

INTERNATIONAL CRIMINAL LAW & PRACTICE



TRAINING MATERIALS FOR:

BOSNIA & HERZEGOVINA

CROATIA

SERBIA

Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions

Part of the War Crimes Justice Project funded by the European Union

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INTERNATIONAL CRIMINAL LAW & PRACTICE TRAINING MATERIALS

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**INTERNATIONAL CRIMINAL LAW
& PRACTICE**

TRAINING MATERIALS

INTRODUCTION

*Supporting the Transfer of Knowledge and Materials
of War Crimes Cases from the ICTY to National
Jurisdictions, funded by the European Union*

Developed by International Criminal Law Services

- 1. INTRODUCTION**
- 2. WHAT IS ICL?**
- 3. GENERAL PRINCIPLES**
- 4. INTERNATIONAL COURTS**
- 5. DOMESTIC APPLICATION**
- 6. GENOCIDE**
- 7. CRIMES AGAINST HUMANITY**
- 8. WAR CRIMES**
- 9. MODES OF LIABILITY**
- 10. SUPERIOR RESPONSIBILITY**
- 11. DEFENCES**
- 12. PROCEDURE & EVIDENCE**
- 13. SENTENCING**
- 14. VICTIMS & WITNESSES**
- 15. MLA & COOPERATION**



Project funded by the EU



Implemented by:



MODULE 1: INTRODUCTION

Part of the OSCE-ODIHR/ICTY/UNICRI Project “Supporting the Transfer of Knowledge and Materials of War Crimes Cases from the ICTY to National Jurisdictions”

Developed by International Criminal Law Services

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1. INTRODUCTION

For the past 17 years, the International Criminal Tribunal for the former Yugoslavia (ICTY) has been the primary body responsible for trying serious violations of international humanitarian law committed during the armed conflicts in the region of the former Yugoslavia since 1991. However, it is no longer opening new cases and it is expected to finish its current proceedings by the end of 2014.

Since its establishment, the ICTY has played a pioneering role in the development of international criminal justice. The tribunal possesses unique institutional knowledge and specialized skills, and has generated a massive amount of evidence and legal documentation concerning the atrocities committed in the region.

The ICTY was never intended to possess the capacity to prosecute all of those persons alleged to have committed atrocities during the conflicts. Since 2003, the tribunal has been implementing its completion strategy. Part of that strategy involves the transfer of low- and mid-level perpetrators indicted by the ICTY, as well as the transfer of case files back to the countries in the region and a commitment to assist institutions in national jurisdictions in the conduct of those proceedings.

Legal institutions in these jurisdictions have not only been trying the cases transferred by the ICTY but have also been conducting their own investigations and prosecutions of many alleged perpetrators not indicted by the ICTY. Consequently, as the ICTY completes its work, these courts are anticipated to intensify theirs.

This publication was funded by the four-million euro War Crimes Justice project funded by the European Union and carried out by OSCE Office for Democratic Institutions and Human Rights (ODIHR) in partnership with the ICTY and the United Nations Interregional Crime and Justice Research Institute (UNICRI), as well as the OSCE field operations in Belgrade, Podgorica, Pristina, Sarajevo, Skopje and Zagreb. The Project aims at enhancing the capacity of judiciaries in the region to handle complex war crimes cases.

Under the War Crimes Justice Project on the legacy of the UN International Criminal Tribunal for the former Yugoslavia, OSCE ODIHR, the ICTY and the UNICRI have partnered up to ensure the effective transfer of institutional knowledge and materials from the ICTY to the national judicial systems in the countries where the crimes took place. The purpose of the project is to assist national authorities in strengthening capacity in their jurisdictions to handle war crimes trials in an effective and fair manner that is consistent with the highest international standards of due process. The project also aims to ensure that national judiciaries have access to ICTY materials in a form that will enable them to conduct their proceedings long after the tribunal has completed its work. In the context of the War Crimes Justice Project, International Criminal Law Services ("ICLS") was asked to develop this body of training materials for selected countries of the former Yugoslavia. This assignment arose out of the need for "a modern, tailored, easily-updateable,

ICHL-specific curricula” to train practitioners, which was identified as a high priority during the research phase conducted prior to the initiation of the War Crimes Justice Project.¹

The aim of the ICLS assignment was to create a comprehensive, practice-oriented training curriculum (“materials”) on international criminal and humanitarian law (“ICL”) and practice (“ICLP”), particularly relating to genocide, crimes against humanity and war crimes, tailored to the legal frameworks of Bosnia and Herzegovina (“BiH”), Croatia, and Serbia (collectively, “the three states”). The materials are designed to be used primarily by national legal training centres and other legal training providers, including international trainers, in capacity-building activities for legal practitioners in the three states.

