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Post mortem

In December, the Yugoslavia tribunal closed its doors for good. But its legacy of bringing war criminals to justice is still having an impact

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2017 marked the end of an era for international justice. On 21 December, the International Criminal Tribunal for the former Yugoslavia closed its doors for good.

Established in 1993, and located in The Hague (Netherlands), the Yugoslavia tribunal – as it is generally known – brought to justice numerous political and military leaders who had committed war crimes during the 1990s conflict in the Balkans, as well as lesser-known individuals. One of the last people to be tried there, former Bosnian Serb commander Ratko Mladić, was sentenced to life imprisonment for his role in the Srebrenica massacre and other offences.

Though the tribunal has now closed, its legacy lives on. It has spurred countries in the Western Balkans to launch their own investigations into crimes committed during the conflict. These countries have also adopted much of its legal practice and case law into their own national legal systems.

Heroes and villains

The Yugoslavia tribunal had something of a 'marmite effect' in the 24 years of its existence, welcomed by some countries in the former Yugoslavia (such as Bosnia and Herzegovina) but loathed by others (Croatia and Serbia).

Ethnic Serbs claim people from their own ethnic group were more likely to be pursued, and have faced harsher punishments, than their neighbours. In Croatia, most people still consider their 'Homeland War' a legitimate war against the Serbian aggressor, and believe crimes committed in the conflict were a 'necessary evil'.

Equally, convicted war criminals are often viewed as heroes on their home turf. When the Bosnian Croat general Slobodan Praljak died after taking potassium cyanide in the court last November, supporters organised memorial services in Zagreb. Public buses to the ceremony were laid on free of charge. One catholic priest even compared Praljak to Jesus. The general had been charged with the ethnic cleansing of Muslim Bosniaks in Herzegovina in 1993.

Impact on national courts

Perhaps the greatest achievement of the tribunal was the way in which it spurred the creation of national tribunals in the countries created after Yugoslavia's break up.

Bosnia and Herzegovina established a special Prosecutor's Office and a Department for War Crimes within the state court. These have been dealing with complex war crimes cases since 2005. War crimes trials have also taken place in Serbia and Croatia, thanks in part to pressure from the EU, NATO and the US.

In Bosnia and Herzegovina, 185 people have so far been convicted at the national level. Their collective prison sentences stack up to 2449 years. The trials receive a lot of media coverage and popular support.

Far fewer trials have taken place in Serbia, and only 78 people have been sentenced. In 2003, Serbia established a war crimes chamber within the Belgrade district court, as well as creating a war crimes unit in the national prosecutor's office. The then prime minister, Zoran Dindić, supported the trials. It was he who extradited Slobodan Milošević to The Hague in 2001. Two years later, Dindić was murdered.

In 2016, chief war crimes prosecutor Snežana Stanojković announced she would now be prioritising crimes committed against Serbs, rather than by them.

There are, however, still reasons to hope in Serbia. Last year eight men went to court, accused of committing atrocities during the 1995 Srebrenica massacre. It is the most complex trial the country has dealt with to date.

Croatia has been reluctant to carry out investigations into war crimes – a condition linked to its EU membership bid. Now that it's successfully joined the block, the motivation to probe allegations further is no longer

there.

Getting techie

The Yugoslavia tribunal has left a lasting impact on the legal systems of Bosnia and Herzegovina, and Serbia. Both countries have issued new criminal codes based on the Yugoslav model. Judges in Bosnia and Herzegovina use case law from the Yugoslavia tribunal to fill gaps in their own law or to clarify ambiguities.

International offences, including war crimes, crimes against humanity and genocide, have likewise been incorporated into national criminal codes. They acknowledge that forms of sexual violence such as rape, genital mutilation or keeping sex slaves are used as a means of war and of genocide.

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Criminal courts in the countries of the former Yugoslavia are professionalising, for example by introducing 'status conferences', a concept taken straight from The Hague. These are places where all those involved in a trial – the prosecution, defence and judges – meet to structure the sometimes years-long legal proceedings, leading to a speedier trial. Technology is also helping reduce time spent in court, for example by letting witnesses appear via video link.

More importantly, all countries now have well-functioning witness protection programmes, making it easier to collect evidence.

The Yugoslavia tribunal's unexpected legacy

The Yugoslavia tribunal was set up in 1993 by the UN Security Council as an alternative to military intervention in the Yugoslav wars. At the time, few believed it would get off the ground, let alone indict 161 individuals for committing war crimes. The tribunal has not only helped bring justice to victims, but has also advanced international criminal law and law surrounding war crimes.

In 2002, the International Criminal Court was founded to try individuals accused of genocide, war crimes, crimes against humanity and the crime of aggression – not just in former Yugoslavia but around the

world. The Yugoslavia tribunal, and its sister tribunal in Rwanda, provided the blueprint. By bringing the most high-profile war criminals to justice, it showed the world that powerful people can no longer kill, rape and torture with impunity.



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