

# LAST STOP BELGRADE

BY JOHN RYAN

With the **International Criminal  
Tribunal for Yugoslavia**

winding down, it has fallen to the national courts to

hold war criminals accountable for the

**atrocities of the 1990s**. Serbia's experience shows that  
**prosecuting these crimes**

in resistant domestic settings takes

both **courage and patience**.



Srebrenica

juli 1995



# Last Summer,

Radovan Karadzic, one of the most notorious accused war criminals to stand trial since the Nuremberg and Tokyo tribunals, cross-examined prosecution witness Milorad Davidovic, a former chief inspector for the Yugoslav Federal Secretariat of Internal Affairs.

The spectators' gallery in the trial chamber of the International Criminal Tribunal for the Former Yugoslavia, or ICTY, separated from the courtroom by a thick pane of glass, was mostly empty. A few handfuls of students and

Nations Security Council established the ICTY in 1993 as a temporary or "ad hoc" tribunal limited to prosecuting crimes from the wars that followed the dissolution of the former Yugoslavia. The ICC has a broader mandate: It is an autonomous, permanent tribunal established by treaty and run by its member nations, with jurisdiction beginning in July 2002 – when the treaty entered into force. Since then, the ICC has initiated proceedings for crimes committed in several of the worst conflicts of the past decade, including those in Uganda, Darfur and Democratic Republic of Congo.

As Davidovic sat in the witness chair at the ICTY, judges at the ICC were preparing to issue arrest warrants for Muammar Gaddafi, his son and an intelligence official over the conflict then unfolding in Libya. The excitement was palpable over the court taking on another high-profile conflict; the ICC was the place to be.

By contrast, the ICTY was – and remains – in the midst of its slow wind-down, with most of the cases completed or on appeal. Davidovic was one of about 200 witnesses eventually called by the prosecution in the nearly two-year-long presentation of its case against Karadzic, who is now set to present his defense. Still, for anyone who donned a headset and sat patiently through the simultaneous translations, the exchange between Karadzic and Davidovic had its share of drama. And the stakes remain high: The ICTY's cases, together with domestic justice efforts in the former Yugoslavia, will either bolster or undermine claims over the value of criminal justice responses to gross human rights violations, and may signal whether the ICC has a realistic



other onlookers were monitored by a pair of security guards, who would occasionally peer over the shoulders of notetakers to make sure they were not drawing any pictures of the proceedings. (This is a matter of policy; Davidovic is not a protected witness and was testifying in open court.)

The setting was serene, even sleepy, compared to the International Criminal Court located across town in The Hague. The ICC's main gallery and public spaces were so packed with groups of visitors during the last week of June 2011 that public affairs staffers had to carefully coordinate groups of tours to avoid traffic jams within the building.

To both its critics and supporters, the ICC is the culmination of an international justice movement that began with Nuremberg and continued with the ICTY, intended to provide a forum for credibly prosecuting the worst violations of international humanitarian law. The United

goal of meeting its goal to end impunity.

Karadzic served as President of the Republika Srpska, the self-declared Serb entity within Bosnia-Herzegovina, in the early to mid-1990s. He is accused of genocide, war crimes and crimes against humanity for his alleged role in the removal of Muslims and Croats from areas in Bosnia claimed by the Serbs. Prosecutors contend that he played a leadership role in the massacre in Srebrenica of 7,000 to 8,000 Muslim men and boys in July 1995 (determined by the ICTY to be an act of genocide in an earlier case), as well as the siege

#### **PARTNERS:**

**The offices of Vladimir Vukcevic (right), Serbia's war crimes prosecutor, and Serge Brammertz, the chief prosecutor at the ICTY, have cooperated on war crimes investigations since 2003.**

of Sarajevo that lasted from 1992 to 1995 – considered two of Europe’s worst atrocities since World War II.

Indicted in 1995, Karadzic was in hiding until his 2008 arrest. He initially boycotted his trial but later decided to represent himself. Trained as a psychiatrist, Karadzic quickly caught on to his role as defense lawyer. One of the two professional lawyers helping him with the case, the American Peter Robinson, has praised his performance.

Davidovic came to testify about coordination between Serb civilians and military and paramilitary forces in forcibly removing Muslims from Republika Srpska. However confident about what he knew, Davidovic tapped his leg furiously as Karadzic repeatedly attempted to tear into his credibility by asking him about allegations of fraud and other financial wrongdoing. Davidovic denied having a criminal record, and said that officials in Republika Srpska had been trying to cast him in “a negative light” as a result of his testimony at earlier ICTY cases. He said he would face a fresh round of “consequences” for his present testimony.

“I came here to tell the truth,” Davidovic shot back at Karadzic – “painful” truths. “Mr. Karadzic, I am a Serb, a member of the Serb people – my father, my mother, my wife – and I do not allow you to impute things of this nature to me.”

Far away, in Serbia, it remained unclear if the ICTY’s attempts at establishing the hardest truths of the wars were ever going to have the type of impact desired by tribunal proponents. Much of the fighting took place after Croatia, in 1991, and Bosnia-Herzegovina, in 1992, seceded from the Socialist Federal Republic of Yugoslavia, with Serbia in control of the Yugoslav Army and police that were aligned with various Serb paramilitary and defense units in the region. (Serbia and another republic, Montenegro, formed a new Federal Republic of Yugoslavia in 1992; they became a looser union of states in 2003, and Montenegro became independent in 2006.) The 1995 Dayton Accords concluded the war, though the ICTY later assumed jurisdiction of crimes committed during the Kosovo war between 1998 and 1999, when Albanians in that region fought for independence from Yugoslavia. (After the war, the U.N. assumed administration of Kosovo, which later declared its independence – not recognized by Serbia – in 2008.) Approximately 140,000 people died during the conflicts, with about four million displaced; rape and other forms of torture were common.

All sides committed crimes during the wars, which is reflected in the range of defendants prosecuted by the ICTY. Nevertheless, the position of the tribunal – and the international community generally – is that Serb forces, including the Yugoslav Army and police, as well as Serb defense units and paramilitaries, committed the most atrocities throughout the 1990s. In 1999, Slobodan Milosevic, the president of the Federal Republic of

Yugoslavia and before that the president of Serbia, became the first sitting head of state to be charged with war crimes. He eventually stood trial for war crimes, crimes against humanity and genocide over his plans to establish Serb dominance in the region; he died in 2006 during the course of the proceedings. Serbs have generally detested the ICTY, which is viewed as biased against their people, and the results of the cases are not trusted. Convicted Serb war criminals and the high-level remaining defendants, such as Karadzic, are still viewed as heroes by much of the population. (In a recent opinion poll, only 23 percent of Serb citizens believe that Karadzic is guilty.)

The ICTY has had other limitations. The number of war crimes suspects from the conflicts totals in the thousands, with some estimates in excess of 10,000 individuals. The ICTY ended up indicting 161 suspects, eventually developing a focus on senior or command-level defendants. That meant that the vast majority of suspects from the wars would not be prosecuted. In 2003, the ICTY adopted a “completion strategy” that has the domestic courts of the former Yugoslav republics – principally, Bosnia-Herzegovina, Croatia and Serbia – taking back a significant amount of responsibility for war crimes cases. The ICTY still has “primacy” under the tribunal’s statute, meaning it can assume jurisdiction over any case it wants from the wars, but the hope was that the domestic courts could prosecute a significant number of lower-level and mid-level offenders to fill justice gaps left by the tribunal.

As part of this effort, Serbia, in 2003, established a new War Crimes Chamber, based in Belgrade, within its national court system. The chamber is a purely domestic institution, outside the control of the ICTY or any other international agency, which are limited to monitoring and providing assistance when needed. In addition to filling justice gaps, supporters of the new court hoped it would build skills and restore trust in the judiciary. A chamber run by Serbs might also be viewed as more legitimate by the population and, therefore, do a better job than the ICTY at convincing people about the extent of atrocities committed by Serbs. This type of acceptance is often seen as a precursor to reconciliation or at least improved trust between ethnic groups in the region.

