru/ida/1966/) [last accessed: 30 October 2023]

harder due to constitutional barriers of each country. From 2003 until its dissolution 2017 the ICTY cooperated with local courts and judiciaries in the concerned countries and majorly affected the transitions of these countries' jurisdiction to be more effective and up to the standards of international law. Such a challenge the Tribunal could not take over without the cooperation and active advocacy of each country involved who were expected to fully work with the tribunal and in no way setting back its work. These nations demonstrated varying degrees of cooperation and intent to change the way they handle war crime cases. The approach of the countries of the former Yugoslavia determined their relationship with not just the international community but also their chance to be part of the European integration and the European Union itself. For the newly independent Republic of Croatia which played a big part in the conflict and had numerous individuals in its territory indicted by the international tribunal, it held the utmost importance to ensure that their democratic state is capable to hold trials fair and adhere to the standards of the international community and the tribunal. The implementation of the rules of the ICTY and level of cooperation with the court played a crucial role concerning the country's annexation to the European Union later. While the goal of Croatia to become a member of the European community and with that the European Union was reached, the goal of the Tribunal to have the countries judiciary system evolve to the international standards concerning the prosecution of their own war criminals remained far from certain.

4.3. The Tribunal's work with the State of Croatia

The work of the ICTY in Croatia centred around not just the handling of war crime cases but also to achieve progress in improving the domestic legal system. The Tribunal issued 19 indictments which concerned crimes committed in Croatian territory by various nationalities. Out of the investigated cases of the Tribunal which concerned Croatia they were able to convict seven out of the 19 indicted persons. The indictments of these cases concerned crimes against humanity, genocide and violation of the laws of war. Three members of the Yugoslav People's Army, three members of Serbian forces and one member of the Croatian army were convicted for crimes against humanity and/or violations of the laws or customs of war.⁵⁴ When handling the prosecution of war criminals in Croatia, the Tribunal in accordance with rule 11 bis of its Rules of Procedure and Evidence planned to refer cases to the authorities of the country in a

⁵⁴ Judgment list, Legacy website of the International Criminal Tribunal for the former Yugoslavia, [icty.org](https://www.icty.org/), 2017
Can be accessed: <https://www.icty.org/> [last accessed: 30 October 2023]

way the domestic judiciary can conduct the trials based on their ability.⁵⁵ The ICTY referred only one case to Croatia successfully.⁵⁶ There have been attempts to refer more cases but either those cases been referred to another country or stayed under the jurisdiction of the ICTY due to the decision of the referral bench of the Tribunal. In Croatia's case, the judiciary noted problems regarding the transition of the country in connection with the prosecution of war criminals which mostly reflected the speed and level of efficiency of the work of the judiciary. The most crucial effect of these problems concerning the Republic of Croatia were the several offences which have never been dealt with and brought to trial or the few times when it was, it was due to external pressure (see case of Dinko Šakić). Croatia approximately had 1.5 million of unresolved cases concerning war crimes which included cases dated back several decades. Also, the great number of complaints about the corruption in the judiciary from the public were present during the process of transition to democracy. During the work of the ICTY in Croatia, similarly to Serbia and Montenegro the local judiciaries has been reformed in accordance with the standards of the Tribunal and received professional training for the better conduct of proceedings for war crimes in the settings of the country's jurisdiction and constitution.⁵⁷ The country had to implement regulations relevant to criminal responsibility and for the protection of witnesses, new measures had to be introduced. Within the national courts separate organizational units needed to be established for proceedings working with war crimes.⁵⁸

⁵⁵ Based on the Rule 11 bis the process of referral of an indictment to another court starts:

‘After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent Judges selected from the Trial Chambers, which solely and exclusively shall determine whether the case should be referred to the authorities of a State: (i) in whose territory the crime was committed; or (ii) in which the accused was arrested; or (iii) having jurisdiction and being willing and adequately prepared to accept such a case so that those authorities should forthwith refer the case to the appropriate court for trial within that State.’

Rule 11 bis, Referral of the Indictment to Another Court, International Tribunal for the Former Yugoslavia, Rules of Procedure and Evidence, Rev. 37, 2005

Can be accessed: https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_rev37_en.pdf [last accessed: 30 October 2023]

⁵⁶ International Criminal Tribunal of the former Yugoslavia, Case of Rahim Ademi and Mirko Norac (Case No. IT-04-78/PT). The Hague, The Netherlands, 2009.

Can be accessed: https://www.icty.org/x/file/Outreach/11bisReports/11bis_norac_ademi_progressreport_17th.pdf [last accessed: 30 October 2023]

⁵⁷ Eszter Kirs, The legacy of the ex-Yugoslav Tribunal (ICTY), Miskolc Law Review/Az ex-jugoszláv törvényszék (ICTY) hagyatéka, Miskolci Jogi Szemle Vol. 6, No. 1, 2011, p. 65

⁵⁸ Developments in Croatia, Capacity Building' Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 2017

Can be accessed: <https://www.icty.org/> [last accessed: 30 October 2023]

4.4. Political problems of Croatia with the ICTY

In Croatia, the relationship with the Tribunal was majorly affected by the different approach of governments towards the importance of the integration to Europe and the cooperation with the ICTY. The changes of Governments altered this relationship differently throughout the work of the ICTY. In the elections of 1990, the Democratic Union Party won in Croatia, and with Franjo Tudjman as president led the country to independence.⁵⁹ Despite its successes this Government was hesitant to cooperate with the ICTY due to its nationalistic orientation with the goal to protect the veterans considered as national heroes of the country. Between 1990 and 1996, re-calibration of the judicial institutions took place which resulted in nearly 44% of Croatian judges being replaced (559 out of 1263).⁶⁰ Sovjetka Režić, a Croatian Split County Court Judge in 1990, describes the reason for these changes as a political criteria, which resulted in the removal of 'persons who were not lucky enough to be ethnic Croats, or those who failed to renounce their Party Communist past' in a timely manner.⁶¹ These changes enabled the courts to prosecute the Serb war criminals responsible for massacres against Croats more effectively but also give ethnic Croats the possibility to escape justice in the light of bringing the freedom to the country. Between 1992 and 2000, in Croatia 578 persons have been convicted for war crimes, nearly all of them were members of the Serb armed forces, of which 86% (497) were tried and convicted *in absentia*.⁶² Only with the change of government in 2000 were the country able to conclude in the prosecution of war criminals with the Tribunal efficiently and get closer to the standards set by the tribunal.⁶³ In 2001 they concluded and ratified the 'Stabilization and Association Agreement' which laid down the provisions to the

⁵⁹ Pandora's War: The Multi-Dimensional Nature of the Yugoslav Conflicts, Slobodan Drakulic, Special Issue on the Former Yugoslavia, Refuge: Canada's Journal on Refugees, Vol. 14, No. 3, 1994, pp. 5–7

Can be accessed: <https://www.jstor.org/stable/45412364?seq=3> [last accessed: 15 March 2024]

⁶⁰ Maja Dubljevic, Prosecuting war crimes, Appointments and discharges of judges in Republic of Croatia from 1990 to 1996, Zagreb, 2014, p. 126

Can be accessed: <https://documenta.hr/wp-content/uploads/2020/09/procesuiranje-ratnih-zlocina-FINAL.pdf> [last accessed: 30 October 2023]

Can be accessed: <https://www.ceeol.com/search/chapter-detail?id=940261> [last accessed: 30 October 2023]

⁶¹ Sovjetka Režić, Prosecuting warcrimes from 1991 to 2000 from a judge's perspective, Appointments and discharges of judges in Republic of Croatia from 1990 to 1996, Zagreb, 2014, pp. 109–110.

Can be accessed: <https://www.ceeol.com/search/chapter-detail?id=940258> [last accessed: 30 October 2023]

⁶² Milena Čalić-Jelić, Review of trials in absentia ('Pregled suđenja u odsutnosti'), Dubljevic, Procesuiranje ratnih zločina, 2014, p. 137.

Can be accessed: <https://documenta.hr/wp-content/uploads/2020/09/procesuiranje-ratnih-zlocina-FINAL.pdf> [last accessed: 30 October 2023]

⁶³ Wind of Change: The Croatian Government's Turn towards a Policy of Ethnic Reconciliation, Petričušić, Antonija, European Diversity and Autonomy Papers – EDAP, 2004 pp. 5–6

Can be accessed: <http://aei.pitt.edu/id/eprint/6163> [last accessed: 15 March 2024]

full cooperation between Croatia and the tribunal.⁶⁴ It also created the base for the rule of law and a strengthened judiciary in the country. Although, it made the ground for substantial changes and improvements possible, the cooperation of the new government with the tribunal were not reached fully, mainly due to strong political resistance until 2003. In 2003, contrary to the earlier stance of the Croatian Democratic Union, when winning the elections, it started to establish full cooperation with The Hague.⁶⁵ Therefore, in 2003 the prosecution of war criminals of the ICTY was able to start in Croatia with this formed cooperation. This made it possible for Croatia to start accession negotiations with the European Union in 2005.⁶⁶ However, the Tribunal had difficulties concerning the cooperation with the Croatian authorities and there were multiple setbacks during the work of the ICTY due to the late and incomplete cooperations of the Croatian courts.⁶⁷

The problems arising in case of prosecution of war crimes were usually the product of a one-sided justice seeking where countries by choice only saw the other nations at fault thus not accepting their own responsibility in the created conflicts. This reoccurring pattern which in the case of Croatia can be seen since the events of World War Two, became an issue in every country as a double standard for responsibility.⁶⁸ The gravest crimes committed against the minorities or other countries were not held responsible however the criminal prosecution of the hostile members of the other parties of the conflict were in several cases prosecuted without proper legal grounds, without the respect of the individuals and a fair trial. The national judiciary's competence in this sense did not achieve the needed justice the international standards required. Therefore, the ICTY's goal was to enable the possibility to achieve and render to victims' justice and to set new standards of responsibility for crimes against humanity, war crimes, and genocide to national judiciaries of the countries of the former Yugoslavia. In the case of Croatia (similarly to most countries) resistance appeared among the Croatians

⁶⁴International Agreements of the official gazette Narodne novine, No. 14/2001

⁶⁵ Concerns existed about the party's approach over war crimes and minority rights of the country, but Croatia was clear about turning towards the democratic procedures needed for a successful European Union membership.

⁶⁶ On 3 October 2005, the first Croatia - EU Intergovernmental Conference opened.

Press release, 2678th Council Meeting, General Affairs and External Relations, Luxembourg, 2005

Can be accessed: https://ec.europa.eu/commission/presscorner/detail/en/PRES_05_241 [last accessed: 15 March 2024]

⁶⁷ Ivo Josipovic, Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88, Number 861, 2006.

Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

⁶⁸ Croatia held many war crime trials, but most of them were mostly against Serbs, and rarely against members of its own armed forces. Number of those carried out properly, were under duress, or with refused initiation of the proceedings.

regarding the prosecution of the country's "own" perpetrators. The Indictments issued against Croatian generals by the Tribunal for crimes committed against the Serbian minorities in Croatia always got an outrage and extreme reaction from the Croatian public and sometimes from political figures as well.⁶⁹ Whether the Tribunal conducted the proceedings of these indictees were tried on national courts or the Tribunal. Accused members of the country enjoyed the role of national heroes and in some cases still do. Their responsibility rarely discussed and brought forward in the media. When it was, it was followed by strong, negative public reaction, making the prosecution of these criminals even more difficult. The start of accession negotiations with EU was also postponed due to the problems regarding the lack of cooperation with the ICTY in Croatia. For instance, one of these cases was the finding and arresting a Croatian General named Ante Gotovina indicted by the Tribunal. He was considered a public hero in the eyes of Croatian people whose indictment spited the Croatian public's general disgust.⁷⁰ According to the indictment against Ante Gotovina, the Operation of which the indicted was a member of, forced closely 200,000 Serbs to leave the country.⁷¹ The failure of Croatia to deliver Gotovina to the Hague resulted in the postponement of accession talks scheduled for 17 March 2005. Because of earlier demonstrations on the prosecution of war criminals of the country (for instance: Split demonstration), the government tried to take up a more nationalist approach and waited for a month before issuing arrest warrants, giving Gotovina plenty of time to organize his escape. This resulted in series of setbacks in the future prosecutions and relationship with the tribunal. On 9 October 2003, Carla Del Ponte the prosecutor of the Tribunal criticized Croatia for lack of cooperation with the ICTY in her address to the UN Security Council.⁷² Furthermore, she accused certain government institutions such as the secret services and the Interior Ministry, of aiding Gotovina and spreading

⁶⁹ For example, the during the case of Slobodan Milošević.

See more: Indicting for the first time on May 24, 1999, a sitting head of State, Yugoslav President Slobodan Milosevic, View from the Hauge, Balkan, 2004, p. 6.

Can be accessed: https://www.icty.org/x/file/Outreach/view_from_hague/balkan_040407_en.pdf [last accessed: 30 October 2023]

⁷⁰ Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88 Number 861 March 2006 - Volume 88 Number 861 March 2006, endnote 7., p. 148.

⁷¹ See: International Criminal Tribunal for former Yugoslavia, Indictment in the case of Prosecutor v. Ante Gotovina IT-01-45, sec. 20., The Hague, The Netherlands, 2001

Can be accessed: https://www.icty.org/x/cases/gotovina_old/ind/en/got-ii010608e.htm [last accessed: 30 October 2023]

⁷² Vjeran Pavlakovic, Better the Grave than a Slave: Croatia and the International Criminal Tribunal for the Former Yugoslavia, Croatia Since Independence: War, Politics, Society,..., p. 12, 2008.

Can be accessed:

https://www.academia.edu/544619/Better_the_Grave_than_a_Slave_Croatia_and_the_International_Criminal_Tribunal_for_the_Former_Yugoslavia [last accessed: 30 October 2023]

misinformation through the media.⁷³ The judgment of Ante Gotovina at first instance was delivered on 16 April 2011 and the general was sentenced to twenty-four years of prison imposed by the ICTY. The court found that Gotovina, during the Storm operation in 1995 was responsible of murder, deportation, inhumane acts, looting and intentional damage to public property, but the court did not consider the charges of ethnic cleansing to be justified.⁷⁴ Surprisingly, by the appeal of the convicted the convictions of Gotovina were controversially overturned in 2012 and all charges were dropped.⁷⁵ Out of the most experienced judges of the Tribunal, Judge Agius and Pocar gave negative feedback of the trial of Gotovina. Judge Agius noted that the majority's approach of the Appeals Chamber was 'artificial and defective',⁷⁶ saying that it 'in no way resembles an application of the proper standard of review applicable to errors of law or indeed any recognisable standard of review'.⁷⁷ Judge Pocar criticised the majority for 'the paucity of the legal analysis' noting that it 'opens more questions than it provides legal answers'⁷⁸, stating that he do not 'believe that justice is done when findings of guilt not lightly entered by the Trial Chamber in more than 1300 pages of analysis are sweepingly reversed in just a few paragraphs, without careful consideration of the trial record and a proper explanation'.⁷⁹

⁷³ OSCE spot report, reaction in Croatia to the arrest of Ante Gotovina, Dec. 2005.

⁷⁴ Communications Service of the International Criminal Tribunal for the former Yugoslavia, Case information sheet of the case 'Operation Storm' (IT-06-90) Gotovina et al., [haguejusticeportal.net](http://www.haguejusticeportal.net) (online), 2008.

Can be accessed:

<http://www.haguejusticeportal.net/Docs/Fact%20Sheets/Gotovina%20et%20al%20Case%20Information%20sheet.pdf> [last accessed: 30 October 2023]

⁷⁵ On 3 April 2009, the charges were dropped pursuant to the 'Rule 98bis' which by the description of the 'case information sheet' of the Tribunal states that: 'The Trial Chamber can rule on whether there is a case to answer. If the Chamber believes that the Prosecution has not presented sufficient evidence to prove certain charges, it can dismiss those charges and enter a judgment of acquittal before the beginning of the presentation of Defence evidence.'

Communications Service of the International Criminal Tribunal for the former Yugoslavia, Case information sheet of the case 'Operation Storm' (IT-06-90) Gotovina et al., [haguejusticeportal.net](http://www.haguejusticeportal.net) (online), 2008.

Can be accessed:

<http://www.haguejusticeportal.net/Docs/Fact%20Sheets/Gotovina%20et%20al%20Case%20Information%20sheet.pdf> [last accessed: 30 October 2023]

⁷⁶ International Criminal Tribunal for former Yugoslavia, Gotovina et. al., Appeals Chamber Judgement, Dissenting opinion of Judge Carmel Agius Gotovina et. al., The Hague, The Netherlands, 2012.

Can be accessed: https://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf [last accessed: 30 October 2023]

⁷⁷ Ibid., para. 7.

⁷⁸ International Criminal Tribunal for former Yugoslavia, Gotovina et. al., Appeals Chamber Judgement, Dissenting opinion of Judge Pocar, para. 10., The Hague, The Netherlands, 2012.

Can be accessed: https://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf [last accessed: 30 October 2023]

⁷⁹ Ibid., para. 14.

4.5. Problems regarding command responsibility

Command responsibility first appeared in the Hague Conventions IV and X (1907) within the rules of warfare.⁸⁰ It allowed the prosecution of the military leaders' for war crimes committed by their subordinates in international criminal law. It was first used by the Supreme Court of the United States in its actuality in the case titled 'In re Yamashita'.⁸¹ Where they stated that commanders are responsible for their subordinates, and that they have a duty to assure the protection of 'prisoners of war' and prevent any violations of the law of war. The IMT charter stated that in case of war crimes, crimes against humanity committed under any higher orders, even if given to soldiers, cannot constitute mitigating circumstances where these outrageous crimes have been committed knowingly, without military justification.⁸² The practice of command responsibility regarding the responsibility of German highly ranked officers in the case of the independent state of Croatia were later on implemented and used in the decisions of the ICTY.⁸³ Article 7 of the ICTY Statute set down the doctrine of command responsibility holding immersive importance when talking about the responsibility of war crimes.⁸⁴ The responsibility in this case is focused on people holding military or political power in its actuality, whose omission or decision resulted in others committing a crime or violation. The doctrine puts responsibility on those who were and may be still in the position of power in case of crimes committed by anonymous or not accessible perpetrators. However, the lack of legal grounds politicization makes this approach fairly criticised especially when we are talking about defensive wars.⁸⁵ In Croatia, courts regarding most cases, used direct responsibility for the commission or order of the crime. Almost all of the cases concerning war crimes, were connected to lower and intermediate ranked commanders. The only exception were cases of Serbian or Yugoslav officers of high rank who were being conducted *in absentia*.⁸⁶ (ICTY rules

⁸⁰ United Nations, Convention IV. respecting the Laws and Customs of War on Land, Regulations concerning the Laws and Customs of War on Land, The Hague, The Netherlands, 1907.

Can be accessed: <https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf> [last accessed: 30 October 2023]

⁸¹ case 'In re Yamashita' 327, United States Supreme Court, 1946

⁸² United Nations, Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement"), London 1945.

Can be accessed: <https://www.refworld.org/docid/3ae6b39614.html> [accessed 7 November 2023]

⁸³ Franklin A. Hart Naval War College Review, Vol. 25, No. 1, Yamashita, Nuremberg and Vietnam: Command Responsibility Reappraised, U.S. Naval War College Digital Commons, 1972, pp. 1–5.

Can be accessed: <https://digital-commons.usnwc.edu/nwc-review/vol25/iss7/3> [last accessed: 30 October 2023]

⁸⁴ Particularly Section 3 of Article 7 of the Statute.

⁸⁵ See: The Ante Gotovina case (IT-01-45) and Slobodan Milosevic case (IT-02-54)

⁸⁶ Absentia under Section 5 of Article 305 of the Criminal Procedure Act of Croatia is described as follows: 'the accused can be tried in absentia only if he has fled or is otherwise not available to state authorities, and if there

did not permit trials *in absentia*.) There have been occasions for the implementation of command responsibility's concept in part by the Croatian judiciary, for instance the verdict against Dinko Šakić in this context merits close attention.⁸⁷ However, there were no trials on the ground of command responsibility. The Croatian courts did not show any signs to implement the extensive doctrine of command responsibility in the case of war crimes. The implementation of command responsibility is fairly important in order to prevent any violations of international humanitarian law. It underlines the commanders' duty to instruct their subordinates to keep the obligations of the law of armed conflict and to deter war crimes happening during an armed conflict. Most descriptions of these offences with destructive effects starts with the phrase 'Whoever, by violating the rules of international law'⁸⁸ and makes no distinction between civilian superiors and military commanders. Thus, the responsibility of a superior is not limited to a person of military and applies significant norms of international law quite often. Thus, the amendments regarding command responsibility introduced different offences of command responsibility, for example 'Subsequent assistance to the perpetrator of a criminal offence against values protected by international law' in Article 187b and 'Planning criminal offences against values protected by international law' in Article 187a.⁸⁹ Thus, the applications of the provisions of international law that define command responsibility is possible, the application of command responsibility in domestic court can be resolved. However, as in the case of Ademi and Norac which was referred to Croatia by the ICTY, the limitations of these applications made it difficult to hold those who are responsible accountable.⁹⁰

are particularly important reasons for him to be tried in spite of being absent.'

Official gazette Narodne novine, Nos. 110/97, 27/98, 58/99, 112/ 99, 58/02, 143/02 and 62/03.

Republic of Croatia, Criminal Procedure Act of Croatia, Official Gazette No. 62, 2003. Can be accessed:

https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Criminal-Procedure-Act.pdf [last accessed: 30 October 2023]

⁸⁷ On 4 October 1999 the County Court of Zagreb delivered the verdict (No. K-242/98) of Sakic for the responsibility he had as a commander of the Jasenovac concentration camp to twenty years of imprisonment, which was the maximum penalty in the Criminal Code.

