# Judicial Voting Behavior at the Appeals Chambers of the International Tribunals

by James Meernik, Kimi King, Melissa McKay, University of North Texas, and Rosa Aloisi, Trinity University

*Judges at the international criminal tribunals are revolutionizing the development of international law. Given the complexity of the relevant conflicts and crimes being prosecuted, the recent creation of the ad hoc tribunals and the embryonic state of international law, it is not surprising that many appeals are lodged against the initial decisions of these courts. The appeals chambers have confirmed and codified many of the trial chamber rulings, but they have also reversed decisions and progressively developed international law to expand its reach and to confront the complexity of these human rights atrocities. We seek to understand the judicial decision making of the appellate judges by analyzing their votes to uphold or reverse the decisions of the trial chambers. We propose a new depiction of judicial behavior that accounts for the propensity of judges to uphold the decisions of their trial chambers, or reverse these judgments by upholding the appeals of the prosecution or the defense.*

**Introduction**

Judges at the international criminal tribunals are revolutionizing the development of international law. The ad hoc tribunals—the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL)—have been at the forefront of what Kathryn Sikkink (2011) terms, the "justice cascade," the international movement to protect the rights of individuals and to hold leaders criminally accountable for their actions. When the promise of the Nuremburg and Tokyo tribunals to apply law to exact justice rather than vengeance in the aftermath of war foundered on the shoals of the Cold War, international humanitarian and human-rights law remained mostly dormant for the next forty years. But as the ethnic cleansing of the Balkan wars, the genocide of Rwanda and the horrible atrocities of Sierra Leone's civil war demonstrated horrific violence was neither a relic of World War II nor the Cold War, and international law was given new life. Indeed, since the establishment of the ICTY in 1993, these three tribunals have handed down verdicts against 188 individuals. The judgments and the sentences meted out to the guilty have been widely visible and garnered a great deal of scholarly and political attention. Now, as the tribunals prepare to conclude the last of their trials and shutter their doors, it is timely and important to develop a theoretical account of their decision making.

Each of the three ad hoc tribunals is organized into several trial chambers, which hear cases brought against those charged with violating international laws, and an appeals chamber, which hears appeals brought by both the defense and the prosecution. The trial chambers, whose Rules of Procedure and Evidence and courtroom management are an amalgam of common and civil law, issue verdicts and sentences and apply international law to novel situations, often for the very first time. Indeed, the Genocide Convention had never been applied internationally until the ICTR handed down its first judgment in 1998. Crimes against humanity have

existed in practice since the dawn of humanity, but there remains no international codification of their number, meaning, and elements. The tribunal judges have been at the forefront of the clarification, deepening, and expansion of international law.

Given the complexity of the relevant conflicts and crimes being prosecuted, the recent creation of the ad hoc tribunals, and the embryonic state of international law, it is not surprising that many appeals are lodged against the decisions of the trial chambers. The appeals chambers have confirmed and codified many of the trial chamber rulings, but they have also reversed decisions and progressively developed international law to expand its reach and to confront the complexity of these human rights atrocities. And as the courts of last resort for these international laws, their decisions are final. We seek to understand the judicial decision making of the appellate judges by analyzing their votes to uphold or reverse the decisions of the trial chambers. Research on international courts has examined the propensity of judges to issue decisions that reflect the interests of their national governments but has mostly concluded that while there is some evidence such strategic voting occurs on some issues, it is mostly not a widespread phenomenon (Voeten 2008). Analogous research on domestic courts, particularly in the U.S., has long debated the extent to which judicial ideology—measured on a conservative-liberal spectrum—characterizes judicial behavior, or whether the law itself in the form of policy or precedent guides judicial interpretation. We believe that both international and domestic courts research can inform our understanding of the appellate decisions of the ad hoc tribunals. Our goal, however, is to propose a new depiction of judicial behavior that accounts for votes according to judges' propensity to uphold the decisions of their trial chambers or reverse these judgments by upholding the appeals of the prosecution or the defense.

By analyzing the individual votes of judges in the appeals chambers of ad hoc tribunals for all of the claims advanced by both the defense and the prosecution, we seek to determine the degree to which the voting behavior of individual judges falls into recognizable patterns. Specifically, we propose that judges may be located along three dimensions based on their votes. We must emphasize that these proposed dimensions are hypothesized perspectives through which we may, hopefully, understand judicial decision making. Other decision-making dimensions undoubtedly exist as well. We also do not suggest that judges necessarily seek to vote in a particular fashion—we are not arguing that these categories necessarily reflect intentional behavior. Rather, our aim is to determine if these dimensions have any utility in accounting for judicial votes on appellate issues that may then help us better explain the outcomes of these votes.

The first of our proposed dimensions is the institutionalist perspective. To the extent that such a dimension conveys a judicial ideology, we argue that judges so classified will tend to favor protecting the interests of their tribunal and will generally be reluctant to grant the appeals advanced by either the defense or the prosecution. Appeals judges have, on several occasions, underlined the importance of creating a coherent and authoritative body of law by showing deference to trial-chamber decisions and intervening only when errors of law have caused a miscarriage of justice.[1] Their main interest remains that of preserving the legitimacy of the institutions by developing a consistent body of law and ensuring continuity in the vertical hierarchy of judicial decision making. The second dimension we propose is deference to the prosecution. We suggest that judges who may fall into this category will be more likely to grant the appeal claims of the Office of the Prosecutor in order to advance the mandate of the tribunals to provide justice to the victims and the international community and to promote the general deterrence of international crimes. The ad hoc tribunals represent the first unequivocal attempt since Nuremberg and Tokyo at holding accountable those that have com-

1. See Eliezer Niyitegeka v. Prosecutor, Case No. ICTR-96-14-A at paragraph 8 "the Appeals Chamber must give deference to the Trial Chamber that received the evidence at trial, and it will only interfere in those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous. Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice."

mitted the most heinous human-rights violations. Hence, there is substantial concern for ending impunity for those who violate international law and punishing violations of human rights. The third dimension we propose to describe in judicial voting behavior is concern for protecting the rights of the defendants. We suggest that the voting behavior of some judges may be categorized as receptive to the appeals of the defense. Such judges may place a high priority on the importance of protecting defendants' procedural rights, and protecting defendants against *nullum crimen sine lege* and *nullum crimen sine poena*. It is our general contention that such judicial decision-making dimensions can serve as useful categories for classifying voting behavior and that scholars can utilize this classification system to better understand and predict judicial decision making, the development of international law, and long-term viability of international justice.

Hereafter, our paper is organized as follows: We provide background into the appellate process and review the relevant literature, especially on the international courts to determine the degree to which such research can inform our understanding of international criminal courts. Following that, we develop in full our classification system of judicial philosophies. This is followed by our data. We collected information on every ground of appeal raised by both the prosecution and defense and recorded the votes of each of the judges, as well as their professional and home country characteristics. Then we explore the extent to which this system aptly characterizes judicial voting behavior. We also briefly evaluate the degree to which judicial background and home country characteristics influence the propensity of judges to fall into one of our categories. We caution that this is a preliminary and descriptive analysis. We are chiefly interested in introducing our data and examining general trends rather than hypothesis testing. We have saved that for a series of subsequent papers. We conclude with a discussion of this research agenda.

