



War Crimes Chamber of the Court of Bosnia and Herzegovina

Mallinder, L. (2012). War Crimes Chamber of the Court of Bosnia and Herzegovina. In L. Stan, & N. Nedelsky (Eds.), *Encyclopedia of Transitional Justice* (Vol. 3, pp. 484-488). Cambridge University Press.

[Link to publication record in Ulster University Research Portal](#)

Published in:
Encyclopedia of Transitional Justice

Publication Status:
Published (in print/issue): 01/12/2012

Document Version
Publisher's PDF, also known as Version of record

General rights

The copyright and moral rights to the output are retained by the output author(s), unless otherwise stated by the document licence.

Unless otherwise stated, users are permitted to download a copy of the output for personal study or non-commercial research and are permitted to freely distribute the URL of the output. They are not permitted to alter, reproduce, distribute or make any commercial use of the output without obtaining the permission of the author(s).

If the document is licenced under Creative Commons, the rights of users of the documents can be found at <https://creativecommons.org/share-your-work/licenses/>.

Take down policy

The Research Portal is Ulster University's institutional repository that provides access to Ulster's research outputs. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact pure-support@ulster.ac.uk

War Crimes Chamber of the Court of Bosnia-Herzegovina

The War Crimes Chamber (WCC) of the Court of Bosnia-Herzegovina, inaugurated on March 9, 2005, is tasked with prosecuting crimes that were perpetrated during the conflict in Bosnia-Herzegovina in the early 1990s, in conjunction with the trials at the International Criminal Tribunal for the Former Yugoslavia (ICTY; see separate entry) and in Bosnia's lower entity-level courts. The crimes within the jurisdiction of the WCC include genocide, war crimes, and crimes against humanity. The WCC complements the work of the ICTY, but the institutions differ as the WCC is located in Sarajevo, is a permanent institution, has local staff working on the cases, conducts its trials in local languages, and is governed by Bosnian domestic law (which incorporates international human rights and humanitarian law). It was anticipated that these differences would create the potential for the Bosnian population to feel greater "ownership" over the chamber. In addition to prosecuting war crimes cases, the WCC, as part of the Court of Bosnia-Herzegovina, is responsible for harmonizing prosecutions of suspected war criminals throughout Bosnia-Herzegovina (see entry on Bosnia-Herzegovina). As a result, the Special Department for War Crimes in the state prosecutor's office has developed a database of all war crimes cases in the country and has been involved in the development of a National War Crimes Strategy.

Political Background

Although domestic courts in Bosnia-Herzegovina had prosecuted conflict-related crimes since the war broke out, the standards of fairness in these trials were criticized. This contributed to the UN Security Council's decision to establish the ICTY to prosecute war crimes in the former Yugoslavia. Under the Rome Agreement of 1996, all domestic indictments had to be approved by the ICTY before suspects could be arrested (this process was known as the Rules of the Road). This meant that until recent years, very few prosecutions for war crimes took place in domestic courts. However, in 2001, the ICTY Office of the Prosecutor presented the idea of establishing a special war crimes court in Sarajevo, as part of efforts to develop a completion strategy for the international tribunal.

Initially, this proposal received only tentative support from the Bosnian politicians, many of whom held strongly nationalist views. Then, in 2002, the Office of the High Representative (OHR) commissioned a group of experts, led by a former head of ICTY's investigations, to write a report on the need for such a court. The OHR is an ad hoc international institution responsible for overseeing implementation of civilian aspects of the Dayton Peace Agreement of 1995, which ended the war in Bosnia-Herzegovina. It has wide-ranging lawmaking powers. This report found that to develop domestic efforts to prosecute war crimes, it was necessary to establish a special chamber in the state court. The idea received the support of the OHR and the UN Security Council, which was eager for the ad hoc tribunals to complete their work. Once the ICTY and OHR had developed concrete proposals (the ICTY participated heavily in designing the framework of the court), the Bosnian government became involved.

In 2003, a new Criminal Procedure Code of Bosnia-Herzegovina was adopted, followed by efforts to harmonize the criminal procedure codes of the entities (the territorial units created under the Dayton Peace Agreement). These changes were controversial as they moved the Bosnian legal system from a purely civil law system to a "hybrid" approach

that incorporated elements of the common law system. In particular, investigative judges were abolished as part of criminal proceedings, and the possibility of plea bargaining was introduced. The “Anglo-Saxon” methods were adopted in response to the dramatic increase in organized crime in Bosnia-Herzegovina during and immediately after the war, as well as a huge backlog resulting from delays related to the processing of cases. These changes created the framework for the trials before the WCC. The legislation establishing the chamber was then enacted by parliament at the end of December 2004, and thirty countries donated funds to support its work, leading to the inauguration of the War Crimes Chamber of the Court of Bosnia and Herzegovina on March 9, 2005.