⁸⁸ This formulation is used under the second Paragraph of the Criminal Code of Croatia in the case of Genocide, war crime against civilians, the wounded and sick; illegal killing and wounding of enemy, prisoners of war, negotiators; inhumane treatment of wounded, sick and prisoners of war, destruction of cultural goods and illegal means of combat.

Ministry of Justice Republic of Croatia, Narodne Novine, Official Gazette of the Republic of Croatia Nos 125/11, 144/12, 56/15, 61/15, 101/17 and 126/19, Zagreb, 2004

Can be accessed: https://sherloc.unodc.org/cld/uploads/res/document/hrv/criminal-code-1997-english_html/Croatia_Criminal_Code_1997.pdf [last accessed: 15 March 2024]

⁸⁹Ibid., Articles 156 - 167

⁹⁰ Ademi and Norac to be tried in Croatia, SENSE Transitional Justice Center, The Hague, 2005.

Can be accessed: <https://archive.sensecentar.org/vijesti.php?aid=9268> [last accessed: 30 October 2023]

4.5.1. Legal challenges concerning command responsibility

The problem concerning the legal aspect of the prosecutions was that command responsibility was not recognised by the Croatian substantive criminal law (like by other European bodies of law) in the way the Tribunal's Statute laid down in section 3 of Article 7. Despite the Croatian Criminal Code of 2004 incorporated the doctrine in the form of amendments, they were not able to apply this provision for constitutional reasons on the domestic trials concerning the case ICTY has referred to Croatia under the Rules of Procedure and Evidence (Rule 11 bis). (They failed to apply it mainly due to the principle of legality and prohibition of retroactivity in substantive criminal law.) Thus they covered command responsibility with interpretations and provisions already existing in substantive criminal law. Most of these provisions used were relating to crimes of omission.⁹¹

4.6. International reviews of Croatia

The international community and multiple NGOs also paid close attention to the trials in Croatia and noted the shortcomings of the state resulting of the uncertain conditions of the country. For instance, the project called 'Dealing with the Past – Monitoring of War Crime Trials' was created with the aim to create a more efficient judicial practice in the countries concerned and repair the trust towards the national judiciaries.⁹² In the case of Croatia, in 2005 the NGOs summed up the findings recognized the shortcomings of the judiciary in witness, victim and plaintiff treatment and the indictments' quality.⁹³ Furthermore, they recognized the bias of the judiciary⁹⁴ and the big amount of trials held in absentia.⁹⁵ However, the members

⁹¹ Ivo Josipovic, Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88, Number 861, 2006, p. 153.

Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

⁹² The 'Centre for Peace, Non-violence and Human Rights' seated in Osijek carried out this project co-operating with other NGOs. See results of the report: Monitoring of War Crime Trials: Centre for Peace, Non-violence and Human Rights, Monitoring of War Crime Trials: Annual Report 2005, Osijek, 2005.

Can be accessed: <https://www.legal-tools.org/doc/a93ead/> [last accessed: 30 October 2023]

⁹³ Centre for Peace report, above note 12, pp. 8–9.

⁹⁴ The report noted instances of bias, regarding ethnicity of the indictees. For instance, Croatians were accused only when the cases were in connection with murder while on the other hand they accused Serbs of a wild range of crimes including not appropriate attitude to victims and witnesses.

⁹⁵ Section 5 of Article 322 of the 'Croatian Criminal Procedure Act' says that 'the accused can be tried in absentia only if he has fled or is otherwise not available to state authorities, and if there are particularly important reasons for him to be tried in spite of being absent.'

Trials in absentia give rise to speculations about political motives and more ground to 're-victimization' when requesting multiply hearings.

Republic of Croatia, Criminal Procedure Act of Croatia, Official Gazette No. 62, 2003. Can be accessed:

https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Criminal-Procedure-Act.pdf [last accessed: 30 October 2023]

also made a note on positive development on the work of the judiciary regarding the criteria set by the Tribunal. They noted improvement in enforcing the criteria set for the protection of witnesses, the establishment of regional cooperation with the ICTY, open monitoring of proceedings and the increased publicity of said proceedings. However, the ‘Organization for Security and Cooperation in Europe’ (OSCE) in a report on war crimes proceedings from 1999 to 2005 in Croatia recognized similar shortcomings to those mentioned above. It noted a certain progress in the judiciary of Croatia.⁹⁶ Based on this report the judiciary of Croatia ‘largely reiterates the definition of genocide contained in Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide’ demonstrating it as a ‘forcible population displacement’.⁹⁷ On the other hand OSCE did not record the shortcomings with command responsibility opposite from other NGOs studying the trials in Croatia. In the report, OSCE noted that ‘maintaining the status-quo means that a majority of the 1,500 persons wanted by Croatia will face the charges against them only when they cross an international border, entering the country or another state that executes international arrest warrants and is willing to extradite’ the indicted. On rare occasions individuals in order to challenge the charges’ validity against them, surrender voluntarily. The report presented the idea of Croatia developing a mechanism to review all cases to determine ‘how, where, or if’ a case would proceed to completion with the other states. With this approach it would have been ensured that each individual case in question would affect the relations with the neighbouring countries and not let it be forgotten. The solution for ‘*in absentia* convictions’, on the other hand, posed a bigger problem because the legal framework at the time only deliberates surrender of the indicted to Croatia for re-trial. However, the report stated that requests for documents from other countries to the Ministry of Defence (MoD) were not successful, usually with the excuse from MoD that they could not locate the documents. Thus, trial and investigation results were depending on the upon the testimonies of witnesses, which was most of the time limited because of the need for high level of witness security and inter-state cooperation between courts, which at the time was not available usually.⁹⁸

⁹⁶ Organization for Security and Cooperation Headquarters, OSCE Background Report: Domestic War Crime Trials 2004, Vienna, 2005, pp. 3–9.

Can be accessed: <https://www.osce.org/files/f/documents/d/b/14425.pdf> [last accessed: 30 October 2023]

There were 370 accused whose charges were dropped because of the lack of legal grounds, mainly against Serbs, which was considered an improvement.

⁹⁷Ibid., p. 20.

⁹⁸ Organization for Security and Cooperation Headquarters, OSCE Background Report: Domestic war crime trials 2005, Vienna, 2006.

Can be accessed: <https://www.osce.org/files/f/documents/6/d/20688.pdf> [last accessed: 30 October 2023]

Croatia with the deepening cooperation with the ICTY and pressure from the international community started to address some of the issues concerning the prosecution of war crimes and crimes concerning the conflict. Particularly, due to the efforts regarding war crime trials made by Croatia in 2000. Such problems were, primarily, that the time passed since the commission of the crimes resulted in the problem of lack of witnesses, of which most of the time the reason was death or fear of threats. Additionally, pressure on judicial bodies were present from the public or other groups protecting the indicted. While there were attempts from the Governments to solve these problems the overall willingness politically and socially lacked in Croatia.

4.7. The effect of the Tribunal on Croatia regarding prosecution

In Croatia until the end of 1991 the legal source of law concerning war crimes was the Criminal code of the Socialist Federal Republic of Yugoslavia (SFRY). After the independence it was included in the Croatian legal system and later renamed and amended as the Basic Criminal Code of the Republic of Croatia.⁹⁹ Although the law went through some modifications in relation of criminal responsibility the content of the text was not amended. Following the independence, the new Criminal Code came into force on 1 January, 1998,¹⁰⁰ alongside the Acts on the cooperations and obligations with the ICTY and the application of its Statute became the base for the punishment of war crimes.¹⁰¹ Furthermore, Croatia is also bound by international conventions relating to the means of war and humanitarian law such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the 1949 Geneva Conventions on the protection of war victims; the 1968 Convention on the Non-Applicability of Statutory

⁹⁹ For data on sources of international law binding for the Republic of Croatia, see: Ivo Josipovic, 'Stalni međunarodni kazneni sud', Zagreb: HPC-Narodne novine, 2002, pp. 36–45. Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

¹⁰⁰ The new Criminal Code was published in the Narodne novine of 1997 entering into force on 1 January 1998. Later additional amendments in Narodne novine were related to war crimes.

¹⁰¹ These Acts were the following based on the review of the Red Cross: '1996 Constitutional Act on Co-operation of the Republic of Croatia with the International Criminal Tribunal; Law on Protection of Witnesses; Criminal Procedure Act; 2003 Act on Application of the Statute of the International Criminal Court and Prosecution of Criminal Offences against International Laws of War and International Humanitarian Law; Law on International Legal Assistance in Criminal Matters; and Law on International Restrictive Measures'.

Limitations to War Crimes and Crimes against humanity¹⁰² and the Rome Statute of the International Criminal Court.¹⁰³

Therefore, the Tribunal to be able to refer cases to the national judiciary legal instruments for successful prosecutions and a reformed and qualified judiciary were needed to be prepared and the relevant political power to be present. In Croatia this was a political and a professional issue. The Hauge trials confirmed the democratic state of Croatia but also took into consideration the serious political problems occasionally appear during the process of the trials. In 2003, Croatia implemented the Act on the 'Application of the Statute of the International Criminal Court and the Prosecution of Criminal Offences against International Laws of War and International Humanitarian Law'.¹⁰⁴ Due to the seriousness of war crimes which many times happened in an organized manner, it had particular provisions complementing domestic legislation and relating to prosecuting war criminals. They were also, applicable for prosecutions concerning crimes committed during the 1991–1995 war. Article 12 of the Act enabled that the war crimes proceedings were to be held in the courts of Zagreb, Rijeka, Osijek or Split in Croatia. In these cities they established departments for the conducting special investigations. Based on section 1 and 3 of Article 13 and Article 14 of the Act, they appointed investigating judges and a state attorney specifically for war crimes. Also, the police service established a specific department for war crimes as stated in Article 15. The Act gave special focus on the protection of victims and witnesses in Articles 8 and 9.¹⁰⁵ In the process of the transition to democracy, the capacity of prosecuting war criminals before Croatian national courts became established fully in 2004 with the final amendment of the Croatian criminal code. The most concerning legal problem was the fact that the Croatian substantive criminal law did not acknowledge (like other European bodies of law) command responsibility in the way section 3 of Article 7 of the ICTY Statute laid it down. Thus, as mentioned before, the provisions

¹⁰² United Nations, Treaty Series, Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, New York, 1968. *p.* 73.

Can be accessed: https://treaties.un.org/doc/Treaties/1970/11/19701111%2002-40%20AM/Ch_IV_6p.pdf [last accessed: 30 October 2023]

¹⁰³ Progress Report by Croatia, The implications for Council of Europe Member States of the ratification of the Rome Statute of the International Criminal Court, Council of Europe, Strasbourg, 2003, *p.* 2.

Can be accessed:

<https://www.coe.int/t/dlapil/cahdi/Source/ICC/ConsultICC%282003%2908Eonly%20Croatia.pdf> [last accessed: 30 October 2023]

¹⁰⁴ Law on the Implementation of the Statute of the International Criminal Court and the Prosecution of Crimes against International Law of War and Humanitarian Law, Narodne novine, 29/2004.