## Background

### *Overview of Appellate Process*

At the conclusion of the trials at the ad hoc tribunals the three-judge panels that hear these cases issue their judgments. These judgments review the evidence and assess its probative value. They analyze the various interpretations of the relevant international law in order to resolve legal issues regarding the liability of the defendant(s) and conclude with a disposition that formally announces the verdicts and the sentences for those found guilty. These verdicts are issued on each of the counts on which an individual has been charged in the final indictment. The judgments also indicate whether any of the three judges disagreed with the majority (the affirmative votes of two of three judges are required for a guilty verdict). Often, there are dissenting opinions as well as annexes containing more detailed descriptions of the evidence or other pertinent matters. Those adjudged guilty are given a sentence, which generally reflects the sum total of their guilty conduct rather than a series of penalties individualized for each particular guilty count.

All those found guilty appeal their verdicts, with the exception of those who have pled guilty (and even some of these individuals have appealed their sentences). None of those *found* guilty agree with the reasoning provided by the judges. As is typical of the ad hoc tribunals, according to the ICTY Statute, art. 25:

> The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds: (a) an error on a question of law invalidating the decision; or (b) an error of fact which has occasioned a miscarriage of justice.

In the ICTY Rules of Procedure and Evidence, the judges elaborate further on the appellate process:

> A party seeking to appeal a judgment shall, not more than thirty days from the date on which the judgment was pronounced, file a notice of appeal, setting forth the grounds. The Appellant should also identify the order, decision or ruling challenged with specific

> reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. The Appeals Chamber may, on good cause being shown by motion, authorise a variation of the grounds of appeal. (Rule 108)

Defendants appeal as many aspects of the trial chambers' factual and legal reasoning as possible. The defendants' appeals are packed with allegations of everything from judicial misconduct to faulty legal reasoning and from misapplication of command and control doctrine to failure to consider their mitigating circumstances properly when sentencing. The Office of the Prosecutor can appeal verdicts and sentences as well and has shown little reluctance to do so, especially when it perceives a defendant's sentence is too lenient or the defendant has been acquitted on a particular count. The OTP may also file appeals in cases where a defendant is entirely acquitted.

The Appeals Chambers of the ICTY and ICTR are comprised of the same judges. There are a total of seven judges who make up the Appeals Chamber with five coming from the ICTY and two from the ICTR. When appeals arise from the ICTY, five of these judges make up what is officially known as the Appeals Chamber of the ICTY. The same process occurs with regard to the ICTR. The Appeals Chambers issue their lengthy decisions regarding all of the issues raised on appeal by both parties. The judges typically review each and every appeal raised by the parties down to each discrete issue that may make up a broader category of appeals issues. For example, a defendant may issue an appeal against sentence, which then consists of a series of more specific appeals on issues like improper consideration of mitigating circumstances, allegations that elements of the crimes that must be proven to establish guilt were also used to establish aggravating circumstances, failure to consider the sentencing practices of the former Yugoslavia, etc. These appeals issues may then be further broken down into even more specific issues, such as failure to properly consider evidence of a defendant's cooperation with the Prosecution in mitigation of sentence or failure to properly consider the impact of incarceration on a defendant's health. Thus, there are many specific appeals that make up broad categories of appeals. All are issues on which the judges then reach decisions to either grant or reject the specific argument. The purpose of our analysis is to assess judicial-voting behavior at the level of the most specific issues on which the judges render a decision.

*Prior Research*

Research on international judicial decision making has advanced slowly despite the emerging role played by international courts in conflict management and resolution. In particular, studies of judges at the international tribunals have certainly not kept pace with research on the legal and political developments emanating from domestic criminal courts (e.g., Darcy and Powderly 2010; Drumbl 2007; Sluiter, Swart, and Zahar 2011, and see Terris, Romano, and Swigart 2007). Some studies have analyzed the propensity of judges to vote for more severe sentences (Meernik, Aloisi, and Ding 2012; Meernik, King, and Dancy 2005), while others have begun to develop more generalized models of judicial decision making (Jodoin 2010) that are informed by studies of the U.S. Supreme Court. While these studies do help establish a rationale for studying international judicial decision making and a foundation for theoretical development, we have many more questions about why judges might vote along any ideological or political grounds and even whether there are any identifiable voting patterns.

Sebastien Jodoin's work (2010) is among the first to posit a theoretical framework for understanding the decisions of the ad hoc tribunals. He suggests two alternative conceptions of judicial decision-making. The attitudinal model, borrowed from research on domestic courts and the U.S. Supreme Court in particular (see especially Segal and Spaeth 1993, 2002), suggests that judges have policy preferences they seek to advance through interpretation of the law. Because judges at the international tribunals, and in particular the appeals chambers we study, share key features in common with the U.S. Supreme Court (e.g., they are a court of last resort), Jodoin suggests the ICTY and ICTR judges may seek to advance policy objectives,

although these will differ from the types of ideological preferences one finds in the domestic courts. Indeed, Jodoin suggests that international judges have even greater latitude than their domestic counterparts in interpreting the law and advancing ideological or political interests. He writes:

> The traditional left-right categories along which judicial preferences are aligned at the domestic level may need to be modified when moving from the domestic to the international context. In the context of international criminal law for example, in a complete reversal of the situation present at the domestic level, the left has been the strongest proponent of international prosecution while the right has been more recalcitrant. Likewise, the categories of activism and conservatism through which judicial roles at the domestic level are often understood may also not translate to the international level. (Jodoin 2010: 7)

Instead, Jodoin contends that the judicial philosophy we are most likely to find in evidence in these types of international courts concerns judicial orientation on the relationship between state sovereignty and international law. Judges who apply international humanitarian, human rights, and international criminal law must determine the extent to which such law can be interpreted to increase the authority of these tribunals to weigh into matters that pertain directly to state sovereignty and security matters. Those who favor a more activist approach are more willing to expansively interpret customary international law or interpret treaties "in a teleological manner." Such judges would carve out an increasingly consequential role for tribunals and the law in the conduct of conflict. Statist, or more conservative, judges accord greater value and deference to state sovereignty and a more limited expansion of international law (Jodoin 2012: 8). There would be less legal justification for regulation of conflict behavior through international law and courts. Thus, this ideological dimension mirrors in many ways the judicial activism and restraint philosophies one finds dominating studies of U.S. courts.

Jodoin also suggests that judges may vote according to strategic rationales. Strategic decision making is quite flexible and assumes that judges have more far-reaching personal and institutional interests they seek to advance through their decisions. Such objectives might be generalizable to the international tribunals. While Jodoin looks at the propensity of judges to reach decisions that achieve either institutional or personal interests, our research is more concerned with judicial efforts to advance organizational interests. As Jodoin (2010: 13) argues, these international courts are:

> Most concerned with extending their authority, standing, independence and influence in the particular regime or region in which they operate. The notion of organizational self-interest advanced here is not focused on the mere survival of an organization, but instead on its non-material interests in terms of ideational commitments, reputation, and effectiveness.