As scholars and human rights activists have come to recognize in the past few decades, few goals associated with post-conflict justice efforts are easily attainable, and expectations are increasingly tempered for particularly challenging settings like Serbia – where the legacy of Milosevic’s paranoid brand of nationalism has been powerful. Prosecutors in Serbia’s Office of the War Crimes Prosecutor, tasked with prosecuting cases before the domestic War Crimes Chamber, have faced threats for prosecuting their own citizens at home, as have the chamber’s judges and human rights advocates in the country for supporting the cases.

Vladimir Vukcevic has been the chief war crimes prosecutor in Serbia since the National Assembly elected him to the new post in 2003. Beginning in 2006, Vukcevic, a former deputy state prosecutor, also coordinated Serbia's "action team" for the arrests of the final fugitives from The Hague. The failure to arrest Karadzic and another high-profile defendant, Ratko Mladic, the Serb military leader in Bosnia during the war, had long been an embarrassment for both the Serbian government and the ICTY, as well as a source of tension between domestic officials and European leaders. The ICTY has mostly been dependent on governments of the former Yugoslavia to arrest and turn over suspects, and the European Union conditioned Serbia's candidacy for EU membership on compliance to these obligations. Last year, Serb security services arrested both Mladic and the last ICTY fugitive indicted, Goran Hadzic, a Serb leader in Croatia during the war, and transferred them to the tribunal. In February, then-President Boris Tadic presented Vukcevic and the action team with an honor on Serbia's day of statehood in recognition of their work.

In the domestic War Crimes Chamber, Vukcevic and his team of eight deputies have also notched some impressive trial victories, with final convictions of 58 individuals for a total of 668 years in prison. Most of the cases have targeted Serbs despite long-held concerns that national courts in the region might be unable to prosecute their ethnic majorities. The office has received praise from a range of international observers, including officials from the ICTY, the European Union and the U.S. But the office has also faced criticism at home for a dearth of cases against higher-level army and police officials who have political influence in Serbia; most of the defendants have been lower-level offenders or members of paramilitary and territorial defense units outside the formal state apparatus. Recent investigations have also been complicated by allegations that the witness protection unit for war crimes cases, housed within the police forces, has been pressuring witnesses not to testify.

Perhaps the harshest critic of the office is Natasa Kandic, who is among the most renowned human rights advocates in Europe and the head of the Humanitarian Law Center, a nongovernmental organization in Belgrade. Kandic believes that the prosecutor's office lacks the political will to prosecute higher-ranking officials. Vukcevic's office has publically disputed this notion, contending that it resists political pressures and will bring cases against any individuals "regardless of their respective positions" if it can do so based on the evidence.

"The very fact that a number of Serbs have been convicted for war crimes against non-Serbs, that the Serbian judiciary and the state have taken a stand behind the victims in these cases and sent the perpetrators to prison, that is very important for reconciliation," Ivan Jovanovic, the Belgrade-based war crimes monitor at the Organization

for Security and Cooperation in Europe, or OSCE, said in an interview. "But certainly there will be many people who deserve to be prosecuted for what they did during the wars who will pass away in their own beds, surrounded by their family members, without spending a single day in prison. And that is not a good thing."

The mixed results and ongoing challenges in Serbia undoubtedly offer lessons for future accountability efforts in turbulent post-conflict domestic settings, particularly for efforts that may benefit from complementary relationships between international and domestic tribunals – as the ICTY and the former Yugoslav republics have attempted. Such scenarios are particularly relevant in the age of the ICC. Despite its jurisdiction over recent conflicts, the ICC is a self-described "court of last resort," with national courts obligated to try their own cases whenever possible. Just what those lessons are remains a matter of debate, both within Serbia and internationally among organizations that have a stake in promoting prosecutions for serious human rights violations.

The uncertainty of Serbia's commitment to confronting its past may have intensified with the recent election to the presidency of Tomislav Nikolic, the leader of the Serbian Progressive Party who defeated Tadic, an official widely seen as pro-Western and generally praised for prioritizing cooperation with the ICTY. Tadic had taken other steps to recognize Serb war crimes by attending ceremonies at the sites of Srebrenica and Vukovar, the site of another massacre, in Croatia. Nikolic, in contrast, was once a high-ranking member of the ultranationalist Serbian Radical Party, whose former leader, Vojislav Seselj, is also on trial at The Hague for alleged wartime crimes. Though he has softened his nationalism in recent years and favors EU integration, Nikolic immediately caused concern after his election by stating that the Srebrenica massacre did not amount to genocide. Milosevic's former spokesman, Ivica Dacic, is now Serbia's Prime Minister.

With all suspects finally in custody, the ICTY estimates that all trials and appeals will finish by 2016. In an interview, Vukcevic declined to estimate how long the domestic system will need to fulfill its mandate, though he did not think it would take decades, as some observers have thought.

"What matters most ... is the political willingness – or the readiness of society – that a consensus be reached over this issue," Vukcevic said. "I believe that, by having the ICTY indictees transferred to The Hague, we have demonstrated as a society our readiness for catharsis."

**THE SREBRENICA-POTOCARI MEMORIAL AND Cemetery, in Potocari, Bosnia-Herzegovina, is a good place for visitors new to the region to begin to understand some of the unresolved facets and lingering resentments of the wars. The memorial, with significant donations from the U.S. and other foreign governments, opened in 2003 at the site of the U.N. base in Potocari, where Muslims had**

unsuccessfully sought refuge. (In 2005, Bosnian police found two bombs at the site just days before a ceremony on the 10-year anniversary of the Srebrenica massacre.) The long stretches of graves are occasionally interrupted by open ditches, ready for new burials. As of this past summer, fewer than six thousand of the 7,000 to 8,000 people massacred were buried here; remains in mass graves are difficult to identify, a source of ongoing torment to the families of those killed.

A detailed explanation of the identification process is offered at the Sarajevo office of the International Commission on Missing Persons, which collects blood samples from relatives of the victims with the hopes of matching the DNA to collected bone samples. The International Committee for the Red Cross estimates that more than 13,000 people remain missing from the wars in Croatia, Bosnia-Herzegovina and Kosovo, in addition to those killed and victimized by displacement, torture and other forms of abuse.

How to address such massive crimes? Trials were not the obvious solution as Yugoslavia was being torn apart by war. Any momentum created by Nuremberg and Tokyo tribunals was halted by the divisions of the Cold War, which prevented the international community from agreeing on a new international criminal tribunal. But the field of “transitional justice” – the use of justice mechanisms in transitioning societies to address crimes from a period of war or oppression – started to solidify in 1980s and 1990s. A number of books, including Kathryn Sikkink’s “The Justice Cascade,” identify the factors involved, including the strengthening of the global human rights movement and the transitions to democracy in Latin American and Eastern European nations. Trials, truth commissions, lustration and reparation policies became increasingly common in post-conflict settings; memorials and local reconciliation rituals or programs also joined the mix of “justice” tools.

The end of the Cold War was a key factor in the U.N.’s ability to form international criminal tribunals for situations in which domestic courts were too unstable to credibly handle their own cases. (The ICTY was nevertheless an unlikely institution and struggled in its early years to become a credible court; as has been documented in

several accounts, the Western powers behind the court were themselves somewhat ambivalent about their support, mostly out of a concern for the delicate political balance required to achieve and then sustain peace in the region.) In addition to the ICTY, the U.N. created the International Criminal Tribunal for Rwanda, for the 1994 genocide, and has played a role in establishing so-called hybrid ad hoc tribunals – staffed by a mix of international and domestic professionals – to prosecute crimes from conflicts in places like Sierra Leone, Cambodia and East Timor.