Mission, Organization, and Activity

The Court of Bosnia-Herzegovina was created by the Law on the Court of Bosnia-Herzegovina, which was promulgated by the OHR on November 12, 2000. This law, adopted by the parliament of Bosnia-Herzegovina on July 3, 2002, established the court. In December 2004, this law was amended to award the court the competence to try war crimes cases. As a result, the Criminal Division of the court is divided now into three chambers: (1) war crimes; (2) organized crime, economic crime, and corruption; and (3) general crime. The Court of Bosnia-Herzegovina has been described as a hybrid court because, although it is part of the Bosnian domestic judiciary, there were international judges and prosecutors among its personnel until 2010.

In the December 2004 Agreement between the OHR and the Bosnian government on the creation of the WCC, the new chamber and the related Special Department for War Crimes within the national prosecutors’ office were described as “an integral part of the establishment of the rule of law principle in Bosnia and Herzegovina” (Agreement between the High Representative for Bosnia and Herzegovina and Bosnia and Herzegovina 2004), and part of the signatories’ commitment was to “hold accountable the perpetrators of serious violations of international humanitarian and human rights law and the criminal law in Bosnia and Herzegovina” (Agreement between the High Representative for Bosnia and Herzegovina and Bosnia and Herzegovina 2004). The Agreement also stated that the creation of the court was necessary to ensure that the Bosnian judiciary could receive cases transferred from the ICTY, as part of the international tribunal’s completion strategy.

Initially, the trial panels and the appellate panel were composed of two international members, appointed by the OHR, and one national judge. Most of the international staff at the WCC in its early days were former ICTY officials, including several prosecutors and some judges. However, since July 2006, judicial and prosecutorial appointments to the court have been conducted by the High Judicial and Prosecutorial Council of Bosnia-Herzegovina, and since 2008, each panel has been composed of one international judge and two national jurists. The High Judicial and Prosecutorial Council also appoint the president of the Court of Bosnia-Herzegovina, who, since 2004, has been Judge Kreso Meddžida.

The Special Department for War Crimes of the Prosecutor’s Office of Bosnia-Herzegovina was created at the same time as the WCC and is responsible for prosecution of war crime cases committed in the territory of Bosnia-Herzegovina during the conflict. The head of the Special Department is international prosecutor, David Schwendiman, and his deputy is prosecutor Milorad Barašin. The department has fourteen national and

five international prosecutors, together with a large number of international and national legal associates, case managers, administrative, and other professional personnel. The staff is divided into teams that focus on specific geographical areas. In both the judiciary and the prosecution, the involvement of international legal professionals was deemed necessary to counteract mistrust of the local judiciary and to create the impression that the prosecutions were impartial.

The WCC has jurisdiction over the crimes of genocide, torture, multiple murders, and multiple rapes, and adheres to the legal principles employed by the ICTY. The Special Department is empowered to launch investigations of these crimes for both cases referred from the ICTY (including cases where indictments have been issued, known as rule 11bis cases, and cases where the ICTY prosecutor had not completed investigations) and cases resulting from the prosecution's own investigations. The WCC also has jurisdiction over the outstanding Rules of the Road cases.

As part of its review of the cases, the Special Department for War Crimes of the Prosecutor's Office of Bosnia-Herzegovina has developed a centralized data collection system for gathering statistical data on all war crimes cases pending before the domestic judiciary. In the figures it released relating to cases before the courts' and prosecutors' offices in Bosnia up to October 1, 2008, the study found a total of 9,879 suspects and accused. The term "suspect" refers to a person with respect to whom there are grounds for suspicion that the person may have committed a criminal offense and against whom the indictment has not been confirmed; the term "accused" denotes persons against whom one or more counts in an indictment have been confirmed. In the context of the ICTY's completion strategy, the responsibility for prosecuting the thousands of outstanding cases falls to the domestic courts. In addition, to identify the sites of mass atrocity, the Prosecutor's Office has developed "a catalog of war crimes and crimes against humanity, including genocide" that were committed across different regions within Bosnia-Herzegovina (National War Crimes Strategy 2008). This catalog is intended to facilitate "a preliminary crime selection" on the basis of available data.

The Special Department reviews the cases according to the Orientation Criteria for Assessment of Sensitivity of the Rules of the Road Cases to determine whether these cases are "most sensitive" and to be prosecuted before the WCC or "sensitive" and to be processed by the entity-level courts. These criteria recommend that the Prosecutor's Office consider factors like the number of crimes, the number of victims, and the rank of the suspects involved in a particular case. Crimes such as genocide, mass murders, multiple rapes, systematic and widespread persecution, and the use of concentration camps, which involve large numbers of victims, fall within the "very sensitive" category. The expectation is that the entity-level courts will process the majority of the cases, although considerable doubts have been expressed by international monitors over the capacity of these courts.

From 2006, international agencies working within Bosnia-Herzegovina, in particular the European Union, called on the Prosecutor's Office of Bosnia-Herzegovina to develop a plan to improve the capacity of the domestic courts and develop approaches to harmonize the capacity of courts at all levels to prosecute the remaining war crimes cases. In response, the Ministry of Justice of Bosnia-Herzegovina created a Working Group for the Development of a National Strategy for Work on War Crimes and War Crimes Recovery in July 2007. This Working Group was composed of representatives of the Ministry of

Justice, the State Court, the Prosecutor's Office, the High Judicial and Prosecutorial Council, and the finance ministries of the entity-level governments in the Federation and Republika Srpska. The UN Development Programme was granted observer status at the Working Group.