We believe such interests will be especially relevant at the ad hoc tribunals, which, because of the new and revolutionary role in the interpretation of international law, have been especially concerned with their power and legacy (King and Meernik 2011). We will return to this theme in more detail when we discuss our proposed typology of judicial philosophy.

Several scholars have suggested that one strategic objective judges may seek to advance are the interests of their own nation. Yet the evidence that national interests affect judicial voting is not consistent. While Eric Voeten (2008) finds some evidence to suggest that some judges are more likely to support their home governments on political sensitive cases, in general he notes the evidence of nationalist voting on the European Court of Human Rights is modest. Eric Posner and Miguel de Figueirido (2005), however, find strong evidence to suggest that judges vote along state interest lines on cases before the International Court of Justice. They write, "Judges vote for their home states about 90 percent of the time. When their home states are not involved, judges vote for states that are similar to their home states—along the dimensions of wealth, culture, and political regime" (Posner & de Figueiredo 2005). But in their study of judicial voting behavior at the ICTY, James Meernik, Kimi King, and Geoffrey Dancy

do not find evidence of any kind of home country bias among judges from the NATO states that took part in military campaigns against parties in the wars of the former Yugoslavia. They looked to determine if such judges would punish Serbs, as the ethnic group targeted by their home governments, more severely, but they did not find evidence of any strong impact. More recently, Meernik (2011) argued that judicial decision making regarding sentencing behavior at the international tribunals is driven by concerns for retribution, deterrence, and peacebuilding. However, this line of research is focused more on a fairly specific outcome of the Trial Chamber judgment and is not the type of judicial philosophy in evidence in higher-level, appellate courts.

In sum, the nascent research on judicial decision making at the international tribunals has only begun to develop theoretical models borrowed from domestic courts and the International Court of Justice. Our purpose here is to begin building on this initial work to suggest three dimensions or philosophies of judicial decision making we are likely to observe in the outcomes of appellate judgments at the international criminal tribunals. After having explained the proposed philosophies, we analyze data on judges' votes on all of the issues raised in appeals. Our goal is to both determine if individual judges exhibit characteristics of these philosophies and to determine if these philosophies are more prevalent among certain types of judges based on home country characteristics.

**Three Judicial Decision Making Dimensions—A Modest Proposal**

Before proceeding, we must emphasize that the judicial decision-making dimensions or philosophies we propose are ideal types that exist along a dimension or continuum. The end points of these dimensions represent the most pure ideological variant of the dimensions. Hence, it is unlikely that in the real world there are individuals who occupy these positions. As such, these hypothesized philosophies are intended to convey the exemplars and most noteworthy features of these dimensions. It is extremely unlikely that any one judge's decision making strictly conforms to such depictions. Nor do we wish to suggest that these are necessarily conscious ideologies or preferences judges intentionally pursue. Rather, we seek to describe below the broad contours of three possible judicial decision-making dimensions grounded in previous research and subsequently examine the empirical record to ascertain their validity.

*Institutionalism*

We conceive of the institutionalist philosophy, to the extent that such a hypothesized voting dimension may be found to exist among judges of the appellate chambers, as a preference for protecting the interests and decisions of the tribunals and the facts and precedents established in the judgments of the trial chambers. Accordingly, such a philosophy would conform to the notion that the decisions of the trial chambers should rarely be disturbed, and only then when there are compelling factual and/or legal errors at issue. Voeten (2008: 422) finds such a philosophy in evidence at the European Court of Human Rights.

While we expect that judges would generally accord the opinions of the trial chambers substantial deference and would not engage in *de novo* review of their decisions, we suggest that some judges might hold even stronger preferences for not disturbing these prior decisions. Furthermore, in the idealized view of this decision-making type, we should find that intuitionalist judges would reject, more or less equally, the appeals of both the prosecution and defense. They would demonstrate a degree of deference toward the trial chambers' decisions and reasoning, and would tend to set a higher bar for determining when factual and legal errors are substantial enough to warrant overturning a decision of the trial chamber. Thus, in our idealized conception of judicial philosophies, judges may be placed somewhere along a dimension represented by two extremes: one by a substantial reluctance to overturn the decisions of the trial chamber because they believe strongly in the importance of institutional interests and the other by a more "activist" proclivity in which their threshold requirement for reversing lower court decisions is significantly lower.

Institutionalist judges may base such preferences on several interrelated rationales. First, judges who practice judicial restraint may be generally reluctant to overturn trial chamber rulings and judgments because of a respect for precedent. Somewhat similar in form to a conservative or judicial restraint philosophy, such judges may view their role as ensuring continuity in the interpretation of the law lest the law, especially in an already rapidly evolving domain, be perceived as lacking a firm anchor in reasoning and subject to the whims of shifting judicial preferences and various combinations of judges in the appeals chamber. Such change might also undermine the legitimacy of international law and the tribunals if the international community viewed the international justice project as unpredictable and subject to the preferences of an elite and removed corpus of judges. And again, given the recentness of their creation, we might expect some judges to be especially solicitous of the need to establish the legitimacy and authority of the tribunals in the adjudication of conflict. As Cassese writes (390), "Although none of the statutes prescribe a system of precedence, where Appeals decisions are formally binding on Trial Chambers, this hierarchy has been adhered to in practice."

Second, we argue that institutionalist judges are less likely to overturn the rulings of trial chambers, because they recognize these lower court judges have a substantially greater understanding of the complex political and military issues and facts that enter into the trial record. We would expect that judges who believe in such restraint would caution against substituting the judgment of the appeals chamber and grant greater deference to the trial chambers' familiarity with the evidentiary record. Third, we believe that judges who subscribe to a philosophy of judicial restraint may do so because they seek to bequeath to the international legal community a solid foundation upon which to gradually solidify the influence of international courts and the legitimacy of international law in contemporary international relations. Such judges may perceive that a clear and consistent jurisprudence that provides a foundational legacy for future cases may be the most important contribution the tribunals can make to international law.

*Deference to the Prosecution*

Our second, hypothesized type of judicial philosophy is deference to the prosecution. We suggest that some judges' voting behavior in appeals chamber is characterized by a preference for the substantive objectives of their respective tribunals as outlined in their founding documents (e.g., the United Nations Security Council resolutions authorizing the ICTY and ICTR and their founding statutes). In particular, these tribunals were intended to contribute to the establishment of peace, the deterrence of future violations of international law, and most importantly of all the provision of justice for the victims of international crimes. We hypothesize that some judges will be especially mindful of this concern for human rights and justice and so will typically be reluctant to accede to the appeals of defendants.