The foundational theory of the field is that societies that do not account for past human rights violations are more likely to experience future turmoil and a reoccurrence of crimes, whereas transitional justice strategies can help promote democratization, victim and survivor healing, deterrence of future crimes, an accurate historical documentation of past crimes, and reconciliation, or at least a greater chance of stability in a nation or region. The varying theoretical claims are not always backed by clear empirical evidence, but few advocates or academics support a total-amnesty approach without any attempt to document or address past crimes. What is more hotly contested is which justice mechanisms work best in particular settings. While it has become more common in recent years to view the mechanisms as

complementary, debates continue over the value of “truth” versus “justice,” which often pits truth commissions against the more punitive trial approach.

Both critics and supporters of trials have relied on the ICTY to back their positions. By one assessment, the tribunal has run credible proceedings that have established important legal records of some of the worst atrocities, as well as new precedents in international criminal law. Though often criticized as a token gesture by Western nations unwilling to stop the bloodshed by intervening militarily, the tribunal’s achievements allowed proponents

**THE ACTIVIST:**  
**The Humanitarian Law Center's Natasa Kandic has earned praise for securing the participation of witnesses at war crimes trials but has butted heads with prosecutors over the targets of certain investigations.**



**THE MEMORIAL:**  
**The memorial and cemetery in Srebrenica-Potocari honors the victims of the 1995 massacre. Remains are still being identified and buried.**

to successfully push for the creation of a permanent ICC. But the high costs and glacial movement of the tribunal's cases, along with its inability to gain trust in resistant settings like Serbia or to measurably promote reconciliation (at times, it has seemed to do the opposite), raised concerns. Critics have used these shortcomings to argue that international tribunals are not only

divisive but a waste of resources that could be spent better elsewhere in fledgling societies.

More practically, the shortcomings also contributed to the U.N. Security Council and the ICTY developing the 2003 completion strategy that placed an increased responsibility on the national courts. The completion strategy also reflected a belief that the passage of time had stabilized national governments of the former Yugoslavia to the point where they could begin to handle their own war crimes cases. (In fact, some war crimes trials had taken place in national courts in the region, though the credibility of the proceedings were of regular concern to human rights groups.)

The situation in Serbia was nevertheless harrowing in 2003. Milosevic was ousted in 2000 by the Democratic Opposition of Serbia, a tenuous alliance between the nationalism of Vojislav Kostunica, who became president, and the more moderate and pro-West factions led by Zoran Djindjic, who became prime minister. Djindjic operated behind Kostunica's back to orchestrate Milosevic's arrest and transfer to the ICTY in 2001. In March 2003, an organized crime group assassinated Djindjic in an operation reportedly called "Stop The Hague." The tragedy not only intensified crackdowns on organized crime, which had flourished under Milosevic, but it also created increased momentum for a War Crimes Chamber. Significant domestic support already existed for the establishment of a new chamber for organized crime cases. International pressure from Europe and the U.S. along with the expectation of ICTY case transfers allowed the creation of the Belgrade War Crimes Chamber to be "folded into" the same process, according to OSCE's Jovanovic; both new chambers were created in 2003. Jovanovic also said there was a genuine desire on the part of some Serb prosecutors and judges

as well as other members of the government to prove that Serbia could handle its own war crimes cases.

Vukcevic said he accepted the job because he felt it was important and honorable work.

"We prosecute people whose hands are stained with blood and who brought shame on our country," he said. "Our children do not deserve to be left with such a heavy burden on their shoulders, and that is ... a strong motive behind one's decision to take on a duty like this."

A successful completion strategy would also require credible domestic prosecutions in the other republics. In Bosnia-Herzegovina, where the war had inflicted tremendous damage to physical and administrative infrastructures, the new domestic chamber required more formal international participation, even though there was a stronger demand for war crimes cases in that country. The U.N. Office of the High Representative for Bosnia-Herzegovina and the ICTY established a specialized war crimes chamber in Sarajevo that began operations in 2005. Though part of the domestic justice system, the court was set up as something of a hybrid with the participation of international judges and prosecutors who have been phased out of the operations over time. Like Serbia, Croatia's war crimes cases have taken place without international participation, most of them in various local courts around the country, though recent reforms are designed to funnel the cases to specialized chambers.

All of these domestic efforts have received their share of mixed reviews over the years. The dedicated chambers in Bosnia-Herzegovina and Serbia have been generally viewed as meeting international legal standards for war crimes prosecutions. The cases in Croatia, with so many tried in dispersed local courts, have received the most criticism for



perceived biases in predominantly targeting the country's Serbs, many of whom have been convicted on weak evidence and in absentia. The process has become more professionalized in recent years as the prosecutor's office has focused on more substantiated cases, including those against Croats, according to the OSCE. (The U.N. Mission to Kosovo, and more recently the European Rule of Law Mission in Kosovo, have been responsible for war crimes cases there; an OSCE report in 2010 found a systematic failure to process war crimes cases adequately.)

Though staffed only with Serbs, international assistance has played an important part in the establishment and operations of the domestic system. ICTY staff, the OSCE and the U.S. government have provided training to Serb prosecutors, judges and related personnel. The OSCE and an outside team of experts retained by the organization provided assistance in drafting the 2003 war crimes legislation, and the OSCE began monitoring all of the cases from the outset. The U.S. Marshals helped the Interior Ministry, which includes the police forces, establish a witness protection unit to protect and if necessary relocate witnesses. The chamber also has a victim and witness support unit, which coordinates logistical matters for witnesses and victims attending proceedings.

In Jovanovic's view, some of the biggest challenges in 2003 resulted from the lack of experience in "highly complex criminal cases with cross-border dimensions" that would require the participation of reluctant witnesses and the incorporation of evidence and rulings generated by the ICTY – all procedurally new in Serbia. By and large, the technical assistance and hard work by domestic actors has succeeded. Despite criticism over a lack of cases against the highest-level remaining offenders, prosecutors and judges have demonstrated their ability to process complex and unpopular war crimes cases.

"Ten or 15 years ago, the idea that Serb judges and prosecutors would be conducting credible cases against Serbs in Belgrade for crimes committed during the wars was unthinkable," said Mark Ellis, the executive director of the International Bar Association, an expert hired by the OSCE to evaluate the domestic environment in 2003 and assist with the drafting of the legislation. "I think in that historical context, you have to see it as a success."

Ellis said he saw a critical mass of political will to get the chamber off the ground in 2003, noting that Serbian officials agreed to a number of important revisions to the proposed legislation before it reached the National Assembly. Still, Ellis, like many observers, recognized a strong "culture of impunity" in Serbia, and he knew that support of the cases would not be widespread throughout the state machinery and the public.

Indeed, training and the efforts by justice advocates – including prosecutors, judges and victims' representatives – can only do so much in a setting that is extremely

resistant to accountability mechanisms. One relatively uncontroversial theory in the area of transitional justice is that prosecutions and other justice mechanisms are more likely to take hold in societies that have a clean break with the past – a complete military victory or a toppling of a government – or where incoming and outgoing regimes reach some agreement about how to address past crimes. This was not the case after the end of the Milosevic era in Serbia, which has witnessed a constant push and pull between nationalist and reformist political forces without any agreement on how to forge a full reckoning of the wars and the complicated history that preceded them.

#### **A KEY EVENT ON THE ROAD TO WAR WAS**

the 1980 death of Josip Broz Tito, the longtime leader of the Socialist Federal Republic of Yugoslavia who had held its six republics together since World War II. As recounted in many written works, including Gary Bass' popular book about war crimes trials, "Stay the Hand of Vengeance," Tito suppressed many of the ethnic divisions simmering from that war, which included massacres of Serbs by the Croatian fascists who supported the Axis powers, as well as reprisal attacks by the victors. His death led to a resurgence of nationalism and ethnic suspicions in the decentralized republic. The void also made citizens of the republics more susceptible to attaching themselves to strong-willed nationalist leaders like Milosevic and Croatia's Franco Tudjman, according to Kemal Kurspahic, whose book "Prime Time Crime: Balkan Media in War and Peace" documents Milosevic's alarming control over the public mindset. Kurspahic writes that Milosevic first used the media to help maneuver his rise to power, then kept near-total control throughout his reign over the state media and other private news outlets, which were run by ardent supporters or intimidated from straying from the nationalist line; the state-owned TV channel was known as "Slobovision." The endlessly promoted narrative was that of Serbia as the long-suffering victim that needed to defend itself against surrounding existential threats from Muslims in Kosovo and Bosnia, and Croats. (The narrative easily drowned out some of the courageous work of independent outlets.)