Can be accessed: https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Implementation-Statute-International-CCPCI.pdf [last accessed: 15 March 2024]

¹⁰⁵ Ibid.

of the Statute on command responsibility incorporated by the mentioned amendments only, limited the prosecution of war crimes. The improvements in the national judiciary however, as a result of the improving cooperation with the ICTY, had visible effects and the Republic of Croatia from 1991 to 2005 reported 4,774 individuals for war crimes, indicted 1,675, convicted 778 and 245 were acquitted.¹⁰⁶

4.8. The obligations of Croatia to the Tribunal

Croatia's cooperation and obligations to the Tribunal were laid down in the 'Constitutional Act on Cooperation of the Republic of Croatia with the International Criminal Tribunal'.¹⁰⁷ It regulated the methods of cooperation and while it did not determine the features of domestic trials, at the end of 2003, meant to introduce amendments to the Criminal Code of Croatia including provisions on command responsibility, but the Croatian Constitutional Court dismissed these amendments in their entirety under the decision of the Croatian Parliament. With this decision Croatia dismissed more efficient ways to hold persons of leadership accountable for their failures to adequately supervise their subordinates and have a valuable deterrent effect on the commission of future crimes. In 2004 by change of Government amendments were submitted to the Criminal Code which removed the contradictions¹⁰⁸ from the Croatian Criminal Code with the Rome Statute¹⁰⁹ and added provisions of command responsibility¹¹⁰ and crimes against Humanity. In the Croatian Criminal Code, the descriptions of the criminal offenses listed in the Tribunal are inherited from the criminal Code of the former Yugoslavia. These crimes correspond to crimes against humanity however, in Croatian legislation crimes against humanity was not separated from other offences until 2004.¹¹¹ The Statute of the ICTY, referred to a 'superior' in cases of violation of international humanitarian

¹⁰⁶ Ivo Josipovic, Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88, Number 861, 2006, p. 152.

Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

¹⁰⁷ United Nations, Constitutional act on the cooperation of the Republic of Croatia with the International Criminal Tribunal, Legislations implementing the ICTY Statute, The Hague, The Netherlands, 1996.

Can be accessed:

[https://www.icty.org/x/file/Legal%20Library/Member States Cooperation/implementation legislation republic of croatia_1996_en.pdf](https://www.icty.org/x/file/Legal%20Library/Member%20States/Cooperation/implementation_legislation_republic_of_croatia_1996_en.pdf) [last accessed: 30 October 2023]

¹⁰⁸ Concerning command responsibility and its application in Croatian law, see: The shadow side of command responsibility, Mirjan Damaska, American Journal of International Law, Vol. 80, No. 3, 1986.

¹⁰⁹ Croatia ratified the Rome Statute on 21 May 2001, and the Agreement of Privileges and Immunities of the Court on 17 December 2004.

¹¹⁰ The Criminal Code received provisions on command responsibility according to German law see: Paragraph. 4, 13 and 14. of Völkerstrafgesetzbuch, 2002

¹¹¹ Croatian legislation recognizes a criminal offence corresponding to Crimes against humanity of the Statute of the ICTY in Articles 156 – 167 of the Criminal Code.

law and its application was not restricted to cases regarding military or based on the nature of the armed conflict similarly to the Croatian Criminal code which as mentioned before uses the descriptions of said offences with the formulation ‘Whoever, by violating the rules of international law...’.¹¹² The application of international law is described in the Constitution of the Republic of Croatia, in Article 140 noting that ‘International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects.’¹¹³ This, however, indicates that the international contracts in this case the Statute of the ICTY is outside of the internal legal system and hence rules out the need for application of regulations and provisions of the Statute to the Criminal Code. Provisions to the direct principle of Command Responsibility were not necessary to include in the criminal code. Thus, while the ICTY did not prosecute indictees in absentia and held the principle of command responsibility at most importance, the latest version of the Croatian Criminal code did not apply provisions in the strict sense on command responsibility. The constitutional provisions concerning this are also significant regarding application to legislation and need to be taken into consideration. Section 1 of Article 31 in the Constitution laid down that ‘no one shall be punished for an act which before its perpetration was not defined by law or international law as a punishable offence, nor may he be sentenced to a punishment which was not defined by law’ (Prohibition of retroactivity and principle of legality).¹¹⁴ Which plays an important part in the prosecution of war crimes before domestic courts regarding the Balkan conflict where in most cases the concerned Croatian law was the Croatian Penal code of 1993 which restricted the final punishment and legislation of the court. Some of these proceedings have been considered as a travesty of court.¹¹⁵

¹¹² In the case of criminal offenses corresponding with the crimes against humanity of the ICTY this formulation is used.

¹¹³ The Constitution of the Republic of Croatia, Narodne novine, No. 41/2001., 2001

¹¹⁴ Constitutional Court of the Republic of Croatia, Official Gazette Nos 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14, Croatia, 2014

Can be accessed:

https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf [last accessed: 27 March 2024]

¹¹⁵ For instance, the ‘Lora’ case in and the ‘Karan’ case

4.9. Reports of the representatives of the Tribunal on Croatia

According to the President of the Tribunal Croatian authorities have failed to arrest one person from the list of the indicted individuals and challenged the ICTY and its power to make binding orders or *subpoenas*. Moreover, there were disagreements between Croatia and the ICTY concerning sentences and their enforcement while Croatia passed implementing legislation regarding war crimes.¹¹⁶ While the negotiations took place corresponding with the Statute of the Tribunal and Article 27 which states, that ‘imprisonment shall be served in a State designated by the International Tribunal from a list of States which have indicated to the Security Council their willingness to accept convicted persons’, the compliance with the tribunal had to be in the country’s best interest if they wanted to keep the correct impression of its nation before the international community. Contrary to this, these negotiations took months to reach an agreement with the Republic of Croatia further delaying the work of the tribunal. Furthermore, the Office of the appointed Public Prosecutor reported ‘delays, obstructions, and interference on the part of Croatia during investigations and prosecutions’.¹¹⁷ These resulted in the delay of the work of the ICTY and been part of the reason why the judiciary during trials were not able to prosecute and sentence the indicted persons in time according to the completion strategy presented earlier. The Statute of the ICTY points the investigators of the Prosecutor’s powers for conducting investigations on Croatian territory.¹¹⁸ However, Croatia did not accept the powers and authority of the Prosecutor in its entirety. There were occasions where the police of Croatia followed the investigators and interfered with the luggage of investigators during the process of investigations. Furthermore, there were records of important exhumation work during which the staff of the Prosecutor could not attend and were not present although the Prosecutor requested the cease of the process.¹¹⁹ The Prosecutor reported broad variations of cooperation with investigative teams on local levels. There were three major investigations where multiple delays happened in assistance requested by the Office of the Prosecutor. In some

¹¹⁶ International Criminal Tribunal of the former Yugoslavia, Decision on the objection of the Republic of Croatia to the issuance of subpoenas duces tecum, The Hague, The Netherlands, 1997.

Can be accessed: <https://www.icty.org/x/cases/blaskic/tdec/en/70718SP2.htm> [last accessed: 30 October 2023]

¹¹⁷ See: The report of the Office of the Prosecutor in:

Committee of Ministers, commitments accepted when becoming the member of the Council of Europe, Programmes of assistance and cooperation, (hereinafter ‘Report of the Office of the Prosecutor’) chapter III, section 2, Strasbourg, 1998.

Can be accessed: <https://rm.coe.int/0900001680518689> [last accessed: 30 October 2023]

¹¹⁸ Statute of the International Criminal Tribunal for the former Yugoslavia, Article 18, September 2009. Can be accessed: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf [last accessed: 30 October 2023]

¹¹⁹ Report of the Office of the Prosecutor, chapter III, Section 3/ii.

of these cases, letters of the Prosecutor from 1995 and 1996 notes requests remaining unanswered or unfulfilled even by two years. The Prosecutor described difficulties not only at the stage of investigations but during the process of the trials too. Mainly in instances where the Croatian authorities failed to comply without delay to the orders of the court. There were cases where like press releases or speeches by President Tudjman endangered and threatened the safety of witnesses. Also, Croatia did not accept the ICTY's jurisdiction over the operations done by Croatian police forces to reintegrate the territory of Krajina what they regarded as an internal operation.¹²⁰ Croatia claimed that those committed serious violations of international humanitarian law have been prosecuted by national courts in contradiction with that most of those cases were concerning minor charges and not military commanders and the known events.¹²¹ Additionally, based on the report of the 'International Volume of the Red Cross', the Croatian State Attorney¹²² reported an overview for an increased amount of cases regarding war crimes in 1993, but these overviews were only done in 2005, concerning mostly cases related to Serbs.¹²³ The State Attorney announced the suspension of 800 proceedings relating to war crimes (no ground to continue them) as the outcome of said overviews. According to the report Croatia applied the 'Law of Forgiveness' to 22,000 Serbs who were accused of armed rebellion however, several Serbs were accused of war crimes and have been sentenced to imprisonment for war crimes. Most of these sentences (based on the report 500 persons were listed for war crimes) were announced in trials in absentia. On the other hand, when it came to cases concerning members of the armed forces of Croatia, by 2005 only four individuals, have been convicted for crimes carried out against Serbs.¹²⁴

The delay was most likely connected to the changes of Government in this period and more so to their constantly changing approach to the Tribunal and their will to cooperate. While the lack of proceedings regarding Croatians could have been explained as a result of the large territory acquitted by Serb forces during the conflict, they in no measure reflect the crimes committed from the Croatian side. Particularly, in the light of the extensive unwillingness of

¹²⁰ Confidence Restoration Operation of the UN was established in Croatia, in 1995. With Croatia reintegrating in May the territory of Krajina region alongside with Western Slavonia there was no need for the present of UN troops in that territory and it resulted in their withdrawal.

¹²¹ Ibid., chapter III, 3/v.

¹²² The appointed State Attorney in Croatia at the time was Mladen Bajic'.

¹²³ Vecernji list, HTnet, 2004 in Ivo Josipovic, Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88 Number 861 March 2006 - Volume 88 Number 861 March 2006, p. 152.

Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

¹²⁴ Ibid., p. 152–153

the Croatian authorities to hold their own war criminals responsible, who were seen as their national heroes the prosecution of war crimes in domestic courts did not reflect the expectations of the Tribunal. On 31 March 2016, Serge Brammertz a Prosecutor of the Tribunal and later of the International Residual Mechanism for Criminal Tribunals stated, that they ‘have not been able to convince people in the region that persons indicted and convicted by the Tribunal are not heroes but war criminals.’¹²⁵ Thus, when it comes to the necessary legal qualifications of the Croatian judiciary, the laws and provisions for war crime proceedings regardless of their limitations, were present however, the domestic courts lacking experience with international crimes did not carry the capacity to conduct or initiate war crime proceedings justly. Furthermore, having special regard to the overall political and moral climate the State did not require the necessary will to prosecute the country’s compatriots. Thereby, the biggest concern was if the state authorities of Croatia were able and willing to transform the state bodies’ and the public’s overall attitude to work out the problems regarding the prosecution of war crimes.¹²⁶

4.10. The need for international intervention and the pressure on the leaders of Croatia

The conflict between the former countries of Yugoslavia was an example of the possibility to have an international criminal tribunal to empower on multinational level, countries and their forces to arrest war criminals. Legally, the Tribunal enforced its goals with its broad worded Statute and rule-making powers. Whereas, the Tribunal did not have its own military power to execute the arrest warrants issued by the court, without the arrests of the indicted individuals the Tribunal could not move forward in its work. Consequently, when announcing indictments, the Prosecutor requested the voluntary surrender of the accused. When said surrender did not occur the concerned country’s Minister of Justice had the task of providing the arrest and transfer of the accused.¹²⁷ In Croatia once the indictees were transferred to the Hauge the UN Detention Unit had the task to protect and keep the indictees until they are ready to stand before trial. The first indictment concerning Croatia was in 1995. However, before 2001 no indicted came forward and no arrests were made by the country by itself due to

¹²⁵ War criminals in Balkans “not heroes”, Serge Brammertz, interviewer Daniel Dickinson, United Nations News, (online) 2016 Can be accessed: <https://news.un.org/en/audio/2016/03/610932> [last accessed: 15 March 2024]

¹²⁶ Nationalists in Croatia have repeatedly portrayed the tribunal, and the chief prosecutor Carla Del Ponte of the ICTY, as being part of an international anti-Croat conspiracy.

¹²⁷ Constitutional Act on the Cooperation of the Republic of Croatia with the International Criminal Tribunal, II, Articles 13. and 16., Narodne novine, 29/2004. Can be accessed: https://www.icty.org/x/file/Legal%20Library/Member_States_Cooperation/implementation_legislation_republic_of_croatia_1996_en.pdf [last accessed: 30 October 2023]

delays of cooperation. This resulted that the arrests of the Tribunal did not happen accordingly to the expected pace either.¹²⁸ While the issue of arrest warrants at least made leaving the country impossible for the indicted persons, there were reports to the Security Council from the Prosecutor and the Presidents of the ICTY of insufficient cooperation with the concerned countries. Hence, at the beginning of the Tribunals work, countries of the former Yugoslavia lacked the general will to prosecute the indicted individuals. According to the ICTY's Statute and the resolutions of the Security Council all members of the United Nations were obligated to cooperate but also needed to be compliant with all of the Tribunal's orders and requests for assistance.¹²⁹ The ICTY issued arrest warrants against the indictees in every member state and ordered for their search and their assets to be frozen to minimize the possibility for them to escape prosecution. In its early years, due to the unwillingness to arrest in the countries concerned the Tribunal had to face serious challenges regarding the arrest and transfer of the indictees. The Republic of Croatia and states such as the Federal Republic of Yugoslavia¹³⁰ and the entity of Bosnia and Herzegovina were not willing to carry out the search, detainment or the transfer of the indictees on the request of Tribunal. Moreover, there were cases where the local authorities gave protections to individuals the Tribunal wanted to arrest and overall showed contempt for the orders of the ICTY.¹³¹ As a result, to improve the search for the fugitives, a tracking team was set up to collect information on the indicted persons' whereabouts. Although, the countries of the former Yugoslavia generally showed unwillingness on many occasions to search and arrest the persons indicted, the ICTY still relied on the states' cooperation besides the international forces stationing in Bosnia and Herzegovina.

While NATO forces intervened on military grounds during the armed conflict, some of the NATO countries had contingents based in the area were responsible for some of the arrests of war criminals in the territory of former Yugoslavia.¹³² Prosecutor Louise Arbour pressured said NATO countries stationing in Bosnia to arrest the indictees of the Tribunal, who however

¹²⁸ Annual report by the President of the ICTY, Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 1995

Can be accessed: <https://www.icty.org/en/documents/annual-reports> [last accessed: 15 March 2024]

¹²⁹ Fondation Hirondelle, A look back at the history of the International tribunal for the former Yugoslavia, Media for peace & human dignity, (online) 2018.

Can be accessed: <https://www.hirondelle.org/en/our-media/350-a-look-back-at-the-history-of-the-international-tribunal-for-the-former-yugoslavia> [last accessed: 30 October 2023]

¹³⁰ In this case Serbia and Montenegro.

¹³¹ The fugitives, Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 2017
Can be accessed: <https://www.icty.org/> [last accessed: 30 October 2023]

¹³² Military intervention in Yugoslavia in 1999 was marked by a 78-day bombing campaign (24 March to June 10, 1999).

refused due to fear of reprisals.¹³³ The beginning of arrests in 1996, allowed trials to be held. Despite the start of active help by the NATO countries, in several cases international troops based in Bosnia and Herzegovina could not carry out the requested arrests because of the lack of cooperation of the local forces. With the introduction of sealed indictments in 1996 by the Prosecutor the situation significantly improved. (By this time indictees' names were confidential until they were arrested.) In result the indicted had not got the possibility to hide or flee because of leaked information of the potentially biased members of authority in the countries of the former Yugoslavia.¹³⁴ There were more than 50 indicted mostly in Serbia by mid-1997 but only 8 were in the Hauge, in custody. Peacekeeping forces such as the 'Stabilisation Force in Bosnia and Herzegovina' (SFOR) from mid-1997 were prepared to arrest indictees of the Tribunal and their work notably improved and won the territories with the increased number of persons indicted transferred to The Hague to stand trial.¹³⁵ These arrests resulted in several perpetrators to come forward and surrender as an alternative to be arrested by international forces. The NATO-led operation has assisted in 53 arrests of indictees for war crime of the Tribunal in the territory. The force also gave security and logistic support to the ICTY investigative teams, alongside with surveillance with the determination to bring war criminals to justice.¹³⁶

The different political climate around 2000 in Croatia and the constant pressure by the international community resulted in improved cooperation in the arrest of the indictees and to more surrenders.¹³⁷ In Croatia when the lack of will and ability of the Minister of Justice and the local forces to arrest and transfer the indicted individuals became clear, this task was transferred to the international forces. Even after the work of NATO forces and the UN the

¹³³ Justice Louise Arbour was the Prosecutor of the 'International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda' appointed by the United Nations Security Council on 29 February 1996 in Resolution 1047, 1996.

Fondation Hironnelle, A look back at the history of the International tribunal for the former Yugoslavia, Media for peace & human dignity, (online) 2018.

Can be accessed: <https://www.hironnelle.org/en/our-media/350-a-look-back-at-the-history-of-the-international-tribunal-for-the-former-yugoslavia> [last accessed: 30 October 2023]

¹³⁴ In March 2006, the Tribunal was able to convict for contempt against the ICTY, Markica Rebic, former head of the Croatian Intelligence Service and Ivica Marijagic, editor-in-chief of the Croatian Hrvatski List.

¹³⁵ SFOR operated under Chapter VII of the UN Charter and its primary mission was contributing 'to the safe and secure environment' of the countries. The operation was stationed in Bosnia, Herzegovina and Croatia mainly.

¹³⁶ Katalin Békés, The trend in Hungary's contribution to NATO operations and missions from our NATO accession to the present, *Military Science Review / Hadtudományi Szemle*, Vol 7, Issue 1, 2014, p. 71

¹³⁷ The fugitives, Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 2017 Can be accessed: <https://www.icty.org/> [last accessed: 30 October 2023]

Prosecutor v. Ivica Marijagic and Markica Rebic, Case No. IT-95-14-R77.2, Judgment, icty.org (online) 2006. Can be accessed: <https://www.icty.org/x/cases/blaskic/acdec/en/060407.htm> [last accessed: 30 October 2023]

monitoring groups of the court described lack of will to from the local forces to arrest the indicted individuals. For instance, the ‘Civilian Police Support Group’ of the United Nations in 2001 stationing in Croatia to monitor the local police noted that ‘In the Conclusion of the Government of the Republic of Croatia, it was already assessed that the previous activities of the police and the judicial institutions on the revealing, investigating and prosecuting war crimes committed during and immediately after the Homeland War had not given adequate results’.¹³⁸ From then local forces did not take part in the arrests and were obliged to not get in the way of the operating forces or in any way detain their work (Dayton agreement¹³⁹). In an interview with one of the Hungarian officers of the SFOR operation József Padányi gave a description of the SFOR needed role in Croatia.¹⁴⁰ The officer stated that from a tactical point of view, it was questionable asking local police forces to catch people whom the nation considers national heroes or extraditing a national to a foreign power. He raised the issue that the arrests of these war criminals were just as difficult as catching World War Two war criminals in the time of the Nuremberg trials since in both case the individuals were backed by their whole nation. Even more so in Croatia where not so known officers and people responsible for war crimes and crimes of Humanity had more opportunity to hide among the locals. In the eyes of the Croatian people, they were part of the liberation of Croatia saving them from foreign forces and they were seen as national heroes. Thus, the pressure from the people on the authorities and political figures of Croatia was too big and so the country had to maintain its credibility in both the eyes of the nation and the international community.¹⁴¹

¹³⁸ UNPSG The function of the Police Support Group was to continue monitoring the performance of the Croatian police in the Danube region, particularly with respect to the return of displaced persons, for a single nine-month period beginning on 16 January 1998 and ending on 15 October 1998.

UNPSG Mission Profile, United Nations Peacekeeping, [Peacekeeping.un.org](http://peacekeeping.un.org), 1998

Can be accessed: [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1145\(1997\)&Lang=E](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1145(1997)&Lang=E) [last accessed: 15 March 2024]

¹³⁹ General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), better known as the Dayton Agreement, signed in Paris on 14 December 1995.

United Nations, General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), Dayton Agreement, Paris, 1995.

Can be accessed: https://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf [last accessed: 30 October 2023]

¹⁴⁰ The author of this thesis conducted the interview with József Padányi in the course of the research for this study. The transcript of the interview held on 21 August 2023, can be accessed at the author of this study. József Padányi served as a technical officer from 1997 to 1999 in the SFOR in Bosnia-Herzegovina. His main objective was to maintain the freedom of movement of military forces in the region including tasks of restoration, construction and maintenance of ports, airports, railway lines and the maintenance of freedom of movement for military forces.

¹⁴¹ The Split demonstration resulted in the change of political approach.