The materials aim to help strengthen the capacity of legal training centres and other legal training providers to effectively organise and deliver comprehensive, practice-oriented and lasting-impact ICLP training programmes for legal practitioners in the three states. It is also hoped that the materials will strengthen the capacity of legal practitioners in the three states to investigate, prosecute, try and otherwise manage proceedings relating to violations of ICL in support of human rights, rule of law, democratisation and other long-term development objectives.

ICLS is grateful for the valuable assistance and input of a wide range of experts consulted for this project. The primary team of drafters included: Rodney Dixon, Jennifer Easterday and Jesenka Residovic. Their work was overseen by ICLS’ Executive Director, Cecilia Nilsson Kleffner. The following experts contributed with excellent drafting and research: Luz Gonzalez, Sulejman Imsirpasic, Natalija Labavić, Davor Lazić, Yuliya Mik, Igor Olujić, Rabiah Rahman, Pria Reddy, Ramin Rezaei, Amielle del Rosario and Shalini Swaroop.

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¹ See ICTY-ODIHR-UNICRI Final Report “Supporting the transition process”, page 57.

1.1. STRUCTURE

This introductory section includes a list of abbreviations, a table of treaties, a table of cases, a case study designed to be used as a training aid for all of the Modules, and shorter “hypothetical” situations that can be used as training aids for each Module. Thereafter, the materials are divided into 14 substantive Modules:

- Module 2: What is public international law and international criminal law?
- Module 3: General principles of international criminal law
- Module 4: International and hybrid criminal courts: an introduction
- Module 5: Domestic application of international criminal law
- Module 6: Genocide
- Module 7: Crimes against humanity
- Module 8: War crimes
- Module 9: Modes of liability
- Module 10: Superior responsibility
- Module 11: Defences and other grounds for excluding liability
- Module 12: Basic procedure and evidentiary issues
- Module 13: Sentencing and penalties
- Module 14: Witnesses and victims
- Module 15: Cooperation and mutual legal assistance

Each Module could serve as the basis of a separate training, or could be used in conjunction with other Modules for longer training workshops.

Each Module contains an introduction for trainers, a section on international law and practice, followed by separate sections for each country: Bosnia and Herzegovina, Croatia and Serbia. The Modules each contain a Module description, a list of Module outcomes and notes for trainers.

Each Module will refer to this introduction, including the case study, and be read with references to annexes. Thus trainers are advised to keep available this introduction as well as the annexes when using any of the 14 substantive Modules.

The Modules are practice-oriented and designed as a training resource. They include information on ICLP that is relevant to the three states and provide a general overview of international law, including general principles applied in public international law, a background on international courts and tribunals (“international courts”) and how the national jurisdictions of the three states incorporate international law into their domestic law. Specifically, the materials focus on the substantive international crimes of genocide, crimes against humanity and war crimes arising out of international courts as well as the courts of the three states. The training materials also include the substantive law in relation to modes of liability, superior/command responsibility, grounds for excluding criminal liability and sentencing. Procedural and evidentiary issues are also addressed, as well as issues pertaining to cooperation, mutual legal assistance and victims and witnesses.

The Modules cover the ICLP-related issues that have a close bearing on the law and practice of significant practical relevance to legal practitioners in BiH, Croatia and Serbia. The focus of the

materials is the law as it applies to cases arising out of the conflicts in the former Yugoslavia. Thus the law of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) is given particular attention, although the law of the International Criminal Tribunal for Rwanda (“ICTR”) and International Criminal Court (“ICC”) also feature prominently in the materials.