Drawing comparisons to Nazi Germany, one scholar, Nenad Dimitrijevic, describes the Milosevic government as "a populist criminal regime" characterized not by repression but popular support. Sabrina Ramet, who has published a number of academic works on Serbia, writes that Serbia suffers from "a denial syndrome" that when coupled with nationalist sentiments creates "a powerful concoction in which the society is able to escape into a mythic reality in which people (in this case, the Serbs) are portrayed as simultaneously heroic and victimized." Outsiders more casually familiar with Serbia's complicated history, including visiting journalists, might best avoid making such weighty assessments while at least grasping the obvious – that the carryover of nationalist sentiments was going to cause serious headaches for the ICTY. Similarly, Serbia, which is 83 percent Serb with small



minorities of Albanians and Bosniaks, was never going to have a groundswell of popular support for domestic war crimes trials.

Of course, resistance within the government is the more problematic factor in pursuing war crimes cases. Milosevic's fall did not bring a lustration or vetting policy – as seen, for example, in Eastern Europe after the dissolution of the Soviet bloc – that would have removed some of the corrupt and criminal elements from the government and mitigated the disastrous effects of his legacy. Many people in the army and the police have a vested interest in blocking cases.

"Obstruction is often inherent in these cases," Vukcevic said. "There are people within the police and military ranks who are still holding important positions in these institutions and who – directly or indirectly – were involved in war crimes. They will do anything in order to evade criminal prosecution."

One commonly cited problem, which Ellis had warned against in 2003, was the placement of the new war crimes investigations unit within the police forces, which means the unit is often investigating its own colleagues and has been viewed as traitorous. Human rights groups have questioned the unit's initiative on occasion. According to one of its reports, the Humanitarian Law Center in 2006 successfully lobbied for the removal of the head of the war crimes investigations unit by contending there was evidence to suggest that he bears some responsibility for crimes committed during the Kosovo war.

War crimes cases are almost always extremely complicated, regardless of the jurisdiction or the preceding conflict, often as a result of evidentiary challenges created by a lack of paper trails or other documentation of criminal intent. This leads to a reliance on witnesses who, whether they are victims or "insiders" with knowledge of criminal acts, will likely be reluctant to testify. In the former Yugoslavia, witnesses are scattered throughout the region, often outside the jurisdiction of the cases to which they are relevant.

The OSCE has worked to facilitate cooperation between the different domestic prosecution offices for war crimes. Cooperation has been most effective between Serbia and Croatia, which entered into an agreement in 2006 over the exchange of evidence and cases to work around each country's barring of extradition of their nationals. Serbia and Bosnia-Herzegovina have not reached a similar pact. Leaders of the three countries have also failed to iron out an agreement that would have each government focus on prosecuting its own citizens. This is desirable because the issuing of arrest warrants by one country for another country's citizens has been controversial and often criticized as politically motivated. In one well-known example, a court in London in 2010 refused Serbia's request for the extradition of Ejup Ganic, a former member of the Bosnian presidency, for his

alleged responsibility for war crimes against the Yugoslav army. In 2011, an Austrian court refused an extradition request for former Bosnia-Herzegovina General Jovan Divjak, also wanted by Serbia authorities.

Relations between Serbia and Croatia also took a negative turn last year when Croatia's parliament – in response to an indictment of Croat defendants forwarded on to Croatian prosecutors by Vukcevic's office – passed a law purporting to invalidate all laws in Serbia that deal with the prosecution of Croatian citizens from the war. (Croatia's prosecutor did not support the act and has continued to cooperate with Vukcevic's team.)

Yet Serbia's war crimes prosecution office has had some advantages, including the transfer of evidence from cases that the ICTY had already completed or initiated, giving Vukcevic's team a head start in some domestic cases. The office also had evidentiary assistance from Kandic and the Humanitarian Law Center, which has been widely praised for locating witnesses in victim populations and securing their participation at trials. (In Serbia's legal system, civil society organizations can represent victims in the trials and can file private criminal complaints in matters where the government has not acted.)

"They understood my explanation that they should fight for justice by directly participating in the trials, by testifying in court, because that means their testimony will live forever in the record," Kandic explained in an interview. "Nobody can manipulate their testimony. Every word from their testimony will be there forever. They understood why that's important."

The international assistance has also been ongoing, in Serbia and elsewhere in the region. It culminated in recent years with the War Crimes Justice Project, a four-million-Euro effort funded by the European Union and run collaboratively by the OSCE, the ICTY and the U.N.'s Interregional Crime and Justice Research Institute. According to the OSCE's website, the project provided training to 800 legal professionals in the region and produced curriculum materials on international criminal law and ICTY caselaw that are tailored to each nation's justice system. Part of the funding was used to translate tens of thousands of pages of ICTY trial transcripts and appellate decisions into local languages for use by national prosecutors and judges. The project also funded additional staff positions in the national chambers and prosecutor offices.

Perhaps more important is what this assistance has represented over the years – clear support of the domestic system by the European Union and the United States. Nationalistic politicians and media outlets have been vocal in their criticism of figures like Vukcevic and Kandic, but the importance of economic aid and the prospect of EU membership have prevented these hostile forces from shutting the domestic system down.

Vukcevic said the biggest threat came in 2004, when the justice minister and other members of the government wanted to get rid of the war crimes and organized crimes chambers and move their cases into the regular courts. He said EU support was instrumental.

"There have been pressures and threats, both from those who were in power in the early days of this office and from informal right-wing extremist groups," Vukcevic said. "At no point, however, has any such pressure or threat seriously hampered our efforts to prosecute war crimes."

Vukcevic said that he has sensed "real danger for my colleagues and myself in several situations so far," but that prosecutors do not let this interfere with the victims' right to justice. He added that his team has "complete faith in the state authorities which are responsible for our safety."

**"We prosecute people whose hands are stained with blood and who brought shame on our country."**

**- VLADIMIR VUCKEVIC**

**BY SOME MEASURES, THE WAR CRIMES** Chamber has served as an effective complement to the ICTY. Out of its 161 indictees, the ICTY has convicted and sentenced 64 individuals, with 13 acquittals and ongoing proceedings for another 35; the rest of the cases have been transferred to national courts or been withdrawn. The domestic system has indicted 146 individuals. In addition to its 58 final convictions and 10 acquittals, the domestic chamber has handed down another 39 convictions and nine acquittals that are on appeal, according to information provided by the prosecutor's office. Nine cases are at trial, and many more cases are in investigative stages. As a civil law country, Serbia's cases are decided by three-judge panels, not jurors. Investigative judges also played a key role in guiding investigations in the pre-trial period, until this year, when procedural reforms removed them from the process to make it more prosecutor-driven and efficient. (Vukcevic said the changes already have shown some "positive effects ... in terms of improved efficiency.")

It took several years for the final judgments to accumulate in any significant number as a result of the Supreme Court's regular overturning of convictions and ordering of retrials. Many saw political motivations in these rulings. The Supreme Court, left over from the Milosevic era, was not involved in the creation of the War Crimes Chamber, and it seemed reluctant to sign off on controversial cases. In 2010, a number of laws went into effect that restructured Serbia's judiciary and created a new network of courts. As part of the many changes, appeals from the War Crimes Chamber, now held in the Belgrade Higher Court, go to the Appellate Court in Belgrade. Jovanovic says that the judges handling

war crimes appeals are among the best in the nation.