Such a philosophy we believe might stem from both an interest in the legacy of the tribunals in contributing positively to conflict amelioration and because of a concern for human rights. If the tribunals are perceived as having meted out sentences that do not adequately convey the severity of the crimes, or if their judges prove too willing to let arcane legal issues subvert the broader purposes of justice by acquitting individuals on "technical" grounds, the purpose of the judicial enterprise of international crime may be compromised. Hence, we believe some number of judges will be more likely to be especially solicitous of the appeals advanced by the Office of the Prosecutor and exhibit greater reluctance to question their evidence and arguments, lest such choices undermine the very purposes of the tribunals. These judges, we contend, will be interested in ensuring that the tribunals mete out just deserts to defendants to demonstrate that such conduct will not be tolerated and to signal to local communities that guilty leaders have been punished and that peace and reconciliation are possible. Therefore, we believe the voting behavior of judges may also be located along this continuum in which at one end judges will give significant deference to the Office of the Prosecutor and grant most of their appeals while others will not exhibit such deference and voting behavior.

Judges may also be more inclined to grant the appeals raised by the OTP because of a special interest in protecting and promoting human rights. The judicial record is heavily seasoned with arguments about the importance of protecting and advancing human rights. For example, one finds many appeals to and application of the Martens Clause[2] by the ad hoc tribunals to cases in which deliberate and violent attacks on civilians were perpetrated. The Martens clause represents one of the most important principles in which considerations about human rights and humanitarian law find a common ground of application. Since their establishment, the ICTY and ICTR have been instrumental in the implementation of basic rules of respect for humanity as mentioned in the Martens clause. In the Martic case at the ICTY, the Trial Chamber found that war should not be unlimited in its violence and that the basic respect of humanity "constitutes the foundation[s] of the entire body of international humanitarian law applicable to all armed conflict."[3] Thus, human rights and humanitarian concerns have been at the center of international judicial reasoning. This concern, we contend, is a principal impetus for the need to expand the law and employ its language to speak to the law's higher moral purposes.

*Concern for Defendants' Rights*

Our third proposed dimension of judicial decision making concerns the extent to which judges attach importance to the procedural and legal rights of defendants. Such judges, we might surmise, would be most concerned with ensuring that proper procedures and an equality of arms between the prosecution and defense exist so that the tribunals do not exact a victor's or victim's justice at the expense of the rights of the defendant (Ellis 1997; Johnson 1998; Meernik 2003). Indeed, there has been a traditional criticism dating back at least to the Nuremburg and Tokyo tribunals that international justice is victor's justice and that such tribunals have been "organized to convict." In truth, the wealth of resources and expertise available to the prosecution, with their long history of investigation, evidentiary base, and legal argumentation dwarfs the resources and infrastructure available to the defense. Therefore, we suggest that some judges may be especially mindful of the many challenges confronting the defense and so will take seriously their claims of improper procedures (e.g., withholding of evidence by the OTP), the inadequacy of their ability to mount a case (e.g., the massive volumes of information they are given), and the use of novel and shifting legal standards and definitions (e.g., the meaning of "protected groups" in the context of genocide, the use of the joint criminal enterprise approach to charge individuals, cumulative convictions). As well, such judges may also be concerned with the legacy of the tribunals in international legal circles as well as in the affected communities (e.g., Bosnia, Rwanda) if the tribunals are perceived as having rushed to judgment or having not been impartial in their treatment of defendants. Thus, we would expect such judges to more often grant the appeals brought forward by the defense.

**Data Analysis**

Our goal is to assess the individual voting behavior of judges at the ad hoc criminal tribunals. We examine the ICTY and the ICTR as they share a common appeals chamber. As we indicated above, both defendants and the Office of the Prosecutor may issue appeals on many and various grounds, and our goal is to identify each instance whereby judges rule on the grounds of appeal. Using such a framework means that our analysis of judicial decision making goes into considerably more depth than previous studies of the appeals process that have looked at

2. The Martens Clause was first introduced in the preamble to the 1899 Hague Convention as a minimum yardstick for the protection of civilians, even in the absence of any international treaty. It establishes that "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience."

3. Prosecutor v. Martic. Case No. IT-95-11-R61, Decision under Rule 61 of the ICTY Rules of Procedure and Evidence, (March 8, 1996) paragraph 13. See also Meron (2000) and Cassese (2000) discussing the evolution and relevance of the Martens clause.

ultimate outcomes, such as whether the defendant was acquitted or whether the defendant's sentence was reduced on appeal (Meernik 2007). In fact, using such a classification system in which we measure each specific ground of appeal results in a data set of 3,100 cases across seventy-five trials at the ICTY and ICTR, decided through February 2014.

Since we wish to measure the votes of each of the five judges who sit on an appeals case, this number of 3,100 issues must be further multiplied by five judges per case to create a data set of 15,500 total observations. In addition to the judges' votes, we also measured the issues raised by the appellants; which party was appealing a particular outcome; the overall vote of the Appeals Chamber on each issue; and the home country characteristics of the judges. Data on the characteristics of the judges' home countries are measured for the year of each of the appeals chamber decisions. Thus, a judge's vote on an appeals judgment handed down in 2011 is combined with the country information (democracy, judicial independence, human rights protections, etc., described later) for that particular year. We describe each of these below as we assess the judges voting behavior on the issues.

**Table 1. Appeals Chamber Judges Votes on All Appeals Issues Raised, 1995–2014**

| | ALL APPELLATE VOTES | | OTP APPEALS VOTES | | DEFENSE APPEALS VOTES | |
|---|---|---|---|---|---|---|
| **Judge** | **Percent** | **Number of Votes** | **Percent** | **Number of Votes** | **Percent** | **Number of Votes** |
| **Agius** | 0.239 | 471 | 0.574 | 54 | 0.196 | 417 |
| **Güney** | 0.166 | 2474 | 0.182 | 312 | 0.163 | 2100 |
| **Jorda** | 0.135 | 184 | 1 | 23 | 0.012 | 161 |
| **Liu** | 0.217 | 1013 | 0.308 | 107 | 0.206 | 905 |
| **Meron** | 0.165 | 1822 | 0.184 | 265 | 0.161 | 1496 |
| **Mumba** | 0.142 | 646 | 0.062 | 96 | 0.156 | 550 |
| **Nieto-Navia** | 0.183 | 174 | 0.705 | 17 | 0.127 | 157 |
| **Pocar** | 0.151 | 2331 | 0.145 | 282 | 0.151 | 1987 |
| **Ramaroson** | 0.325 | 160 | 0.25 | 4 | 0.329 | 155 |
| **Robinson** | 0.168 | 409 | 0.32 | 50 | 0.147 | 359 |
| **Schomburg** | 0.151 | 1214 | 0.186 | 241 | 0.142 | 973 |
| **Shahabuddeen** | 0.121 | 1747 | 0.325 | 209 | 0.09 | 1477 |
| **Vaz** | 0.135 | 1101 | 0.18 | 200 | 0.121 | 840 |
| **Vohrah** | 0.145 | 144 | 0.857 | 7 | 0.109 | 137 |
| **Weinberg de Roca** | 0.204 | 752 | 0 | 94 | 0.234 | 658 |
| **AVERAGE** | 0.168 | 15,138 | 0.228 | 2048 | 0.158 | 12,960 |