The Modules are not a comprehensive legal text on all the jurisprudence of the international courts and national jurisdictions. They deal with the main legal issues and cases in order to facilitate training. Where possible, materials have been identified in the footnotes and under “Further reading” at the end of each Module for further research, if required. As the materials are meant to be used as a resource in training centres for prosecutors and judges, they are geared to that audience. It is intended that the materials serve as a companion to the Manual for Defence Counsel developed by the United Nations Interregional Crime and Justice Research Institute (UNICRI).

1.2. BACKGROUND

In developing the materials, ICLS consulted with regional and international experts on the appropriate contents of the materials, including on the relevant law and practice from the three states.

In researching the materials, sources included not only the law of the three states and ICL generally, but also training materials and other sources from the three states. A list of the resources consulted is included at the end of this introduction, including a table of cases and other resources.

In drafting the materials, ICLS generally focused on the law as pronounced by international criminal courts. Where different international criminal courts have ruled differently on a point of law, the materials note such differences without further analysis.

ICLS also considered legislation and available and relevant jurisprudence from the courts in the three states. ICLS was careful to rely on jurisprudence from the highest courts; where trial panel judgements are referenced, these were either upheld by the appellate judgement or there was no higher judgement available to the drafters. The Modules do not include all cases from the national courts. Certain main cases have been selected that best illustrate the application of the key legal principles to facilitate the training. There may be case law that is omitted as it was not available when the Modules were being prepared. Further cases that are known to the trainers and participants should be discussed when the Modules are taught.

The ICLS team sought input from international and regional legal experts, including experts from national judicial training centres and experienced practitioners. To ensure maximum relevancy to the national jurisdictions, ICLS employed drafters from the three states to research and draft the regional law and practice sections. These were drafted using unofficial English translations of the relevant legislation and jurisprudence. The materials, drafted and finalised by ICLS in English, were then translated back into BCS by ODIHR.

ICLS undertook two trips to the three states to, *inter alia*, conduct original research, gain first-hand insight into the relevant legal and practical challenges faced by relevant stakeholders and

discuss with experts the possible approaches to integrating ICLP and national law in relation to particularly complex and contentious areas of national law.

In the Modules, unless the context suggests differently, all references to the masculine are meant to also include the feminine and the singular the plural, and vice versa.

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the International Criminal Law Services (ICLS) and the OSCE Office for Democratic Institutions and Human Rights and can in no way be taken to reflect the views of the European Union.

1.3. ABOUT ICLS

International Criminal Law Services (ICLS) is a non-governmental organization of experts with legal and practical experience with trials of war crimes, crimes against humanity and genocide before international and national courts. ICLS seeks to support fellow practitioners globally by sharing its expertise, including in establishing and managing the requisite legal and institutional frameworks. ICLS provides legal and technical training, advice and support. Partners and beneficiaries include national, regional, hybrid and international courts, judges, prosecutors, defence counsel, court registries, governmental authorities, armed forces, NGOs and businesses.

Over the last two years, ICLS has, among other activities, contributed to accountability on three different continents through the:

- Capacity enhancement of Rwandan investigators and prosecutors and Ugandan practitioners dealing with trials of genocide, crimes against humanity and war crimes.
- Assessment of the sustainability of the Courts and Prosecutor's office in Bosnia and Herzegovina and the development of training curricula on international criminal law for the former Yugoslavia.
- Development of training materials for judges and lawyers in Cambodia.
- Provision of technical advice on witness protection in Nepal.
- Raising of awareness of international criminal justice issues among radio journalists in Kenya and Uganda.

ICLS has also contributed to the transfer of knowledge between international courts and tribunals by, among other activities:

- Identifying gaps for the International Criminal Court in terms of lessons learned from other international criminal tribunals.
- Advising on the potential role that the ICC could play with regards to the ad hoc courts' and tribunals' unfinished work, upon their closure.
- Briefing stake holders on trials *in absentia* under international criminal law.

1.4. ABOUT PROJECT PARTNERS

1.4.1. OSCE ODIHR

ODIHR is the OSCE's principal institution tasked with assisting participating States in implementing their human dimension commitments and thereby enhancing security in the region.

It works in five broad areas: elections, democratization, human rights, tolerance and non-discrimination, and Roma and Sinti issues.