Substantively speaking, the cases have tackled crimes related to several of the worst war crimes committed by Serbs in the 1990s, including the 1995 Srebrenica genocide; the 1991 execution of about 200 Croat prisoners of war and civilians near Vukovar, in Croatia; the massacre of an estimated 700 to 900 Bosniaks in Zvornik, Republika Srpska, in 1992; and the massacre of about 50 ethnic Albanians in the Kosovo town of Suva Reka in 1999, among many other crimes. Prosecutors also have brought cases for some of the horrors inflicted on Serb forces and civilians, including a number of crimes committed by the

Kosovo Liberation Army between 1998 and 1999. Recently concluded was the so-called "Gnjilane Group" retrial against a large group of former KLA members over the massacre of Serbs in Gnjilane, Kosovo, which resulted in 11 convictions and six acquittals. (According to a report of an incident by the prosecutor's office, the lead defendant made an ominous threat to the deputy prosecutor during closing arguments: "I shall take my revenge on you for what you are doing; should I fail to do so, my children will; in case they are not able to do it, then my grandchildren certainly will.")

The case totals become somewhat less impressive with a closer look at who has been prosecuted and convicted, however. The more senior-level officials in the police and army left within the chamber's jurisdiction – those who did not rise to the level to face ICTY prosecution – have tended to escape indictment. Prosecutors have successfully targeted commanders of Serb paramilitary and territorial defense units operating during the wars – forces that worked with but were not formally part of the Federal Republic of Yugoslavia. For example, the cases involving the Vukovar and Zvornik massacres involved the prosecutions of Serbs who were quite powerful during the wars in Croatia and Bosnia, but these individuals did not enjoy the same political clout as members of the army and police in Serbia in the years after the war.

The failure to make similar gains up the chains of command in the police and army ranks has been cited by international groups that have monitored domestic efforts, such as the International Center for Transitional Justice and Human Rights Watch, as well as local groups such

as the Humanitarian Law Center, the Belgrade Center for Human Rights and the Helsinki Committee for Human Rights in Serbia. (Most observers have also given praise for achievements in other areas.)

Vladimir Petrovic, an academic who was an analyst in the war crimes prosecutor's office when first interviewed for this article, described the problem as "the vacancy in the middle." Though the ICTY started with some relatively low-level offenders, it eventually developed a top-down strategy. Serbia's War Crimes Chamber, in contrast, could take a bottom-up approach – starting with the lowest-level offenders and moving up to the mid-level commanders outside the ICTY's range of cases.

"The hope was that we would meet somewhere in the middle," Petrovic said. If this convergence fails to take place, he added, it will create a significant hole in the legal record established by the cases.

A debate remains over the severity of this shortcoming, as well as its causes. Competing views over these issues have created tension between Vukcevic's office and Kandic's Humanitarian Law Center – two institutions ostensibly on the same side of war crimes issues, led by two individuals whose public statements about the importance of accountability efforts often echo each other.

Kandic believes that the indictments and some of the chamber's rulings show an intention to minimize the responsibility of the state of Serbia, and to focus blame instead on individual bad apples at the lower level. One of the goals of war crimes trials is to establish individual criminal responsibility for atrocities, something Kandic readily acknowledges. (One theory in the field of transitional justice is that individualizing crimes can help prevent victim populations from holding grudges against entire groups of people.) Still, she contends that indictments that more aggressively move up the chain of command and better establish the context of the crimes would place a more appropriate emphasis on state institutions. This would be more consistent with the record established by the ICTY – that much of the Serb wartime leadership engaged in a joint-criminal enterprise during the conflict.

Greater state responsibility might also support legal theories of liability that Serbia owes reparations to victims of the wars. Bosnia-Herzegovina sued Serbia before the International Court of Justice for alleged violations of the Genocide Convention. In a 2007 ruling, the ICJ held that the Srebrenica massacre amounted to genocide but that Serbia was not directly responsible for the acts carried out by the forces in the area, the Republika Srpska army. The court did hold that Serbia violated the convention by failing to stop the killings and failing to turn over key suspects. (Among the controversies of the case, the court did not require Serbia to turn over documents that might have shed more light on the alleged participation of Yugoslavia's leadership.)

Vukcevic's office has contended that Kandic, who is trained as a sociologist and not a lawyer, is incorrect in her assessments of its performance, and that cases have only been limited by the evidence available. For example, in the *Lovas* case against former army officials, among other defendants, for the killing of 70 civilians in Lovas, Croatia, in 1991, Kandic criticized the indictment for not targeting any army generals. Vukcevic issued a public response that the "the indictment included all individuals for whom it was possible to find evidence of involvement" and that "there was no evidence of [higher-ranking army officers] having any knowledge of the events in Lovas either before or during" the commission of the crimes.

In responding to questions for this article, Vukcevic said that most of the higher-ranking officials have already been indicted by the ICTY. He said his team operates by the principles of "independence, resistance to all sorts of pressures (political ones in particular), and the equality of treatment for all irrespective of their ethnic backgrounds, religious beliefs or positions in the political and command structures." He added that his office is in the early stages of potential cases against "individuals who occupied high positions in the state system" during the wars.

The Belgrade Center for Human Rights, which until recently was led by another of the region's most respected activists (and scholars), Vojin Dimitrijevic, who died Oct. 5 at the age of 81, does not believe that the prosecutor's office "is avoiding the prosecution of the topmost army and police officers," according to a report issued earlier this year. The organization instead blames obstructive forces within the government and the challenges posed by regional cooperation, with so many witnesses outside Serbia's border. The report noted a number of complications, including that a "considerable number of the Army of Serbia current command staff" fought during the Kosovo war, and that former Milosevic spokesman Dacic (now Prime Minister) had a prominent role in the government as a deputy prime minister.

One of the most high-profile and controversial of the early cases before the War Crimes Chamber was brought in 2005, after the Humanitarian Law Center acquired a tape of the notorious Scorpions paramilitary unit executing six Muslims during the time of the Srebrenica massacres in July 1995. The killings took place in Trnovo, Republika Srpska, where the unit had taken their captives. The Humanitarian Law Center made the tape available to the ICTY, which showed it at the Milosevic trial, and to the media, whose broadcasting of the footage was seen as an important first step in getting citizens to begin to accept that Serbs had committed grave war crimes. The tape also resulted in Serb police arresting the perpetrators who were visible as members of the Scorpions unit; five were indicted, including the commander, Slobodan Medic. Human rights advocates criticized the indictment for describing

**“The very fact that a number of Serbs have been convicted for war crimes against non-Serbs, that the Serbian judiciary and the state have taken a stand behind the victims in these cases...that is very important for reconciliation.”**

**- IVAN JOVANOVIĆ**

the Scorpions as a paramilitary unit operating under the Republic of Srpska Krajina’s Army, as opposed to the state security services, and for characterizing the conflict itself as a “civil war” within Bosnia-Herzegovina. Kandic, as the representative of the victims at trial, said that the deputy prosecutor objected to her questioning witnesses about institutional responsibility.

In 2007, the chamber sentenced Medic and another defendant to 20 years, the maximum for war crimes against civilians under Serbia’s criminal code, but gave more lenient sentences of 13 and five years for two of the younger defendants; a fifth defendant was acquitted. In reading the judgment from the bench, Judge Gordana Bozilovic-Petrvoic said that there was no evidence indicating that the victims were from Srebrenica. The ruling infuriated human rights groups and victims’ family members, who saw a blatant attempt to separate Serbia from the events in Srebrenica. Vukcevic publicly criticized this determination, arguing that “the Chamber erred in giving faith to the defendants’ statements, rather than to those offered by the victims’ families.” He appealed the two lower sentences and the acquittal, but to no avail. (In 2008, the Supreme Court, then still reviewing chamber cases before the restructuring of the judiciary, merely reduced one sentence from 20 to 15 years and ordered a retrial for another defendant.) Kandic said the *Scorpions* trial was a wasted opportunity, and one that signaled that the domestic war crimes system would be more political than professional in its operations.