**Table 2. Appeals Chamber Judges Votes on Appeals Issues by Tribunal, 1995–2014**

| | ICTY | | ICTR | |
|---|---|---|---|---|
| | **Percent** | **Number** | **Percent** | **Number** |
| **All Appeals** | 0.157** | 8880 | 0.183** | 6438 |
| **Prosecution** | 0.261** | 1605 | 0.108** | 443 |
| **Defense** | 0.132** | 6970 | 0.188 | 5990 |

T-Test
*= $p < .05$
** = $p < .01$

**Overall Trends**

We begin by examining the voting behavior of the individual judges at the ICTY and ICTR Appeals Chambers. We look only at those judges who have voted on at least one hundred issues raised on appeal. We look first at all issues raised on appeal by both prosecution and defense to describe judges' individual likelihood of reversing a trial-chamber decision before analyzing their proclivity to reverse the trial chamber on issues raised by the Office of the Prosecutor or the defense. The average rate at which judges reverse trial chambers' decisions is 16.8% (15,138 votes, given missing information on some cases). Of the fourteen judges who voted, at least one hundred times, on such issues, Judge Arlette Ramaroson is most likely of all to vote to reverse (32.5% of 160 votes), followed by Judge Carmel Agius, who voted to reverse 23.9% of the time (471 votes), and Judge Liu Daqun, who voted to reverse 21.7% of the time (1013 votes). At the other end of the spectrum, Judge Mohamed Shahabuddeen voted to reverse only 12% of the time while Judges Claude Jorda and Andrésia Vaz each voted to reverse 13.5% of the time.

More interesting patterns emerge in the judges' voting behavior when we confine our analysis to the issues raised on appeal by the OTP. While the judges' overall probability of voting to support OTP appeals is 22.8% (2048 votes), the range is remarkable. We see Judge Jorda voting to reverse in favor of the prosecution on every single issue it raises (23 votes) on which he voted, while Judge Inés Weinberg de Roca never votes to reverse on any Office of the Prosecutor appeal (94 votes). Indeed, there are several other judges who grant the OTP appeals more than half the time including Judges Lal C. Vohrah (85% of 7 votes); Rafael Nieto-Navia (70% of 17 votes); and Carmel Agius (57% of 54 votes). At the other end of the spectrum, Judge Florence Mumba grants the OTP appeals in only 6% of the issues on which she has voted (96 votes).

We do not witness such divergence when we examine the judges' propensity to vote to grant the appeals claims raised by the defense. Overall, the likelihood any given judge will grant an appeal raised by defense is 15.8% (12,960 votes). The judge scoring highest in this regard, Judge Ramaroson, voted to support the defense on 32.9% of the issues (155 votes). The next closest are Judge Weinberg de Roca at 23.9% (658 votes) and Judge Liu at 20.6% (905 votes). Judge Jorda voted to grant defense appeals only 1.2% of the time (161 votes), while Judge Shahabuddeen granted defense requests only 9% of the time (1,477 votes).

Table 2 contains the breakdown of support for appeals claims at the two tribunals. We note that there are statistically significant differences across virtually all of the categories of support. The most visible difference concerns the propensity for judges to grant the appeals of the prosecution. On cases coming up from ICTR, judges typically grant OTP appeals approximately 10.8% of the time, while on ICTY cases OTP appeals are granted 26.1% of the time. Perhaps some of this may be due to the fact that ICTR defendants are typically given a life sentence, which may not precipitate further OTP appeals to obtain a more severe sentence. At ICTY, on the other hand, not only have more defendants been acquitted, but the sentences are generally lighter, which may cause the OTP to file more appeals when it believes a more severe sanction is warranted. This observation, however, concerns only the propensity of the OTP to file appeals. It does not speak directly to the reasons why the OTP fares significantly better with the ICTY Appeals Chamber. We see also in Table 2 that ICTR defendants are successful on appeals 18.8% of the time (5990 cases), while ICTY defendants are successful 13.2% of the time (8880 cases).

*Discussion*

Our proposed set of judicial decision-making dimensions, while not tested explicitly as a group of hypotheses, shows promise as a methodology by which to characterize judicial behavior. Most of the judges hew fairly closely with the average levels of support given to the decisions of the trial chambers, which is 16.8%. These findings are represented graphically

**Figure 1. Percentage Support Given to All Appeals with Standard Deviation Ranges**

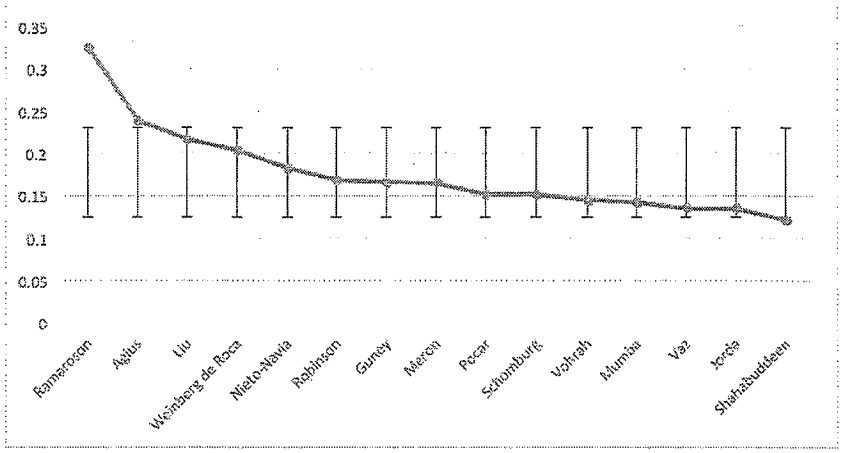



**Figure 2. Percentage Support Given to OTP Appeals with Standard Deviation Ranges**

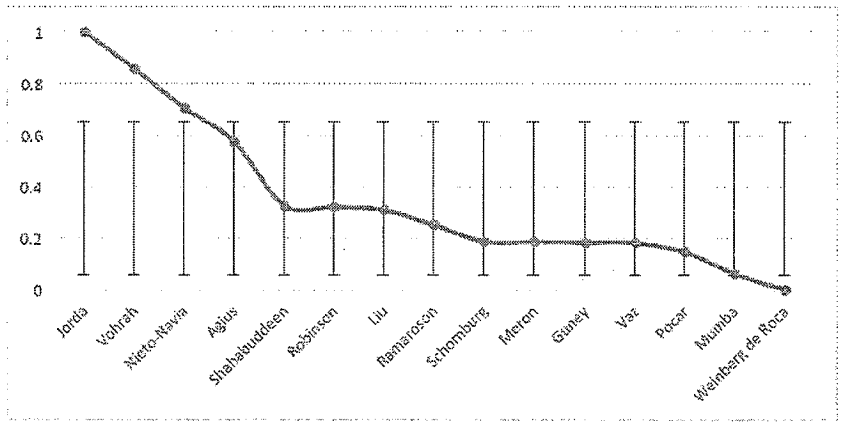
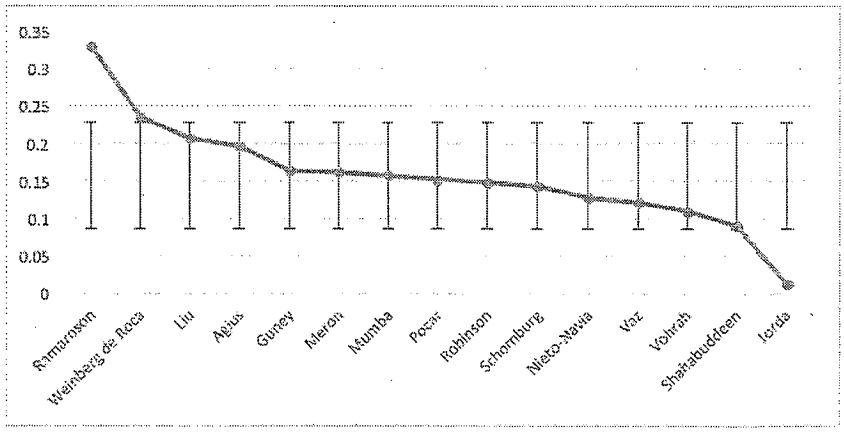