ODIHR activities in these areas include:

- Observing elections to assess compliance with the OSCE's election-related commitments, often together with the OSCE Parliamentary Assembly and other parliamentary groups, and providing assistance with improving electoral processes.
- Strengthening the rule of law – for example, through assistance in achieving compliance with the OSCE's commitments regarding judicial independence, access to the legal profession and justice, and criminal justice in general.
- Assisting participating States in bringing their laws into line with OSCE commitments by reviewing legislation and supporting domestic initiatives aimed at improving the efficiency and transparency of legislative systems, often together with the Council of Europe's Venice Commission.
- Promoting freedom of movement and respect for the rights of migrants – for example, by assisting governments to introduce population registration systems that are in line with international standards.
- Fostering democratic governance by providing support to governments in strengthening democratic practices, with a focus on the legal frameworks of political parties and the participation of women in public affairs.
- Strengthening the capacity of human rights defenders and increasing cooperation between defenders, state authorities and national human rights institutions.
- Assisting governments to strengthen their capacity to identify, protect and assist victims of trafficking in human beings.
- Providing training on combating terrorism, in line with international human rights commitments.
- Implementing human rights training and education activities aimed at raising human rights awareness and enhancing the capacity of civil society to monitor human rights issues, including in areas such as freedom of assembly.
- Supporting the integration of a gender perspective in security sector reform.
- Helping governments to combat hate crimes and other violent manifestations of intolerance; for example, through training for law enforcement personnel and strengthening the capacity of civil society to monitor and report on hate crimes.
- Promoting freedom of religion or belief through legal reviews and other activities of ODIHR's Panel of Experts.
- Advancing the rights of Roma and Sinti through ODIHR's Contact Point for Roma and Sinti Issues.

Organizing the yearly OSCE Human Dimension Implementation Meeting, which reviews governments' progress in putting their commitments into practice and gives NGOs a platform to freely voice their concerns.

1.4.2. ICTY

The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990s. Since its establishment in 1993, it has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced.

In May 1993, the tribunal was established by the United Nations in response to mass atrocities then taking place in Croatia and Bosnia and Herzegovina. Reports depicting horrendous crimes, in which thousands of civilians were being killed and wounded, tortured and sexually abused in detention camps and hundreds of thousands expelled from their homes, caused outrage across the world and spurred the UN Security Council to act.

The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. It was established by the Security Council in accordance with Chapter VII of the UN Charter.

Situated in The Hague, the Netherlands, the ICTY has charged 161 persons. Those indicted by the ICTY include heads of state, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Croatia, Bosnia and Herzegovina, Serbia, Kosovo and the Former Yugoslav Republic of Macedonia. More than 60 individuals have been convicted and currently more than 40 people are in different stages of proceedings before the Tribunal.

1.4.3. UNICRI

UNICRI is a United Nations entity established in 1967 and mandated to assist intergovernmental, governmental and non-governmental organizations in formulating and implementing improved policies in the field of crime prevention and criminal justice. UNICRI's goals are:

- to advance understanding of crime-related problems;
- to foster just and efficient criminal justice systems;
- to support the respect of international instruments and other standards; and
- to facilitate international law enforcement cooperation and judicial assistance.

The programmes of UNICRI aim to promote national self-reliance and the development of institutional capabilities. To this end, UNICRI provides a one-stop facility offering high-level expertise in crime prevention and criminal justice problems. Technical co-operation is enhanced by the use of action-oriented research to assist in the formulation of improved policies and concrete intervention programmes. Institutional and on-the-job training of specialized personnel form an integral part of UNICRI activities.

With more than 40 years of experience, UNICRI has been structuring its work programmes and modus operandi to make them always responsive to the needs of the international community.