Vukcevic said that he did not think “the court ruling outweighed the good effects of the convictions.”

The OSCE’s Jovanovic said he “partly shares the view” that some cases appear to shield the state from responsibility for crimes committed in Croatia and, in particular, Bosnia. However, he cautioned that there may not always be an abundance of evidence that directly links the state to some of the events in the Bosnian war.

“I don’t think the prosecution is attempting to, or that it can, protect the state from responsibility in Kosovo, where there already are convictions of police officers, even if at the lower level of the police,” he added.

The Kosovo cases have been mired in controversy in recent years, which is understandable given the immense tension there. More than 80 countries, including the U.S., have recognized Kosovo’s declaration of independence. Serbia is adamant in its opposition. Serbs view the Kosovo

region as an integral part of the nation’s history and are concerned about the status of the Serb minority population there.

Vukcevic’s office targeted a powerful figure, Radoslav Mitrovic, the commander of the 37th Battalion of the Special Police Unit, in the *Suva Reka* case, over the killing of 50 civilians in Kosovo in March 1999. Forty-eight of the victims were members of the same extended Muslim family. In announcing the case against seven defendants in 2006, Bruno Vekaric, a deputy prosecutor who also serves as an office spokesman, said that the massacred civilians included “four babies, 10 children, a pregnant woman and a 100-year-old woman.” The trial stretched over three years and included the participation of more than 100 witnesses. In April 2009, the War Crimes Chamber convicted just four of the defendants (yielding sentences of 68 years in prison), and acquitted three, including Mitrovic. The prosecution had argued at trial that Mitrovic had effective control over the police forces during the operation, and prosecutors presented corroborating witnesses who worked at the Suva Reka Police Department at the time. A Humanitarian Law Center review of the case contended that “the court protected [Mitrovic], by laying the blame and the command responsibility on the local chief of police.”

A legal technicality may have contributed to the chamber’s ruling, revealing yet another challenge facing the domestic system. The criminal code that Serbia inherited from the Federal Republic of Yugoslavia was generally well-equipped to prosecute war crimes and crimes against humanity, but it had not incorporated certain provisions of the ICTY statute, including a broader definition of “command responsibility” that attaches criminal responsibility to commanders who knew of illegal conduct and failed to stop or punish it. The 2003 law establishing the War Crimes Chamber did not include the ICTY’s command responsibility provisions out of a concern that retroactive application to crimes of the 1990s would not be constitutional. Prosecutors can still use existing provisions related to aiding and abetting theories to target commanders, but Jovanovic said the *Suva Reka* case might suggest the limitations of doing so.

Ongoing investigations in Kosovo have called into question the credibility of the U.S.-trained witness protection unit, which was praised during the early years of its operations. In March 2009, prosecutors initiated a new case against members of the 37<sup>th</sup> Battalion of

the Special Police Unit, including Mitrovic, after the Humanitarian Law Center filed a criminal complaint against 16 of the members. Four were arrested at the request of the prosecutor's office; Mitrovic was already in custody for the pending *Suva Reka* case. The center's complaint was based on insider witnesses from the police force in Leskovac, who then became protected witnesses

and other obstructive forces led the Belgrade Center for Human Rights to conclude that "the Serbia authorities are not prepared to confront the past and prosecute those most responsible for the grave crimes" from the wars.

The prosecutor's office has reportedly acknowledged problems with the unit, though when asked about the scandal for this article Vukcevic said his office has confidence in the witness protection services.

"Most certainly, the situation is often complicated and quite difficult at times," he added. "Still, a fact that should not be overlooked is that the effectiveness of such a protective mechanism also depends on the witnesses themselves, i.e. on their proper understanding of what their own rights and duties are within the program."

Kandic said that the unit has not behaved inappropriately towards victim or other witnesses,

who can testify safely even if they are ultimately angered by the judgments. Petrovic, the former analyst from the prosecutor's office, added that the unit has performed well in some cases, but it varies by the individuals involved with each assignment: "If it's done by normal people, it's good; if not, it can be a problem."

Tensions between the prosecutor's office and Kandic have continued to escalate. The Humanitarian Law Center's March 2011 report on the witness protection problems also alleged that the deputy war crimes prosecutor on the case, Dragoljub Stankovic, did not behave professionally and advised witnesses not to testify. Kandic also appeared on the B92 radio station that month and said her organization had information from sources who claimed that the release of Mitrovic and the other suspects involved the paying of a bribe to the prosecutor's office. Though she did not name the alleged beneficiary, Stankovic was described as such in the center's



for the prosecution's case; two of them were relocated from Leskovac. However, the witnesses claimed that the unit charged with their protection actually harassed them, pressured them to discontinue their cooperation and asked for information about other potential witnesses. According to a Humanitarian Law Center report, one witness claimed that unit members "cut off his electricity from time to time, [raided] his apartment at any time of day ... have asked him if he has engaged in sexual intercourse with Natasa Kandic, and [said] that it is better to withdraw his statement." The protected witnesses departed the case, which subsequently stalled. (The suspects were also released.)

Jovanovic said that the controversy is complicated by the possibility that, as prosecutors and members of the unit have contended, a few of the insider witnesses made inappropriate demands for their testimony. Nevertheless, he said it appears clear that the witness protection unit pressured the witnesses not to testify. This is an alarming problem for war crimes cases, which often require insider witnesses, and it has led to recommendations by European Union officials and other observers that the unit be removed from the police forces of the Interior Ministry and placed inside the Justice Ministry. The witness protection problem

**THE PROTESTS:**  
Arrests and transfers of high-level ICTY fugitives, such as Ratko Mladic, the former Bosnian Serb military leader, have been met with protests by those who view the accused as war heroes.

report, and he filed a defamation case against Kandic. The prosecutor's office also issued an angry rebuttal and defense of Stankovic, noting that his security had been threatened for his work on several controversial war crimes cases and contending that he was not involved in the decision to release the suspects.

Kandic had been sued before for her public comments on war crimes cases, and would be again. Earlier this year, a Humanitarian Law Center report claimed that Lieutenant General Ljubisa Dikovic – whom Tadic appointed in December to head the Serbian army – was responsible for war crimes in Kosovo. Vukcevic claimed that no evidence supported the allegations, and Dikovic promptly sued Kandic for her comments, which she has continued to defend.

In recent years, Kandic and the prosecutor's office have traded criticisms through reports and public statements. In November 2011, the prosecutor's office issued a detailed 15-page report to challenge three of the Humanitarian Law Center's recent reports, calling Kandic "amateurish," "ignorant" of the case files and incompetent as a victims' representative. (A recent change to the procedure code prevents non-lawyers from representing victims in the proceedings, which blocks Kandic from directly participating in the trials, leaving that role to lawyers at the Humanitarian Law Center.) The report said that "she remains invariably committed to her own interest to obtain proofs that our state is responsible for all crimes in Croatia, Bosnia-Herzegovina and in Kosovo, rather than individual perpetrators against whom proceedings are conducted."

Though the office has in the past acknowledged her crucial role in securing the participation of witnesses – the Humanitarian Law Center counted more than 70 who had testified at its invitation and assistance by the end of 2011 – Kandic believes that the office has changed its tone towards her for her heightened criticism in recent years, including what she sees as selective indictments as well as politically motivated arrests (or issuing of arrest warrants) for non-Serbs.

Vukcevic said his office has a good relationship with the human rights community and included Kandic's organization in the mix.

"Regardless of some disagreements, which are mainly of a strategic nature, we appreciate the assistance of the Humanitarian Law Center in the collection of evidence and access to war crimes witnesses," he said. "We continue to perceive them as our partners and a positive force."