**Figure 3. Percentage Support Given to Defense Appeals with Standard Deviation Ranges**



in Figure 1. Judges Theodore Meron and Mehmet Güney hew most closely to the average, and only one judge, Ramaroson, falls outside the standard deviation range. There are some judges at either end of the spectrum who appear more inclined to grant appeals than their colleagues, including Ramaroson, Agius, and Liu, and some who are more apt to reject appeals, such as Vaz, Jorda, and Shahabuddeen.

When we examine these trends according to whether the OTP or defense lodged the appeal, we see more visually who the outliers may be. There are noticeably more judges who are outliers once we make these distinctions, especially in Figure 2, which shows the proclivity of judges to support OTP appeals. Judges Jorda, Vohrah, and Nieto-Navia all fall outside the standard deviation range by according OTP appeals substantially more deference than their colleagues. At the other end of the spectrum, Judge Weinberg De Roca falls outside the standard deviation range in turning down OTP appeals, although we must caution that the number of votes on which these are based is rather small in some cases.

We see in Figure 3 that on defense appeals it is once again Judge Jorda who is at the far end of the spectrum in granting requests. Jorda has granted only 1 percent of defense appeals. Judge Shahabuddeen is very close to Jorda in his voting preferences, although he does not fall outside of the standard deviation range. At the other end of the continuum we find Judge Ramaroson falling outside of the standard deviation range by supporting defense appeals much more than her colleagues.

It would appear that there are several judges whose voting behavior is significantly different from their colleagues. While their numbers are not substantial, these findings do lend support to the notion that judges may be categorized only in the three dimensions outlined in this paper. The overall tendency is for judges to fall close to the averages, especially on defense appeals, which comprise the vast majority of all such requests. Most judges would appear to be institutionalists who grant few appeals and uphold the decisions of their colleagues in the trial chambers with a much smaller number who might be tentatively grouped together as those who defer to the OTP or are more likely to protect the rights of the defendants. We next explore what factors might be associated with these types of voting behavior.

*Judges' Home Country Characteristics and Voting Behavior*

We examine judicial voting behavior according to the type of judicial system and the level of judicial independence in judges' home countries. We categorized judges as hailing from either a common-law system, a civil-law system, or a mixed system that was not wholly one or the other. Judges also come from other types of systems, but because we do not have a sufficient number of judges in many of these system types, we cannot distinguish the influence of the legal system from the individual. The judicial system in which the judge was trained, practiced, and socialized should exert an important influence on the judge's understanding of his role and responsibility in the courtroom and in the decision-making process (Balas et al. 2008; la Porta et al.1998, 2004). Civil law systems place a premium on the discovery of the truth in which the role of the judge is to acquire as complete a picture as possible of the criminal allegations to determine the veracity of the charges against the individual. Common-law systems entrust the proof of charges to the lawyers arguing the case and assume that through an adversarial competition in the courtroom the relevant facts will be made known to the judge and jury. But while common-law judges, who act more as neutral umpires in this process, are not nearly as active in the courtroom as their civil law peers, they do have a long tradition of developing legal doctrine from the bench to fill in gaps and ambiguities in the law while also evaluating the constitutionality of statutory law. Perhaps this tradition of activism will make them more inclined generally to reverse trial chamber decisions.

In fact, we do not see evidence of significant variation among the legal systems represented here that would permit us to draw firm conclusions regarding whether those arriving from one system rather than another are more likely to reverse an appeal. Common-law judges

**Table 3. Appeals Chamber Judges Votes on Appeals Issues by Legal System, 1995–2014**

| | Common Law | | Civil Law | | Mixed | |
|---|---|---|---|---|---|---|
| | Percent | Number | Percent | Number | Percent | Number |
| All Appeals | 0.173 | 2330 | 0.162 | 7219 | 0.165 | 5397 |
| Prosecution | 0.233 | 330 | 0.186** | 986 | 0.279** | 697 |
| Defense | 0.163 | 1939 | 0.158 | 6109 | 0.147 | 4576 |

T-Test
*= p < .05
** = p < .01

**Table 4. Appeals Chamber Judges Votes on Appeals Issues by Judicial Independence, 1995–2014**

| | No Judicial Independence | | Some Judicial Independence | | Judicial Independence | |
|---|---|---|---|---|---|---|
| | Percent | Number | Percent | Number | Percent | Number |
| All | 0.17 | 2252 | 0.152 | 6121 | 0.16 | 5134 |
| Prosecution | 0.291 | 285 | 0.198 | 830 | 0.223 | 827 |
| Defense | 0.15 | 1845 | 0.144 | 5230 | 0.147 | 4185 |

T-Test
*= p < .05
** = p < .01

are only slightly more likely to reverse on appeal—17.3% (2330 votes)—versus civil-law judges who reverse 16.2% of the time (7219 votes) and judges from "mixed legal systems, who reverse approximately 16.5% (5397 votes). When the prosecution raises an issue on appeal, the judges from the mixed systems are most likely to grant their claims (27.9% of 697 votes), while judges from civil-law systems are least likely (18.6% on 986 votes). Judges from common-law states side with the prosecution 23.3% of the time (330 votes). There is little variation apparent in the willingness of judges across all three systems to grant the appeals of the defendants.