ANNEX A: ABBREVIATIONS

1st Instance Verdict / 1st inst.	First Instance Verdict / Trial Panel Verdict
2nd Instance Verdict / 2nd inst.	Second Instance Verdict / Appellate Panel or Supreme Court Verdict
ABiH/ARBiH	Army of the Republic of Bosnia and Herzegovina
AJ	Appeals Chamber judgement
AP (I, II)	Additional Protocol(s) (1977)
ASP	Assembly of States Parties
AVNOJ	Anti-Fascist Council of National Liberation of Yugoslavia
BD	Brčko District
BiH	Bosnia and Herzegovina
BiH Law on the Protection of Witnesses	BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses (2003)
CAH	Crimes Against Humanity
CAT	Torture Convention (1948)
CAMS	Croatian Army Main Staff
CC	Criminal Code
Common Article 3	Article 3 Common to 1949 Geneva Conventions
CPA	Criminal Procedure Act(s)
CPC	Criminal Procedure Code
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR / European Court	European Court of Human Rights
EDS	Electronic Disclosure System
EMD	El Mujahedin Detachment
FBiH	Federation of Bosnia and Herzegovina
FRY	Federal Republic of Yugoslavia
GC (I, II, III, IV)	Geneva Conventions (I, II, III, IV)
YNP	Y National Party (from the case study)
HRC	UN Human Rights Committee
HV	Croatian Army (Hrvatska Vojska)
HVO	Croatian Defence Council
ICC	International Criminal Court
ICC Statute	Rome Statute of International Criminal Court (1998)
ICCPP	International Criminal Court Protection Program
ICCPR	International Covenant on Civil and Political Rights
ICD	International Crimes Division of the High Court of Uganda (ICD)
ICJ	International Court of Justice
ICL	International Criminal Law
ICLS	International Criminal Law Services
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda

ICTR RPE	Rules of Procedure and Evidence of ICTR
ICTR Statute	Statute of ICTR (1994)
ICTY	The International Criminal Tribunal for the former Yugoslavia
ICTY RPE	Rules of Procedure and Evidence of the ICTY
ICTY Statute	Statute of ICTY (1993)
IHL	International Humanitarian Law
IMT	International Military Tribunal
IRMCT	International Residual Mechanism for Criminal Tribunals
JCE	Joint Criminal Enterprise
JNA	Yugoslav People's Army
KZ RH	Criminal Code of the Republic of Croatia
KP DOM	Central prison and criminal rehabilitation centre in Foča
Law on War Crimes	Law on organization and competence of Government authorities in War Crimes proceedings (2003)
LOTC	Law on the Transfer of Cases (2004)
LRA	Lord's Resistance Army (Uganda)
MUP	Serbian Interior Ministry (Ministarstvo Unutrašnjih Poslova)
NATO	North Atlantic Treaty Organisation
ODIHR	Office for Democratic Institutions and Human Rights
OKO	Criminal Defence Section in the Court of Bosnia and Herzegovina
OKZ RH	Basic Criminal Law of the Republic of Croatia
OSCE	Organization for Security and Co-operation in Europe
OPCV	Office of Public Counsel for Victims (ICC)
OTP ICTY/ICTY OTP	Office of the Prosecutor of the ICTY
OVK/KLA/UCK	Kosovo Liberation Army
POW	Prisoner of War
PTSD	Posttraumatic Stress Disorder
PT-C I	Pre-Trial Chamber I
PW	Prosecution Witness
RPE	Rules of Procedure and Evidence
RS	Republika Srpska
SAO Krajina	Serbian Autonomous Oblast of Krajina
SCSL	Special Court for Sierra Leone
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Prosecution Agency (BiH)
STL	Special Tribunal for Lebanon
TJ	Trial Chamber judgement
TO	Bosnian Territorial Defence
UN	United Nations
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
VPRS	Victims Participation and Reparations Section (ICC Registry)

VRS	The Army of Republika Srpska
VWU	Victims and Witnesses Unit (ICC)
WWII	World war II
ZNG	Croatian National Guard

ANNEX B: TABLE OF TREATIES

International Humanitarian Law			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
Geneva Conventions I, II, III, IV 1949	31.12.92	11.05.92	11.09.01
Additional Protocol I 1977	31.12.92	11.05.92	11.09.01
Additional Protocol II 1977	31.12.92	11.05.92	11.09.01
Additional Protocol III 2005	(14.03.06)*	13.06.07	(31.03.06)*
Hague Convention 1954	12.07.93	06.07.92	11.09.01
Hague Protocol 1954	12.07.93	06.07.92	11.09.01
Hague Protocol 1999	---	08.02.06	02.09.02
ENMOD Convention 1976	---	---	---