This resulted that the authorities balancing to compromise with the tribunal's mandate and the countries' obligations to the ICTY and finding a middle ground where they can still get away with the protection of their indicted nationals accused of crimes against humanity and breaching humanitarian law. In a situation where the country's membership of the European Union depended on its credibility it was especially difficult. The officer also noted in this interview that from a legal point of view, there were many individuals who should have been sentenced in the Hague, but it is important to consider that in the process of transition to democracy of these countries what was the best both for the future of the international community and for Croatia. The consequence of prosecuting national heroes of a country must be reckoned in the eyes of future cooperation even to the detriment of individual legal judgments. The Croatian government had to find a middle ground where they prosecute their own war criminals accused of crimes against humanitarian law and humanity, to an extent and showing they are willing to take responsibility, and in the meantime protect the nation's veterans who are viewed by the nation as civil war heroes. However, this meant that the individuals who could have been responsible for the crimes they committed escaped prosecution in the favour of international cooperation.¹⁴²

4.11. Cases referred to Croatia

The taking over of the war crime proceedings of Croatia concerning Croatian, Serb and Yugoslav armed forces and political high-ranking officers by an international court was a challenge in many aspects for the state of Croatia. Foremost, the very need for an international court shows that the national courts' legal and moral system are not efficient enough to deal with the proceedings independently. Also, the people of Croatia perceived the events of the conflict very differently compared to the perspective of the international community. In some cases, the public viewed the cooperation with the Tribunal as a betrayal of Croatian interest. For this reason, there were tries for evaluations in the interest of the national courts to take over the proceedings. As part of the 'Completion Strategy' mentioned earlier, the Tribunal planned to refer cases to domestic judiciaries.¹⁴³ From the cases where the accused were citizens of Croatia there were one case Croatia wanted to take over was the case of Mirko Norac and Rahim Ademi, two generals of Croatia.¹⁴⁴ In Croatia's case objectivity, professionalism for

¹⁴² Interview with József Padányi, interviewer was the author of this thesis, Budapest, 2023

¹⁴³ On the basis of Rule 11bis within the Rules of Procedure and Evidence of the Tribunal.

¹⁴⁴ Case No. IT-04-78/PT See: International Criminal Tribunal of the former Yugoslavia, Decision for referral to the authorities of the Republic of Croatia Pursuant to Rule 11bis, The Hague, The Netherlands, 2005. Can be accessed: <https://www.icty.org/x/cases/ademi/tdec/en/050914.htm> [last accessed: 30 October 2023]

proceedings and the presence of a necessary legal framework were in question. The ICTY on 14 September 2005 decided that compared to the Statute of the Tribunal, the substantive law of Croatia had ‘limited difference’. Thus, providing the required measures of witness protection they found that Croatian courts will be able to hold fair trials. However, in referring the case to Croatia, the chamber of the ICTY ordered the monitoring of the trial and expected regular reports from the Prosecutor.¹⁴⁵ According to ‘Rule 11bis’ of the ‘Rules of Procedure and Evidence’ of the ICTY ‘After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent Judges selected from the Trial Chambers, which solely and exclusively shall determine whether the case should be referred to the authorities of a State’ to be tried accordingly to international standards.¹⁴⁶ A motion of referral was filed on 2 September, 2004 by the Prosecution to refer the case of Rahim Ademi and Mirko Norac, two Croatian army generals of Croatia.¹⁴⁷ The indictment was based on the individual criminal responsibilities of the generals pursuant to Section 1 of Article 7 of the Statute of the Tribunal and section 3 of Article 7 of the Statute based on ‘superior criminal responsibility’. They were also charged with ‘crimes against humanity’ and ‘violations of the laws or customs of war’ based on articles 5 and 3 of the Statute. This case was the first where the Office of the prosecutor (OTP) has asked for the referral of a case to national courts in accordance with the ‘completion strategy’ to complete by the end of 2008, all the first-instance proceedings. The prosecutor, who applied for the referral of the Ademi and Norac case to Croatia, raised certain concerns, mainly about the Croatian courts’ ability to apply the principle of command responsibility accordingly.¹⁴⁸ The key concern was the fact that the Penal Code of the Republic of Croatia of 1993, which needed to be applied in this case since this was the law in force at the period when the crimes were committed, did not envisage sanctions based on ‘command responsibility’, which is given great importance by the OTP. To resolve this problem the Prosecutor proposed

¹⁴⁵ Ivo Josipovic, Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88, Number 861, 2006, p. 163.

Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

¹⁴⁶ Rules of Procedure and Evidence, IT/32/Rev. 50, United Nations, The Hague 2005. pp. 8–9

Can be accessed: https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_rev37_en.pdf [last accessed: 30 October 2023]

¹⁴⁷ Ademi and Norac to be tried in Croatia, SENSE Transitional Justice Center, The Hague, 2005.

Can be accessed: <https://archive.sensecenter.org/vijesti.php?aid=9268> [last accessed: 30 October 2023]

¹⁴⁸ Ivo Josipovic, Responsibility for war crimes before national courts in Croatia, International volume of the red cross, Volume 88, Number 861, 2006, pp. 162 - 163.

Can be accessed: https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

that the domestic court apply the provisions of international law that define command responsibility. The Referral Bench on 14 September 2005 referred the case and its files to the Croatian courts thus, on 1 November 2005, they transferred the persons indicted to Croatia. The Croatian Judiciary were able to amend the indictment, but the amendments had to be acceptable to the OTP. This meant that due to the Penal Code of 1993, the sentence of the two convicted officers did not exceed the maximum sentence of 20 years imprisonment. The court of Zagreb in Croatia acquitted Rahim Ademi of all charges while Mirko Norac was sentenced to seven years in prison.¹⁴⁹ The trial of these indicted persons was to try the judicial capacity of Croatia by the tribunal regarding war crime proceedings. Whether unbiased trials are possible for the country to hold. The judicial preparations of the trial were monitored the prosecutors of the ICTY whom had the ability to decide if the proceedings and the indictment of the national judiciary were carried out accordingly with the guidelines of the Tribunal. For instance, if they have failed to charge said individuals according to the OTP, he had the power to in such case, issue the referral of the case back to the ICTY.

The main legal problems Croatia had to face when taking over a case from the ICTY was the translation process of the Hauge indictments in a way its content and form would stay true to the indictments provided to Croatia, the admissibility of evidence, application of command responsibility. Croatia applied for 8 cases and 18 indictees to be referred to its courts for the referral of eight cases, but the Ademi/Norac case remained the only case which was referred to Croatia by the tribunal. All the other cases in which referral was applied for concern the crimes of Croatian indictees in Bosnia Hercegovina by the tribunal, the prosecution applied for referral to the Bosnia Hercegovina's courts. While the case reached the final prosecution of the indictees successfully the Tribunal decided to not refer any more cases to Croatia in the next 12 years. The reasons for this are not clear but the concerns regarding the principle of command responsibility and the uncertainty of the Croatian court to run trials unbiased and consistent remained a question for the OTP even after the accession to the European Union and till end of the Tribunal. Close to the completion of the Tribunal's work, on 26 August 2013, Croatia received a warning of legal action and a loss of EU funds by the European Commission, since a few days before its accession on 1 July, the country proposed a law in Zagreb for the

¹⁴⁹ See: Communications Service of the International Criminal Tribunal for the former Yugoslavia, Case information sheet of the case 'Medak Pocket' (IT-04-78) Ademi & Norac, haguejusticeportal.net (online), 2008 Can be accessed: https://www.icty.org/x/cases/ademi/cis/en/cis_ademi_norac.pdf [last accessed: 30 October 2023]

prevention of suspect extradition regarding crimes committed before 2002.¹⁵⁰ The reasoning behind the government's action similarly to earlier decisions, was the protection of veterans of the independence war (1991 - 1995) in order to avoid possible prosecutions in other EU countries. Thus, resisting the tribunals request to give out the war criminals of the country.¹⁵¹ Vesna Pusic, in her report to the United Nations Human Rights Council in 2015, noted in Chapter 5, the underfunding, lack of human resources, material and functional incapacities of the four specialised war crimes chambers in Croatia.¹⁵² Due to the decrease of the national support of the prosecutions, changes in priorities and international pressure the prosecution of war criminals withered in the absence of the ICTY. The Croatian political establishment was and still are, nearly united in an assessment that Croatia has faced its recent past, completed its transition into a stable democracy and after the accession to the European Union secured its place in the European integration as a democratic state. It is to be feared that this marked the end of Croatian efforts at transitional justice in the case of war crimes and in the absence of external pressure which was shown to have had a key role in motivating the Croatian authorities lack the will to prosecute their own war criminals. As regards the activities that have a potential to challenge the established truth about the Homeland War, such as the truth-seeking, commemoration, documentation and history writing, these processes have been largely removed from the public eye and are no longer politically sensitive. The Croatian transitional justice is thus not completed, but without any international insistence, it seems that it came to a halt.

¹⁵⁰ This concerning military and civil personnel accused with carrying out war crimes, genocide, and crimes against humanity during World War Two and the Balkan wars as well.

EU pressures Croatia over extradition law, Radio Free Europe/Radio Liberty, 2013

Can be accessed: <https://www.refworld.org/docid/525e3fad31.html> [last accessed: 15 March 2024]

¹⁵¹ Croatia surrenders on EU arrest warrant, Euractiv, 2013.

Can be accessed: <https://www.euractiv.com/section/justice-home-affairs/news/croatia-surrenders-on-eu-arrest-warrant/> [last accessed: 30 October 2023]

¹⁵² Vesna Pusić, Report of the Working Group on the Universal Periodic Review, Croatia, Human Rights Council, United Nations, 2015

Can be accessed:

https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_14_ENG.docx [last accessed: 15 March 2024]

5. CONCLUSION

Even though nearly 20 years passed since the war ended in Croatia, the aftermath of the conflicts continues to influence both its foreign and domestic politics. Resolving the issue of war crimes was one of the primary challenges facing the country and the process of economic and social recovery is still ongoing. The reluctant cooperation of the Governments of the country and its work with the Tribunal since its independence was one of the most important factors determining its future in the EU and other international institutions. This study, sheds a light on how Croatia on both political and social level was not ready to prosecute its own war criminals, focusing on the barriers, unfulfilled obligations and the need for international pressure while prosecuting war criminals. Answering the questions of this study Croatia only under international pressure was willing to prosecute its own war criminals and cooperate with the Tribunal efficiently. There is no doubt that the indictments of the Croatian generals, posed difficult challenges to the administration of the country precisely because the independence of modern Croatia was assured through the victories of these indicted officers in the Balkan conflict, especially during 'Operation Storm' (Gotovina Case). Implementing the provisions of the Tribunal and international law Croatia had the legal capacity to prosecute war criminals even if with limitations. However, due to its numerous national roots, legal barriers regarding command responsibility and judicial practice concerning war crimes the country was not able to fully implement and practice the principles of the Tribunal. This, even after the work of the ICTY, affected the implementation of the principles of the EU based on liberal democracy, antifascist values, and the rule of law. The EU's and international community's insistence on full cooperation resulted in the successful judgments of the indicted individuals and the Tribunal's long-term legacy of correct prosecution of war criminals under international law. In the course of this cooperation there have been plenty of evidence and documentary material collected by the Tribunal, numerous NGOs and the US in the form of reports, witness testimonies, videos, audiotapes, and written documents of all kinds, which were pointing to concrete crimes being committed and the subsequent failure of the Croatian authorities and judicial system to prosecute those crimes. After, the accession negotiations with the EU started, the leaders of the country decided to take bigger steps to reach, a more efficient cooperation with the Tribunal and keep its obligations. Based on the case of Croatia, the prosecution of war crimes has an impact not just nationally but on international level as well. Particularly, as this study highlights the long-term effect of the lack of prosecution of war criminals, the unprosecuted criminals of World War Two greatly contributed in forming the grounds for the

Balkan conflict in 1991. The proceedings regarding war crimes in Croatia, were affected by politics, relations between different ethnic communities, social groups and the quality of the Judiciary in Croatia during the conflict which enhanced the issues that had a grip on all states at that time regarding the prosecution of war crimes. These issues concerning state sovereignty, historical truth, command responsibility and the difference between heroes and aggressors was and still are in this sense justifiably vital for Croatia. Overall, the Tribunal have revealed considerable details of Yugoslavia's breakup, prosecuted the most important individuals committing war crimes and crimes against humanity and in Croatia's case the cooperation with the ICTY improved the overall political climate and made improving steps in its domestic courts and legal ability to prosecute war crimes. However, Croatian leaders and society are still in need to address the crimes committed against humanity and violations of rules of war on their own part. The willingness of government and society to examine the causes and consequences of their troubled past is crucial to be a valuable member of the international community and prove the ability to hold fair and successful trials independently without a two-way standard. Countries' future depends on how they come to terms with the unpleasant chapters of their struggle for independence and democracy and need to face the crimes of its people. This is important for the purpose of keeping the Tribunal's legacy alive and be an example for the former Yugoslavian countries in the process of democracy. While, establishing the elevating human values and rules of law of the European community.