Perhaps a more crucial indicator of a judge's willingness to overrule the judgment of a trial chamber is the level of judicial independence enjoyed in his or her home state. Judges who are accustomed to a high degree of autonomy and freedom from political interference may be more comfortable in asserting their independent judgment in decisions. In order to evaluate the propensity of the appellate judges to overturn the decisions of the trial chambers, we use the measure of judicial independence developed by the CIRI Human Rights project, which also categorizes nations according to their level of human rights protections.[4] Judicial independence is measured by identifying whether governments exhibit no judicial independence, partial judicial independence, or judicial independence.[5]

The general differences among the judges in voting behavior on appellant claims based on the level of judicial independence in their home states is not substantively meaningful. Those from the nations with the greatest level of judicial independence support appellant

4. As found at www.humanrightsdata.com

5. According to the CIRI web site at, independent judiciaries possess the following characteristics:
1. It has the right to rule on the constitutionality of legislative acts and executive decrees.
2. Judges at the highest level of courts have a minimum of a seven-year tenure.
3. The President or Minister of Justice cannot directly appoint or remove judges.
4. The removal of judges is restricted (e.g., allowed for criminal misconduct).
5. Actions of the executive and legislative branch can be challenged in the courts.
6. All court hearings are public.
7. Judgeships are held by professionals.
Those nations with less than complete judicial independence fall somewhere short of these characteristics in whole or in part.

claims in general 16% of the time (5134 votes), while those in the partially independent states vote thusly 15.2% of the time (6121 votes), and those in the least independent category grant appeals approximately 17% of the time (2252 votes). Judges from judicially independent states support the prosecution and defense 22.3% and 14.7% of the time, respectively. Those hailing from partially judicially independent states support the prosecution and defense 19.8% and 14.4% of the time, respectively, while those from the least independent states support these actors 29.1% (OTP) and 15% (defense) of the time. But though the differences across all appeals are not large, it is interesting to note that judges from the least independent states are most likely to grant the prosecution's appeals. Whether this is evidence of judicial deference to the prosecution (analogously, the executive branch in the home state) or the result of some other attribute judges from these nations share (perhaps they come from states with fewer human-rights protections), we cannot yet say.

**Table 5. Appeals Chamber Judges' Votes on Appeals Issues by Political System 1995–2014**

| | Democracy | | Non Democracy | |
|---|---|---|---|---|
| | Percent | Number | Percent | Number |
| ll Appeals | 0.166** | 13,443 | 0.184 | 1875 |
| Prosecution | 0.224 | 1826 | 0.256 | 222 |
| Defense | 0.156** | 11,307 | 0.174 | 1653 |

T-Test
*= p < .05
** = p < .01

**Table 6. Appeals Chamber Judges' Votes on Appeals Issues by Human Rights Protections 1995–2014**

| | Bottom 3rd Human Rights Score | | Middle 3rd Human Rights Score | | Top 3rd Human Rights Score | |
|---|---|---|---|---|---|---|
| | Percent | Number | Percent | Number | Percent | Number |
| All Appeals | 0.172 | 1845 | 0.152 | 7214 | 0.162 | 4448 |
| Prosecution | 0.385 | 161 | 0.2 | 1140 | 0.221 | 641 |
| Defense | 0.15 | 1623 | 0.141 | 5830 | 0.152 | 3807 |

T-Test
*= p < .05
** = p < .01

Next examined is whether the type of political system judges work within exercises any effect on their voting behavior. Do judges from democratic states grant more appeals as they are familiar with the open political systems in which executives and legislatures are freely chosen and can be challenged? Are those judges coming from undemocratic states more accustomed to working in a politically and legally circumscribed environment and thus less willing to grant defense appeals? We do not find any substantial differences between judges from democratic versus judges from non-democratic states. The democratic group supports appeal requests 16.6% of the time in all cases (13,443 votes), 22.4% of the time when the OTP raises an issue (1826 votes), and 15.6% of the time when the defense appeals (11,307). Judges from non-democratic states grant appeals 18.4% of the time (1875 votes); they support the OTP 25.6% of the time (222 votes) and grant the defense appeals 17.4% of the time (1653 votes).

The subsequent focus examines judicial voting behavior according to the level of human-rights protection found in a society. We find some of the same trends in evidence we saw earlier regarding the proclivity of judges from states with less judicial independence to grant

appeals. First, we use the CIRI data on human rights involving the right to personal integrity. The CIRI scale ranges from 0 to 8, where "0" indicates no government respect for human rights and "8" indicates full government respect for such rights.[6] There do not appear to be any meaningful differences when we examine all appeal claims. Nor do we see much variation in voting on issues raised by the defense. However, we do see noticeable differences in voting behavior on appeals brought by the prosecution. Those judges from states that fall in the top one-third of states with the highest level of human-rights protections and those judges who are in the middle tier of states support the OTP 22% and 20% of the time, respectively. However, judges from the states that fall into the bottom tier with the most questionable human-rights records grant the OTP appeals 38.5% of the time. Judges from more authoritarian governments, as measured by their level of judicial independence and human rights records, accord greater deference to the prosecution claims. We suggest that such trends may indicate that these judges are more accustomed to a strong executive branch to which they grant significant political and judicial deference.

Next, we examine the issues involved in the appeals. In the judgments of the appellate chambers the matters raised in the defense and OTP appeals can be identified according to their place in the outlines the tribunals use to organize their judgments. The appeals chambers typically use a standard outline format to classify the issues raised on appeals. At the level of the Roman numeral in the outlines, one finds the issues organized at their most general level, which is typically not useful for determining the issues involved. For example, the first Roman numeral may be listed as "I. Defendant's Appeals" or "II. The Crimes." At the next outline level (capital letters) we almost always find the issues at stake expressly stated, such as "I.A. Alleged Errors of Fact" or "II. B. Command and Control," albeit at still a fairly general level. Subsequent levels of the outline (e.g., Arabic numerals and lowercase letters) break issues down even further to describe, for example, how the defendant or the OTP is appealing alleged errors of fact involving a particular military attack, or the defendant's role in aiding and abetting. The outlines sometimes break the appeals down into fairly specific claims either party may be appealing. We consider each of these specific grounds as separate issues on appeal, as long as there is an identifiable record of judges voting on these appeals.

For purposes of coding the issues and analyzing the data, however, we rely on the issue codes contained in the second and third levels of the outline. As explained above, at the first, Roman numeral level of the outline, the descriptions are typically quite general and do not allow us to identify what the issues are. At the most specific levels of the outline, the issues are broken down into fairly fine distinctions (e.g., alleging a factual error involving a very specific incident and a defendant's claim that at this particular town on this particular day, he

**Table 7. Appeals Chamber Judges' Votes on Appeals Issues by Issues, 1995–2014**

| | All Appeals Votes | | OTP Appeals | | Defense Appeals | |
|---|---|---|---|---|---|---|
| **Issue** | **Percent** | **Number** | **Percent** | **Number** | **Percent** | **Number** |
| **Procedural** | 0.157 | 5895 | 0.265 | 400 | 0.154 | 5340 |
| **Command & Control** | 0.182 | 2315 | 0.231 | 750 | 0.085 | 1545 |
| **Joint Criminal Enterprise** | 0.203 | 1038 | 0.334 | 203 | 0.155 | 760 |
| **War Crimes** | 0.103 | 1465 | 0.545 | 55 | 0.085 | 1410 |
| **Crimes Against Humanity** | 0.236 | 1310 | 0.495 | 115 | 0.193 | 1150 |
| **Genocide** | 0.208 | 225 | 0.184 | 65 | 0.218 | 160 |
| **Sentencing** | 0.171 | 2825 | 0.264 | 435 | 0.155 | 2375 |

6. See http://www.humanrightsdata.org/documentation/ciri_variables_short_descriptions.pdf for further details on the component measures that make up the 0–8 scale.

did not engage in the type of conduct for which he has been found guilty because he wishes to question the veracity of a particular witness), which are not always as useful to delineate the more fundamental issues at stake. Additionally, the judges often do not rule on such specific claims but do rule on a broader category to which these specific grounds of appeal attach. While we code each and every level of the issues in the outlines, we utilize the issue coding at the second and third levels to categorize the issues we use in this analysis. In all, we find approximately 150 issues raised on appeal, which we have categorized for this analysis into several larger groups. The issues we examine below are 1) procedural issues, 2) command and control, 3) joint criminal enterprise, 4) war crimes, 5) crimes against humanity, 6) genocide, and 7) sentencing.