In any event, there are significant payoffs for all stakeholders, not least of all the victims, as revealed in the *Lovas* case involving the killing of 70 Croatian civilians in 1991. In June, the trial chamber sentenced 14 defendants, including members of the Yugoslav army and the territorial defense unit in the area, to a total of 128 years in prison. The verdict followed 182 days in trial, including the testimony of 194 witnesses.

"Serbia's judicial authorities have sent a clear message of respect to the victims, and apologies for all their suffering in those unfortunate years," Vekaric, the deputy prosecutor and spokesperson, said after the verdict. "It is essential to make it clear that the victims will not be forgotten and that the perpetrators of such and similar crimes will be adequately punished."

Though critical of the indictment for not targeting generals, Kandic was extremely pleased with the course of the trial and the verdicts.

"I am happy because the families and the local authorities who came from Lovas are happy," she said. "It is important that they are satisfied with the trial and the work of the presiding judge, who did an excellent job."

Meanwhile, Vukcevic's team has remained in the news for several pending investigations. Prosecutors are reportedly considering a case against wartime media figures who, under some theory, may bear responsibility for inciting violence during the conflicts. The office also has opened cases against the individuals from the support networks that allowed The Hague fugitives to remain at large for so long. (Serge Brammertz, the chief prosecutor at the ICTY, had repeatedly urged for such a case.)

Another of the high-profile pending investigations focuses on whether Albanians in the KLA harvested organs from Serbs captured during the war for trafficking, which Albania and Kosovo have denied. Of particular concern to the U.S. State Department and the Embassy in Belgrade is the criminal case against two former Serb police officers for allegedly murdering three American brothers – Agron, Ylli and Mehmet Bytyqi – who reportedly had traveled to Kosovo to assist pro-independence forces. In May, the War Crimes Chamber acquitted the defendants, and Vukcevic's announced it would appeal.

**GIVEN ITS HEADLINE-GRABBING CASELOAD**, the ICC regime might not appear to the casual observer to favor domestic prosecutions. Under Article 17 of the governing Rome Statute, however, the ICC can only exercise jurisdiction if national courts are "unwilling or unable genuinely" to prosecute crimes falling under the statute. The principle is known as "complementarity," the exact meaning and implementation of which is the subject of much debate and analysis among scholars and advocates who follow the court. But most agree that domestic courts should handle their own cases if doing so is possible. States that ratify the treaty (121 have so far) are required to incorporate ICC crimes into their domestic legislation.

The ICTY has continued to assert its primacy over its pending cases, such as those of the recently arrested high-level fugitives. Nevertheless, some of the reasoning behind the push for domestic participation in the former Yugoslavia was based on complementarity principles – namely, that domestic cases are closer to those most affected by the

**“Trials deal with facts and the testimony of witnesses. This is better than a climate without trials.”**

**- NATASA KANDIC**

proceedings and can restore trust and develop skills in national justice systems. Writing in 2009 about the ICTY’s completion strategy, then-President of the ICTY Fausto Pocar said that “primacy” and “complementarity” were actually “two sides of the same coin” – the ICTY had assumed jurisdiction over cases because of the inability of national courts to do so, and now the tribunal could send cases back to their rightful jurisdictions. (This puts a somewhat positive spin on the motivations behind completion strategy, which was also hastened by concerns about the costs of international tribunals.)

Seen this way, the mix of international and domestic cases that have emerged in response to war crimes in the former Yugoslavia may suggest tandem responses to future atrocities falling under the jurisdiction of the Rome Statute. The ICC may need to exercise jurisdiction in particularly unstable situations, but both the court and international community at large will expect domestic courts to begin processing cases as soon as possible. For those who favor prosecutions after conflicts, this may be crucial to fill justice gaps left by international tribunals, as the ICC has tended to target only a handful or so of high-level suspects in its early cases. The experience of the former Yugoslavia is also likely relevant to accountability efforts that do not involve any international cases, but where domestic courts need significant international assistance. In a presentation last year, David Tolbert, the president of the International Center for Transitional Justice, said that the future of international justice would rely on “nationally-based courts which utilize the support and expertise of international experts,” with a focus on capacity building.

Serbia’s experience provides an opportunity to evaluate such relationships between international and domestic institutions. The domestic system has clearly performed well under certain principles of complementarity. Most sources agree that the war crimes effort has strengthened Serbia’s justice system. Jovanovic said that the skills associated with complex cross-border war crimes cases have been put to use in other criminal matters. The cases have begun to fill justice gaps by prosecuting individuals untouched by the ICTY, however much that effort remains a work in process. Vukcevic said the improvement of the “national justice system is an undeniable fact.”

Public opinion polls conducted by the OSCE and partnering organizations in recent years also show that the domestic system enjoys greater legitimacy in Serbia than the ICTY. Granted, the bar was extremely low: In results from the 2009 poll, 78 percent of Serbs had a very

negative or mostly negative view of the ICTY (while majorities of Albanian and Bosniak citizens in Serbia had positive views). The domestic system has not necessarily received glowing reviews. In surveys from recent years, only about a third of the respondents believed that

the prosecutor’s office had the courage to prosecute high-ranking state officials, and a quarter or less have believed that prosecutors and judges act independently of pressure from state authorities and the public.

Still, only 8 percent from the 2009 survey believed that the point of the domestic system is to “place guilt of wartime sufferings on the Serbs.” That report concluded that, when finding Serbs guilty, respondents believed that “the court reached the decision solely on basis of evidence and hence accept what has been determined,” though the percentage holding that opinion dipped from 57 to 50 percent between the 2009 and 2011 polls. The sizeable acceptance of case results involving Serbs would seem to constitute a notable achievement.

Yet transitional justice efforts are intended to contribute to more transformative goals related to the long-term health of a society or region. The most cherished goal, reconciliation, is also the most fraught with complexity: It can mean individual victim-to-perpetrator forgiveness or improved trust and peaceful co-existence between previously combative ethnic groups or political parties, among other interpretations. In interviews at The Hague and in the former Yugoslavia, the most common theme to emerge regarding transitional justice was that the processes of reconciliation can last decades or longer, and still may never reach satisfying conclusions for the wartime generation. The anticipated benefits of “reconciliation” were tossed around rather easily during the early years of the ICTY, burdening the institution with enormous expectations that led to disappointment among its supporters and constituencies.

Skeptics of punitive approaches do not limit their criticisms to the ICTY or international tribunals generally. Indeed, many lament the emerging consensus over an interpretation of complementarity that requires ICC states to prosecute offenders at home, when truth commissions and other locally developed mechanisms might be more constructive while also satisfying the ICC’s desire to end impunity. A widely shared view is that truth commissions will almost always have a better chance at establishing the historical causes and full range of crimes and victim experiences of any given conflict or period of oppression; trials are necessarily narrow by focusing on individuals, however well the crimes are contextualized.

Serbia has yet to benefit from such a truth initiative. Kostunica, with questionable motivations, attempted to form a truth commission in 2001 whose composition was not considered credible and the process died before

implementation. An impressive effort composed of many organizations is underway throughout the entire former Yugoslavia to push for a regional truth commission, known as RECOM. Advocates of the process want RECOM to include the participation of victims, civil society organizations and all of the governments of nations that were party to the conflicts. Though doubts remain about the chances of securing formal support from the governments, Croatian President Ivo Josipovic has been public in his support of the initiative and suggested his counterparts also look into possible means of implementation.

It is often unclear what trials can accomplish on their own. At times, trial proponents in the field of transitional justice have scaled back expectations in recent years, in no small part due to the mixed performance of the ad hoc tribunals. They have the luxury of falling back on a legalistic premise – that the prosecution of many cases should not be viewed as an option but as required by international law, given that the Genocide Convention, the Torture Convention and “grave breaches” provision of the Geneva Conventions require states to prosecute or extradite offenders. (A more controversial argument is that customary international law now requires nations to prosecute gross human rights violations.) Still, there remains a belief that war crimes cases, when well conducted, can help promote the rule of law, protect and elevate the rights of victims, remove dangerous criminals from the streets and establish a credible legal record of atrocities. Such a legal record can at least contribute to an accurate understanding of past crimes that is shared among different ethnic groups.