In December 2008, the Working Group adopted the National War Crimes Strategy, which prescribes a number of measures to improve efficiency in the prosecution of war crimes cases, promote regional cooperation, and facilitate support and protection of victims and witnesses. It also analyzed the budgetary requirements of the prosecutions. The strategy anticipates the prosecution of the most complex and top-priority war crimes cases within seven years and of other war crimes cases within fifteen years from the adoption of this strategy (that is, about thirty years after the crimes were committed).

Following the adoption of the National War Crimes Strategy, concerns about its implementation have continued to be raised as deadlines within the strategy have been missed and entity-level prosecutors have been criticized for failing to hand over information relating to ongoing investigations. The president of the Court of Bosnia-Herzegovina has attributed the lack of cooperation to political interference.

Victims' groups and civil society more broadly were not consulted on the establishment of the WCC. The court does have an outreach strategy and a Court Support Network of nongovernmental organizations was created, but the organizations involved suspended their cooperation in 2006 because of what they described as the lack of interest in cooperation of the court's Witness and Victims Section. The court attributed the shortfalls in its outreach policy to a lack of personnel rather than an unwillingness to engage. Furthermore, there has been limited public attendance in the court proceedings and little media coverage. This public disinterest has been argued to be a symptom of Bosnia's economic crises, which may make it difficult for people to take days off work and travel to Sarajevo to watch the proceedings. In addition, public surveys have indicated that respondents prioritize improvements in their living standards, the resolution of ongoing disputes on the powers of the federal and entity-level governments, and anti-corruption measures over the prosecution of war crimes.

Although since their creation, the WCC and the Special Department on War Crimes have been heavily involved in building the capacity of the Bosnian domestic legal system to handle the thousands of cases that have yet to be prosecuted, they have also been active in investigating and prosecuting war crimes. To date, the court has issued several notable judgments relating to some of the conflict's most notorious events, such as the systematic use of sexual violence in the town of Foča and the genocide at Srebrenica.

Conclusion

In the four years since its creation, the WCC has made progress toward its goals of prosecuting war criminals, contributing to the restoration of the rule of law in Bosnia-Herzegovina and harmonizing war crimes prosecutions within the country. However, this progress has been slow and has faced considerable obstacles, in particular the lack of political will for trials among some nationalist politicians and the limited capacity of the entity-level courts. Furthermore, the sheer scale presented by the thousands of perpetrators who may be liable for prosecuting is daunting. The adoption of the National

War Crimes Strategy offers the possibility of a systematic approach to address these problems, and it is hoped that is implemented fully.

Louise Mallinder

Cross-references: Bosnia-Herzegovina; Commission for Investigation of the Events in and around Srebrenica between 10 and 19 July 1995; Hybrid Tribunals; International Criminal Tribunal for the Former Yugoslavia.

Further Readings

Agreement between the High Representative for Bosnia and Herzegovina and Bosnia and Herzegovina on the Establishment of the Registry for Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes, Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia. *BiH Official Gazette*, No 12/04 (December 1, 2004).

Human Rights Watch. 2007. *Narrowing the Impunity Gap: Trials before Bosnia's War Crimes Chamber*. Available at: <http://www.hrw.org/en/node/11032/section/1> (accessed October 23, 2009).

Ivanišević, Bogdan. 2008. *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*. New York: International Center for Transitional Justice.

Jelacic, Nerma. 2006. In *Pursuit of Justice: Guide to the War Crimes Chamber of BiH*. Sarajevo: Balkan Investigative Reporting Network.

National War Crimes Strategy, December 2008. Available at: <http://www.adh-geneva.ch/RULAC/news/War-Crimes-Strategy-f-18-12-08.pdf> (accessed October 23, 2009).

World Tribunal on Iraq

The World Tribunal on Iraq was an international citizens' tribunal designed to investigate, document, and bear witness to the illegality and injustice of the U.S.-led invasion and occupation of Iraq in 2003 (see entry on Iraq). Organized within civil society in a decentralized fashion and without a formal mandate from any government or international institution, the Tribunal consisted of more than twenty sessions held in at least thirteen countries between November 2003 and June 2005. Among other things, the Tribunal examined the United States' and United Kingdom's legal and political justifications for the invasion, the media's role in justifying the war to the public, the conduct of coalition soldiers during the invasion and occupation, the use of depleted uranium weapons, the destruction of Iraq's cultural heritage, and the torture, forced disappearances, and other human rights violations allegedly committed by the United States and its allies. The sessions publicly gathered documentary and testimonial evidence about the violation of international law and about the failure of the international community to enforce international standards. The Tribunal's findings lent open support to the antiwar movement and offered recommendations for holding the organizers of the war accountable.

Political Background

The motivation for organizing a tribunal about the invasion and occupation of Iraq arose from the conviction among antiwar activists that the invasion of Iraq had been an ideologically motivated war of aggression that had openly violated international law and that had been waged against global public opinion and in a manner that entailed crimes against the Iraqi people. The rationale for holding a nongovernmental tribunal