Across these broad issue categories, we find significant differences in the judges' votes to grant appeals. Appeals are least likely to be granted in general on issues pertaining to war crimes (10.3%) and most likely to be granted on appeals involving crimes against humanity (23.6%). Interestingly, in terms of their legal "age," war crimes have the lengthiest and most extensive history of adjudication, with international law dating back to the Hague Conventions of 1899 and 1907 and the more recent and well-known Geneva Conventions of the post–World War II period. Thus, such law might be considered relatively more stable and developed in comparison to jurisprudence on crimes against humanity, which has never been codified, with the exception of the tribunals' statutes.

The prosecution, however, is apt to find significant success on both such issues. The OTP wins on war crimes appeals 54.5% of the time and succeeds on crimes against humanity issues 49.5% of the time. They are least likely to be met with success on genocide related appeals (18.4%) and command and control (23.1%) issues. For the defense, their best chances of success are on issues involving genocide and crimes against humanity (21.8% and 19.3%, respectively). It would seem the defense is most likely to win an argument in those areas of international law that have not been adjudicated as often at the international level. Indeed, ICTR handed down the first-ever conviction for genocide at an international court in 1998. Defendants are least likely to be granted an appeal when the issue pertains to either command and control or war crimes (8.5%). The more settled the issue, the more likely the prosecution wins, while the defense is generally much less likely to win on appeal in general. When the defense does win, it tends to be on laws that have been less extensively adjudicated.

**Conclusion**

Our goal with these data is to begin an in-depth research agenda regarding judicial decision making at the international tribunals and the development of international law. The first step in this agenda is to more fully explore judicial ideology and whether differences in the voting behavior of judges can be explained with reference to the characteristics of their home states and the nature of the issues under dispute. In so doing, our first goal in this first part of the research agenda is to determine the extent to which such judicial decision-making dimensions exist.

We believe the findings presented here provide significant evidence to suggest that judges' voting patterns can be described as 1) being more likely to defer to the trial chamber (what we termed an "institutionalist" dimension), 2) being more likely to uphold the appeals of the OTP (what we termed as "deference to the prosecution"), and 3) being more likely to uphold the appeals of the defense (what we termed "concern for defendants' rights"). While most judges tended to cluster around the average in each category, there were outliers in either direction in all three dimensions. Our next steps in this research agenda are to continue development of the theoretical expectations regarding these three dimensions and to determine through multilevel equation modeling how the judges array along these dimensions across the various issue categories. This will help us better understand the nature of the differences in opinion on legal matters among the judges and evaluate the extent to which support for the trial chambers, prosecution, or defense may depend on the issue-centered ideological disputes.

We also believe there is merit to further exploring how judges' backgrounds may influence their voting behavior. This has proven to be a fruitful area of research in general involving international courts (e.g., Voeten 2007). We believe our finding that judges from more repressive states and those from nations where there is less judicial independence and democracy indicate that governing practices may shape judicial ideology. Future research should further investigate whether professional background, election mechanisms, and other such extra-judicial factors influence decision making.

Our next step is to develop a theoretically informed model of judicial decision making. The results presented here offer some tantalizing clues regarding the potential determinants of judicial voting, such as the influence of the political system and the freedoms in the home state. These potentially relevant factors must be justified with reference to literature existing in other areas of international and domestic judicial decision making. Additionally, we must also consider the impact of other factors, such as judges' professional experience, appeal court dynamics, coalition building, and the role of the presiding judge. As well, we must determine what are the truly important issues raised in appeals that have the potential to significantly alter the ultimate outcomes of verdicts and punishments. Fascinating and substantial work lies ahead as the ad hoc tribunals begin to finish their business and attention shifts more to the International Criminal Court.

## REFERENCES

Darcy, Shane and Joseph Powderly (eds.). 2010. *Judicial Creativity at the International Criminal Tribunals*. Oxford: Oxford University Press.

Drumbl, Mark A. 2007. *Atrocity, Punishment and International Law*. Cambridge, UK: Cambridge University Press.

Ellis, Mark. 1997. "Achieving Justice Before the International War Crimes Tribunal: Challenges for the Defense Counsel." *Duke Journal of Comparative and International Law* 7(Spring): 519–37.

Jodoin, Sebastien. 2010. "Understanding the Behavior of International Courts." *Journal of International Law and International Relations* 6:1–34.

Johnson, Scott T. 1998. "On the Road to Disaster: The Rights of the Accused and the International Criminal Tribunal for the Former Yugoslavia." *International Legal Perspectives* 10(Spring):111–92.

King, Kimi and James Meernik 2011. "A Distant Court: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia" in *The Legacy of the International Criminal Tribunal for the Former Yugoslavia*, edited by Göran Sluiter, Bert Swart, and Alexander Zahar. Oxford: Oxford University Press.

Meernik, James. 2011. "Sentencing Rationales and Judicial Decision-Making at the International Criminal Tribunals." *Social Science Quarterly* 92(3):588–08.

_____. 2007. "The Evolving Application of International Law: Insights from the Appeals Chamber of the Ad Hoc International Tribunals." *International Criminal Law Review* 7:117–32.

Meernik, James D. 2003. "Equality of Arms? The Individual vs. the International Community in War Crimes Tribunals." Judicature 86(6): 312–19.

Meernik, James, Rosa Aloisi, and Jennifer Ding. 2012. "The Influence of Home Country Characteristics on Judicial Decision Making at the ICTY." *Judicature*. 95(4) 171–76.

Meernik, James, Kimi King and Geoffrey Dancy. 2005. "Judicial Decision Making and International Tribunals: Assessing the Impact of Individual, National and International Factors." *Social Science Quarterly* 86:683–703.

Posner, Eric and Miguel de Figueiredo. (2005) "Is the International Court of Justice Biased?" *Journal of Legal Studies*: 34.

Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited.* Cambridge: Cambridge University Press.

Segal, Jeffrey A. and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model.* Cambridge: Cambridge University Press.

Sikkink, Kathryn. 2011. *The Justice Cascade.* New York: W.W. Norton & Company.

Sluiter, Göran, Bert Swart, and Alexander Zahar (eds.). 2011. *The Legacy of the International Criminal Tribunal for the Former Yugoslavia.* Oxford: Oxford University Press.

Terris, Daniel, Cesare Romano and Leigh Swigart. 2007. *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases.* Brandeis University Press.

Voeten, Eric. 2008. "The Impartiality of International Judges: Evidence from the European Court of Human Rights." *American Political Science Review* 102(4): 417–33.