6. BIBLIOGRAPHY

Laws and Conventions, statutes

1. Committee of Ministers, *Commitments accepted when becoming the member of the Council of Europe*, Programmes of assistance and cooperation, chapter III. section 2, Strasbourg, 1998. <https://rm.coe.int/0900001680518689> [last accessed: 6 November 2023]
2. Constitutional Court of the Republic of Croatia, *Official Gazette Nos 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14*, Croatia, 2014
https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf [last accessed: 27 March 2024]
3. *Indictment of Dinko Sakic*, Office of the County Prosecutor in Zagreb, legal-tools.org (online), 1998. <https://www.legal-tools.org/doc/f662d2/> [last accessed: 30 October 2023]
4. International Criminal Tribunal for former Yugoslavia, *Gotovina et. al., Appeals Chamber Judgement, Dissenting opinion of Judge Carmel Agius*, The Hague, The Netherlands, 2012.
https://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf [last accessed: 30 October 2023]
5. International Criminal Tribunal for former Yugoslavia, *Gotovina et. al., Appeals Chamber Judgement, Dissenting opinion of Judge Pocar*, para. 10., The Hague, The Netherlands, 2012.
https://www.icty.org/x/cases/gotovina/acjug/en/121116_judgement.pdf [last accessed: 30 October 2023]
6. International Criminal Tribunal for former Yugoslavia, *Indictment in the case of Prosecutor v. Ante Gotovina IT-01-45, sec. 20.*, The Hague, The Netherlands, 2001:
https://www.icty.org/x/cases/gotovina_old/ind/en/got-ii010608e.htm [last accessed: 30 October 2023]

8. International Criminal Tribunal for the former Yugoslavia, *Transcript of the case of Goran Hadzic (IT-04-75-T)*, the Hague, the Netherlands, 2014, p. 9294.
<https://www.icty.org/x/cases/hadzic/trans/en/140703ED.htm> [last accessed: 27 March 2024]
9. International Criminal Tribunal of the former Yugoslavia, *Case of Rahim Ademi and Mirko Norac (Case No. IT-04-78/PT)*. The Hague, The Netherlands, 2009.
10. https://www.icty.org/x/file/Outreach/11bisReports/11bis_norac_ademi_progressreport_17th.pdf [last accessed: 30 October 2023]
11. International Criminal Tribunal of the former Yugoslavia, *Decision for referral to the authorities of the Republic of Croatia Pursuant to Rule 11bis*, The Hague, The Netherlands, 2005. <https://www.icty.org/x/cases/ademi/tdec/en/050914.htm> [last accessed: 30 October 2023]
12. International Criminal Tribunal of the former Yugoslavia, *Decision on the objection of the Republic of Croatia to the issuance of subpoenae duces tecum*, The Hague, The Netherlands, 1997. <https://www.icty.org/x/cases/blaskic/tdec/en/70718SP2.htm> [last accessed: 30 October 2023]
13. Ministry of Justice Republic of Croatia, *Narodne Novine, Official Gazette of the Republic of Croatia Nos 125/11, 144/12, 56/15, 61/15, 101/17 and 126/19*, Zagreb, 2004
https://sherloc.unodc.org/cld/uploads/res/document/hrv/criminal-code-1997-english_html/Croatia_Criminal_Code_1997.pdf [last accessed: 15 March 2024]
14. Prosecutor v. Ivica Marijadic and Markica Rebic, *Case No. IT-95-14-R77.2*, Judgment, icty.org (online) 2006. <https://www.icty.org/x/cases/blaskic/acdec/en/060407.htm> [last accessed: 30 October 2023]
15. Republic of Croatia, *Criminal Procedure Act of Croatia*, Official Gazette No. 62, 2003.
16. https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Procedure-Act.pdf [last accessed: 30 October 2023]
17. Rules of Procedure and Evidence, Rev. 37, icty.org (online) 2005.
https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_rev37_en.pdf [last accessed: 30 October 2023]

18. *The Federal Chamber of the Assembly of the Socialist Federal Republic of Yugoslavia*, Constitution of the Federal Republic of Yugoslavia, 1992.
<https://www.refworld.org/docid/3ae6b54e10.html> [last accessed: 1 November 2023]
19. United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, New York, 1951.
https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf [last accessed: 30 October 2023]
20. United Nations General Assembly International Law Commission, *The Charter and Judgment of the Nuremberg Tribunal – History and Analysis*, New York, 1949.
https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf [last accessed: 30 October 2023]
21. United Nations Security Council, *UN Security Council Resolution 1145*, New York, 1997
[http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1145\(1997\)&Lang=E](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1145(1997)&Lang=E) [last accessed: 15 March 2024]
22. United Nations Security Council, *UN Security Council Resolution 713*, New York, 1991 <https://digitallibrary.un.org/record/126827?ln=en&v=pdf> [last accessed: 15 March 2024]
23. United Nations Security Council, *UN Security Council resolution 1503*, New York, 2003. [statute_1503_2003_n.pdf \(icty.org\)](https://www.icty.org/judgments/statute_1503_2003_en.pdf) [last accessed: 30 October 2023]
24. United Nations Security Council, *UN Security Council resolution 1532*, New York, 2004. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/268/48/PDF/N0426848.pdf?OpenElement> [last accessed: 30 October 2023]
25. United Nations Security Council, *UN Security Council resolution 1534*, New York, 2004.
[statute_1534_2004_en.pdf \(icty.org\)](https://www.icty.org/judgments/statute_1534_2004_en.pdf) [last accessed: 30 October 2023]
26. United Nations Security Council, *UN Security Council resolution 1966: Establishment, Statute, and Transitional Arrangements*, New York, 2010.
[Etpu \(irmct.org\)](https://www.irmct.org/Etpu) [last accessed: 30 October 2023]

27. United Nations Security Council, *UN Security Council resolution 674*, New York, 1994.
<https://www.refworld.org/docid/582060704.html> [last accessed: 30 October 2023]
28. United Nations Security Council, *UN Security Council Resolution 827*, New York, 1993.
https://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf [last accessed: 30 October 2023]
29. United Nations, *Constitutional act on the cooperation of the Republic of Croatia with the International Criminal Tribunal*, Legislations implementing the ICTY Statute, The Hague, The Netherlands, 1996.
https://www.icty.org/x/file/Legal%20Library/Member_States_Cooperation/implementation_legislation_republic_of_croatia_1996_en.pdf [last accessed: 30 October 2023]
30. United Nations, *Convention IV. respecting the Laws and Customs of War on Land, Regulations concerning the Laws and Customs of War on Land*, The Hague, The Netherlands, 1907. <https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf> [last accessed: 30 October 2023]
31. United Nations, *General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP)*, Dayton Agreement, Paris, 1995.
Can be accessed:
https://peacemaker.un.org/sites/peacemaker.un.org/files/BA_951121_DaytonAgreement.pdf [last accessed: 30 October 2023]
32. United Nations, *Statute of the International Criminal Tribunal for the former Yugoslavia*, icty.org (online) 2009.
https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf [last accessed: 30 October 2023]
33. United Nations, Treaty Series, *Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity*, New York, 1968.
34. https://treaties.un.org/doc/Treaties/1970/11/19701111%2002-40%20AM/Ch_IV_6p.pdf [last accessed: 6 November 2023]
35. United Nations, *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the*

European Axis ("London Agreement"), London 1945.

<https://www.refworld.org/docid/3ae6b39614.html> [accessed 7 November 2023]

36. United Nations, *Charter of the International Military Tribunal*, London, 1945.

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf [last accessed: 6 November 2023]

37. *Yugoslavia: Criminal Code of the Socialist Federal Republic of Yugoslavia*, 1977.

<https://www.refworld.org/docid/3ae6b5fe0.html> [last accessed: 15 March 2024]

Studies

38. Ivo Josipovic, *Responsibility for war crimes before national courts in Croatia*, International Volume of the Red Cross, Volume 88, Number 861, 2006.

https://www.icrc.org/en/doc/assets/files/other/irrc_861_josipovic.pdf [last accessed: 30 October 2023]

39. Klaus Bachmann, Gerhard Kemp, Irena Ristić, Peter Lang, *International Criminal Tribunals as Actors of Domestic Change The Impact on Institutional Reform*, Berlin, 2018

http://iriss.idn.org.rs/502/1/ICT_as_Actors_of_Domestic_Change_vol_1.pdf [last accessed: 30 October 2023]

40. Maja Dubljevic, *Prosecuting war crimes*, Appointments and discharges of judges in Republic of Croatia from 1990 to 1996, Zagreb, 2014

<https://documenta.hr/wp-content/uploads/2020/09/procesuiranje-ratnih-zlocina-FINAL.pdf> [last accessed: 30 October 2023]

41. Sovjetka Režić, *Prosecuting war crimes from 1991 to 2000 from a judge's perspective*, Appointments and discharges of judges in Republic of Croatia from 1990 to 1996, Zagreb, 2014.