That last development would surely be transformative in Serbia, as elsewhere in the region, but it has yet to materialize. Serbs may accept the results of individual domestic cases, but not the truth about the broader patterns of atrocities. In the 2011 OSCE public opinion poll, 69 percent of those interviewed believed that Serbs suffered the most during the wars. The respondents believed that Croats, Albanians and Bosniaks (in that order) committed the most crimes during the wars, with Serbs committing the fewest. In addition, 52 percent either did not know what happened in Srebrenica, thought the crimes were made up or that there were casualties in battle but no executions; only 15 percent believed the truth of what actually happened, that more than 7,000 Bosniaks were executed. From those measures, neither the ICTY nor the domestic War Crimes Chamber appear to have contributed to a shared, accurate understanding of the events of the wars.

At least part of the explanation for the ICTY’s failure in this area is presented in Jelena Subotic’s highly regarded book, “Hijacked Justice,” which offers a negative

assessment of transitional justice efforts in the former Yugoslavia. Her chief contention with Serbia is that the use of conditionality – the lure of economic aid and EU membership to secure cooperation with the ICTY, specifically, the arrests of suspects – turned war crimes accountability into a “business transition” that avoided any true national reckoning of the past. Subotic recounts how the post-Milosevic Kostunica government orchestrated a series of “voluntary surrenders” that had ICTY indictees transferred amidst praises for their patriotism and sacrifice – without mentioning the nature of the alleged crimes or the victims. The prospect of EU membership clearly contributed to the May 2008 election of Boris Tadic’s Democratic Party, which created a more favorable environment for war crimes accountability efforts. Subotic nevertheless contends that the EU and Serbia’s numbers-based approach to compliance limited the positive effects that a more genuine transitional justice strategy might have had on Serbian society and governmental institutions.

The prevailing wisdom also places blame on the ICTY itself for failing to invest enough resources into outreach activities to explain its mission and the composition of the cases, in effect allowing its message to become “hijacked” by nationalist politicians. In fact, the ICTY has arranged a number of impressive outreach activities throughout the region, but these efforts are seen as too little, too late. The domestic system has received praise for its public information efforts and proactive relationship with the media. In surveys of journalists in Serbia, Vukcevic and his deputy Vekaric have been named the “most communicative state officials.” However, there is limited media or public interest in the cases. In the OSCE polls, very few Serbs could identify any specific cases that have occurred in the domestic chamber. (Most observers agree that televising chamber proceedings would help.)

Nevertheless, Vukcevic believes that the domestic cases have been contributing to reconciliation.

“In my view, the greatest paradox lies in the fact that cases against individual perpetrators do more for the process of reconciliation than those against top-level indictees,” he explained. “Namely, it is generally easier for people to identify themselves with the victim when they hear that he or she was killed, raped or tortured by a concrete individual. Cases against the highest government officials are complicated and remote from ordinary people.”

In addition, the legal records of both the ICTY and Serbia’s War Crimes Chamber – the most tangible outcomes under their control – continue to grow. How that record is used may be largely out of the courts’ control, but its development is consistent with any number of worthwhile transitional justice goals. A more critical interpretation of the domestic cases might question whether their cumulative effect would unduly minimize state complicity. But even Kandic does not qualify her support for the existence of the system itself.



“Trials are very important, even the bad ones, because they establish the facts, and the facts are different than the judgments and the verdicts,” she said. “In 10 years, we might have more professional institutions, and we might have historians who will take all the facts established by the trials and start to discuss them. Trials deal with facts and the testimony of witnesses. This is better than a climate without trials.”

#### **TIME HAS A COMPLICATED RELATIONSHIP**

with war crimes trials. On the one hand, evidence disappears, witnesses die and memories fade, all of which can thwart or complicate cases. But the passage of time can also reduce the influence of obstructive forces, who themselves may die or at least retire – what Petrovic refers to as “lustration by biology.” This may make certain cases less politically challenging, and it clearly contributed to the weakening of fugitive support networks for ICTY indictees like Mladic.

At the same time, Mladic’s arrest and extradition was met with protests in Serbia with accusations of treason against the Tadic government. The protests were reportedly less intense than those in reaction to Karadzic’s arrest and transfer, but they nevertheless reveal how difficult it may be to prosecute any popular, high-ranking officials domestically. The OSCE polls also showed increases between 2009 and 2011 in the number of respondents who believe that Serbia should not cooperate with the ICTY, and in those who do not believe the domestic cases are contributing to reconciliation. The 2011 U.S. State Department human rights report for Serbia noted that judges and prosecutors for war crimes cases (as well as those for organized crime cases) continue to receive death threats, and that some personnel require full-time police protection.

At this early stage, it is unclear what effect, if any, the new Nikolic regime will have on the operations of the domestic war crimes system. Nikolic’s Serbian Progressive Party supports EU integration, and so it also supported Mladic’s arrest and extradition as necessary to fulfill Serbia’s obligations. Dissatisfaction with state corruption and the poor economy are the most common explanations for his victory. The news website Balkan Insight recently reported that ICTY chief prosecutor Brammertz had a positive meeting with Prime Minister Dacic about continued cooperation on war crimes cases.

Yet Jovanovic nevertheless worries that the passage of time could weaken the resolve to zealously pursue the most controversial cases, especially as the EU, largely satisfied with Serbia’s performance, scales back oversight and pressure. Bringing war crimes cases in Serbia, he said, does not come with a political payoff, unlike organized crimes cases, which are widely believed to threaten the state.

“It will very much depend on the personal ability, persistence, courage and determination of the investigators and prosecutors to produce some serious results, to take some personal risk and to make some unpopular moves,” he said.

If anything, the experience of Serbia and the former Yugoslavia generally suggests that a long-term commitment from both domestic and international institutions will likely be required develop a credible and constructive war crimes system in particularly resistant settings. That might be the most obvious lesson for justice advocates who interpret complementarity as mandating post-conflict trials in the image of the ICC. The International Bar Association’s Ellis, who is working on a book about complementarity, said that the lingering question in the ICC regime is who exactly will provide this training and assistance, given that the court itself has said it will not have the resources to do so.

“That is the gap in the paradigm of the Rome Statute,” Ellis said.

Serbia’s experience similarly suggests that fairly assessing societal outcomes will require a great deal of patience. It is probably unrealistic to have expected public opinion about the wars to have changed dramatically by now, given the powerful historical forces at play and the relative recency of Milosevic’s rule. Despite limited public engagement with the domestic cases, interviews with a range of stakeholders suggest that the cases have made it more common to talk about war crimes in Serbia. Stakeholders also suggest that a more realistic initial goal might be an increased acceptance among Serbs of some of the basic truths about the wars, rather than a shared understanding about the patterns of atrocities among different ethnic groups.

For example, Petrovic sees “a social consensus” developing in Serbia about the fact that many crimes were committed during the wars, and that something should be done in response.

“The term ‘war crimes’ used to be oxymoronic here,” Petrovic said. “People used to think, ‘If you’re waging war, nothing you do is a crime because it’s war.’ It sounds crazy. But the idea that something in war is not lawful is new here.”

Vukcevic similarly believes that the domestic cases, benefiting from greater legitimacy and a closer connection to the people, have contributed to a growing realization that criminal charges against Serbs result from “horrible crimes” and not from political motivations – the most frequent criticism of the ICTY.

“Afforded personal insight into the case proceedings, people will soon realize that the accused are not heroes but infamous criminals,” Vukcevic said. “Once aware of that, people will easily come to terms with the fact that crimes were not committed only by people of other nationalities, but also by their compatriots – in this particular case, people of Serbian nationality.” ■