

# Sentencing by the ICTY

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# Few words about myself

- Maikel Brok
- The Netherlands - Tilburg University
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- Motivation to participate course
- Reason for picking topic

# Overview

- \* *'Is ICTY Sentencing Predictable?'*
- \* Statute of the ICTY
- \* Sentencing by the ICTY
- \* Conclusion

# Is ICTY Sentencing Predictable?

An Empirical Analysis of ICTY Sentencing Practice.'

- \* **Authors;** Barbora Holá, Alette Smeulers, Catrien Bijleveld.
- \* **Source;** Leiden journal of international law vol. 22 (2009) nr. 1 p.79-98.
- \* **Title;** 'Is ICTY Sentencing Predictable? An Empirical Analysis of ICTY Sentencing Practice.'
  
- \* Pioneers in the field of international justice
- \* Controversy
- \* Not only individual sentencing has been criticized
- \* Overall sentencing practice has been designated as inappropriate, flawed and inconsistent

# Statute of the ICTY (I)

adopted by the Security Council by its resolution 827 (1993)

- \* Only fair proceedings and sentencing could lead to the attaining of the Tribunal's fourfold objectives:
  - \* to hold accountable those responsible for the crimes and,
  - \* by doing this, to bring justice to victims,
  - \* to deter further crimes,
  - \* and bring peace to the Yugoslavian region.
- \* In order to be fair, sentences need to be consistent

# Statute of the ICTY (II)

adopted by the Security Council by its resolution 827 (1993)

- \* Concept of consistency of punishment.
  - \* the same underlying principles
  - \* based exclusively on legally relevant factors
  - \* similar factors should be given similar weight in all sentencing decisions, unless some special circumstances require otherwise
- \* The Statute only provides general guidelines that should be taken into account in sentencing

# Statute of the ICTY (III)

adopted by the Security Council by its resolution 827 (1993)

- \* Article 24 Penalties

- \* *Paragraph 1: 'limited to imprisonment'*

- \* *Paragraph 2: 'take into account such factors as the gravity of the offence and the individual circumstances of the convicted person'*

- \* Judges are vested with rather extensive discretionary powers when deciding on the appropriate sentence.

# Sentencing by ICTY (I)

- \* Legally relevant patterns in the ICTY sentencing jurisprudence have emerged
- \* Counter-arguments to all the criticism raised against the ICTY sentencing regime as to its disparateness and inconsistency
- \* On the basis of this study we can conclude that there are indeed some consistent and predictable patterns in ICTY sentencing practice



# Conclusion

- \* International sentencing guidelines
- \* Decision-making should be more structured