<https://www.ceeol.com/search/chapter-detail?id=940258> [last accessed: 30 October 2023]

News portals, Institutions

42. *Ademi and Norac to be tried in Croatia*, SENSE Transitional Justice Center, The Hauge, archive.sensecentar.org (online), 2005

<https://archive.sensecentar.org/vijesti.php?aid=9268> [last accessed: 30 October 2023]

43. *Case of Dinko Ljubomir Šakić, K-242/98*, International Crime Database, internationalcrimesdatabase.org (online), 1998

[https://internationalcrimesdatabase.org/Case/1182/%C5%A0aki%C4%87-\(Dinko-Ljubomir\)/](https://internationalcrimesdatabase.org/Case/1182/%C5%A0aki%C4%87-(Dinko-Ljubomir)/) [last accessed: 30 October 2023]

44. Efraim Zuroff, *The Auschwitz of the Balkans: The Croatian concentration camp Jasenovac is the site of fierce ongoing controversy*, muddled by extremists and cover-ups, about the extent of its horrors, Tablet Magazine, April 2022.
<https://www.tabletmag.com/sections/history/articles/auschwitz-balkans-jasenovac> [last accessed: 30 October 2023]
45. Emily Greble, *Conflict in Post-War Yugoslavia: The Search for a Narrative*, 2021
<https://www.nationalww2museum.org/war/articles/conflict-post-war-yugoslavia> [last accessed: 30 October 2023]
46. *EU pressures Croatia over extradition law*, Radio Free Europe/Radio Liberty, (radio) 2013 <https://www.refworld.org/docid/525e3fad31.html> [last accessed: 15 March 2024]
47. Euractiv, *Croatia surrenders on EU arrest warrant*, (online) 2013.
<https://www.euractiv.com/section/justice-home-affairs/news/croatia-surrenders-on-eu-arrest-warrant/> [last accessed: 30 October 2023]
48. European Commission, press release, *2678th Council Meeting*, Luxemburg, 2005
https://ec.europa.eu/commission/presscorner/detail/en/PRES_05_241 [last accessed: 15 March 2024]
49. Fondation Hironnelle, *A look back at the history of the International tribunal for the former Yugoslavia*, Media for peace & human dignity, (online) 2018.
<https://www.hironnelle.org/en/our-media/350-a-look-back-at-the-history-of-the-international-tribunal-for-the-former-yugoslavia> [last accessed: 30 October 2023]
50. Hart Franklin A., Yamashita, Nuremberg and Vietnam: Command Responsibility Reappraised, Naval War College Review, U.S. Naval War College Digital Commons, (online) 1972
<https://digital-commons.usnwc.edu/nwc-review/vol25/iss7/3> [last accessed: 30 October 2023]
51. James P. Rubin, *Press Statement: United States Commends Outcome of the Trial of World War II War Criminal Dinko Šakić*, U.S. Department of State, Office of the Spokesman, 1999

- <https://1997-2001.state.gov/briefings/statements/1999/ps991004c.html> [last accessed: 8 November 2023]
52. Legacy website of the International Criminal Tribunal for the former Yugoslavia, icty.org, 2017 <https://www.icty.org/> [last accessed: 30 October 2023]
53. Mohamed El Zeidy, *Universal Jurisdiction In Absentia: Is it a legally valid option for repressing heinous crimes?*, Oxford University Comparative Law Forum, 2003 <https://ouclf.law.ox.ac.uk/universal-jurisdiction-in-absentia-is-it-a-legally-valid-option-for-repressing-heinous-crimes/> [last accessed: 30 October 2023]
54. Roger Cohen, The World; *From 'Greater Serbia' to Lesser Serbs: A War Turns*, The New York Times, Section 4, 1995, p. 1 <https://www.nytimes.com/1995/08/20/weekinreview/the-world-from-greater-serbia-to-lesser-serbs-a-war-turns.html> [last accessed: 31 March 2024]
55. Sabina Ferhabdžević, *The United Nations War Crimes Commission and the Prosecution of War Criminals in Yugoslavia*, Journal of the History of International Law, brill.com (online) 2022, p. 381 https://brill.com/view/journals/jhil/24/3/article-p373_5.xml [last accessed: 15 March 2024]
56. Serge Brammertz, *War criminals in Balkans “not heroes”*, interviewer Daniel Dickinson, United Nations News, (online) 2016 <https://news.un.org/en/audio/2016/03/610932> [last accessed: 15 March 2024]
57. Slavenka Drakulic, *Croatia Puts Itself on Trial*, The New York Times, 1999. <https://www.nytimes.com/1999/03/16/opinion/croatia-puts-itself-on-trial.html> [last accessed: 30 October 2023]
58. U.S. Department of State, *54th Daily Press Briefing DPB*, Washington, D.C, 1998. <https://1997-2001.state.gov/briefings/statements/1998/ps980501.html> [last accessed: 30 October 2023]
59. U.S. Department of State, *Bosnia Fact Sheet: Chronology of the Balkan Conflict*, Bureau of Public Affairs, Washington, D.C, 1995 https://1997-2001.state.gov/regions/eur/bosnia/balkan_conflict_chron.html [last accessed: 15 March 2024]

60. Vesna Peric Zimonjic, *Inter Press Service News Agency, Rights-Balkans: Husband And Wife War Crimes Suspects Face Trial*, 1998.
<https://www.ipsnews.net/1998/08/rights-balkans-husband-and-wife-war-crimes-suspects-face-trial/> [last accessed: 30 October 2023].
61. Vjeran Pavlakovic, *Better the Grave than a Slave: Croatia and the International Criminal Tribunal for the Former Yugoslavia*, Croatia Since Independence: War, Politics, Society, ..., 2008
https://www.academia.edu/544619/Better_the_Grave_than_a_Slave_Croatia_and_the_International_Criminal_Tribunal_for_the_Former_Yugoslavia [last accessed: 30 October 2023]
62. Zsuzsanna Csapó, *Decisions of international courts*, Internet Law Encyclopedia / 'Nemzetközi bíróságok döntései', Internetes Jogtudományi Enciklopédia, 2018
<https://ijoten.hu/uploads/nemzetkozi-birosagok-dontesei.pdf> [last accessed: 30 October 2023]

Books, Articles

63. Antonija Petričušić, *Wind of Change: The Croatian Government's Turn towards a Policy of Ethnic Reconciliations*, European Diversity and Autonomy Papers – EDAP, 2004
<http://aei.pitt.edu/id/eprint/6163> [last accessed: 15 March 2024]
64. C. Lamont, *International Criminal Justice and the Politics of Compliance*, Farnham, 2010.
65. Efraim Zuroff, *Operation Last Chance: One Man's Quest to Bring Nazi Criminals to Justice*, March 15, 2011.
66. Eszter Kirs, *The legacy of the ex-Yugoslav Tribunal (ICTY)*, Miskolc Law Review / Az ex-jugoszláv törvényszék (ICTY) hagyatéka, Miskolci Jogi Szemle Vol. 6, No. 1, 2011
67. Ivo Josipovic', *Permanent International Criminal Court / 'Stalni međunarodni kazneni sud'*, Zagreb: HPC-Narodne novine, 2002
68. Katalin Békés, *The trend in Hungary's contribution to NATO operations and missions from our NATO accession to the present*, Military Science Review / Hadtudományi Szemle, Vol 7, Issue 1, 2014

69. Mojzes Paul, *Balkan Genocides: Holocaust and Ethnic Cleansing in the Twentieth Century*, Rowman & Littlefield Publishers, 2011
70. Pattee Richard, *The case of Cardinal Aloysius Stepinac*, The Bruce Publishing Company, 1953.
71. Philippe Sands, *From Nuremberg to The Hague: The Future of International Criminal Justice*, Cambridge University Press, 2003.
72. Slobodan Drakulic, *Pandora's War: The Multi-Dimensional Nature of the Yugoslav Conflicts*, *Special Issue on the Former Yugoslavia*, *Refuge: Canada's Journal on Refugees*, Vol. 14, No. 3, jstor.org (online), 1994, pp. 5–7
<https://www.jstor.org/stable/45412364?seq=3> [last accessed: 15 March 2024]
73. Tamás Hoffmann, *International and Hungarian legal regulation of crimes against humanity*, *Law and Political Science / Az emberiség elleni bűncselekmények nemzetközi és magyar jogi szabályozása*, *Állam és Jogtudomány*, Volume 58, Issue 1, 2017

Reports

74. Balkan, *View from the Hauge*, icty.org, 2004.
https://www.icty.org/x/file/Outreach/view_from_hague/balkan_040407_en.pdf [last accessed: 30 October 2023]
75. Centre for Peace, Non-violence and Human Rights, *Monitoring of War Crime Trials: Annual Report 2005*, Osijek, 2005.
<https://www.legal-tools.org/doc/a93ead/> [last accessed: 30 October 2023]
76. Communications Service of the International Criminal Tribunal for the former Yugoslavia, *Case information sheet of the case 'Medak Pocket' (IT-04-78) Ademi & Norac*, haguejusticeportal.net (online), 2008
https://www.icty.org/x/cases/ademi/cis/en/cis_ademi_norac.pdf [last accessed: 30 October 2023]
77. Communications Service of the International Criminal Tribunal for the former Yugoslavia, *Case information sheet of the case 'Operation Storm' (IT-06-90) Gotovina et al.*, haguejusticeportal.net (online), 2008.
<http://www.haguejusticeportal.net/Docs/Fact%20Sheets/Gotovina%20et%20al%20Case%20Information%20sheet.pdf> [last accessed: 30 October 2023]

78. Fondation Hironnelle, *A look back at the history of the International tribunal for the former Yugoslavia*, media for peace & human dignity, hironnelle.org (online), 2018.
<https://www.hironnelle.org/en/our-media/350-a-look-back-at-the-history-of-the-international-tribunal-for-the-former-yugoslavia> [last accessed: 30 October 2023]
79. Legacy website of the International Criminal Tribunal for the former Yugoslavia, *Annual reports by the President of the ICTY*, icty.org (online), 2017.
<https://www.icty.org/en/documents/annual-reports> [last accessed: 15 March 2024]
80. Organization for Security and Cooperation Headquarters, *OSCE Background Report: Domestic war crime trials 2005*, Vienna, 2006.
<https://www.osce.org/files/f/documents/6/d/20688.pdf> [last accessed: 30 October 2023]
81. Organization for Security and Cooperation Headquarters, *OSCE Background Report: Domestic War Crime Trials 2004*, Vienna, 2005, pp. 3–9.
<https://www.osce.org/files/f/documents/d/b/14425.pdf> [last accessed: 30 October 2023]
82. Council of Europe, *Progress Report by Croatia, The implications for Council of Europe Member States of the ratification of the Rome Statute of the International Criminal Court*, Council of Europe, Strasbourg, 2003.
<https://www.coe.int/t/dlapil/cahdi/Source/ICC/ConsultICC%282003%2908Eonly%20Croatia.pdf> [last accessed: 30 October 2023]
83. United Nations Security Council, *Resolution 780., Report of the Commission of Experts*, New York, 1992.
<https://digitallibrary.un.org/record/151310?ln=en> [last accessed: 30 October 2023]
84. Vesna Pusić, *Report of the Working Group on the Universal Periodic Review*, Croatia, Human Rights Council, United Nations, 2015
https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_14_ENG.docx [last accessed: 15 March 2024]
85. World Peace Foundation, *Yugoslavia: post World War II, Mass atrocities ending*, 2015.
<https://sites.tufts.edu/atrocityendings/2015/08/07/yugoslavia-post-wwii-assaults/#Notes> [last accessed: 30 October 2023]

6.1. Appendix:

No. 1. Map:

In red: Areas of Croatia occupied and ethnic cleansed by Serb forces (1991 – 1995)



(<https://wwiiafterwwii.wordpress.com/2020/02/09/m18-hellcats-in-yugoslavia-after-wwii-the-krajina-express/>)