International Human Rights Law			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
ICERD 1965	16.07.93	12.10.92	12.03.01
ICCPR 1966	01.09.93	12.10.92	1992 (12.03.01)
ICCPR - OP1 1966	01.03.95	12.10.95	06.09.01
ICCPR - OP2 1989	16.03.01	12.10.95	06.09.01
ICESCR 1966	01.09.93	12.10.92	1992 (12.03.01)
CEDAW 1979	01.09.93	09.10.92	12.03.01
OP-CEDAW 1999	04.09.02	07.03.01	31.07.03
CAT 1984	01.09.93	12.10.92	1992 (12.03.01)
OP-CAT 2002	24.10.08	25.04.05	2000 (26.12.06)
CRC 1990	01.09.93	12.10.92	12.03.01
CRC Optional Protocol Armed Conflict 2000	10.10.03	01.11.02	31.01.03
CRC Optional Protocol Sale of Children 2000	04.09.02	13.05.02	10.10.02
ICRMW 1990	13.12.96	---	(11.11.04)*
Disability Rights Convention	(29.07.09)*	15.08.07	31.07.09
Convention on Enforced Disappearances	(06.02.07)*	(06.02.07)*	(06.02.07)*

International Criminal Law			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
Slavery Convention 1926	18.01.94	12.10.92	12.03.01
Genocide Convention 1948	29.12.92	12.10.92	12.03.01
Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity 1968	01.09.93	12.10.92	12.03.01
ICC Rome Statute 1998	11.04.02	21.05.01	06.09.01

Weapons			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
Geneva Gas Protocol 1925	---	18.12.06	1929 (06.03.06)
Biological Weapons Convention 1972	15.08.94	08.10.91	13.06.01
Chemical Weapons Convention 1993	25.02.97	23.05.95	20.04.00
Convention on Certain Conventional Weapons 1980	01.09.93	02.12.93	12.03.01
CCW Protocol I 1980	01.09.93	02.12.93	12.03.01
CCW Protocol II 1980	01.09.93	02.12.93	12.03.01
CCW Protocol III 1980	01.09.93	02.12.93	12.03.01
CCW Protocol IV 1995	10.10.01	25.04.02	12.08.03
CCW Protocol II (amended) 1996	07.09.00	25.04.02	---
CCW Amendment 2001	17.03.08	27.05.03	11.11.03
CCW Protocol V 2003	28.11.07	07.02.05	---
Ottawa Treaty 1997	08.09.98	20.05.98	18.09.03
Convention on Cluster Munitions 2008	(03.12.08)*	17.08.09	---

Terrorism			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
Convention Against the Taking of Hostages 1979	01.09.93	23.09.03	12.03.01
Convention for the Suppression of the Financing of Terrorism 1999	11.08.03	01.12.03	10.10.02
Convention for the Suppression of Terrorist Bombings 1997	10.06.03	02.06.05	31.07.03

Refugees			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
Refugee Convention 1951	01.09.93	12.10.92	12.03.01
Refugee Protocol 1967	01.09.93	12.10.92	12.03.01

European Conventions			
<i>Treaties</i>	<i>Bosnia and Herzegovina</i>	<i>Croatia</i>	<i>Serbia</i>
European Convention on Extradition 1957	25.04.05	25.01.95	30.09.02
European Convention on Mutual Assistance in Criminal Matters 1959	25.04.05	07.05.99	30.09.02
European Convention on the Transfer of Proceedings in Criminal Matters 1972	25.04.05	(23.06.03)*	30.09.02
European Convention on Mutual Assistance in Criminal Matters 1959	25.04.05	07.05.99	30.09.02

*Signature only.

CASE STUDY

NOTES FOR TRAINERS ABOUT THE CASE STUDY

1. The case study is designed to provide a factual scenario for participants to discuss the application of the legal principles and rules set out in the various Modules.
2. The Indictment is not before any particular court. It is not meant to represent an actual case before any of the international or national courts. Participants should therefore not be concerned about issues like whether the Indictment is pleaded as it would be in their national courts. However, participants could be asked to draft an indictment based on the case study according to the specific requirements of their jurisdictions.
3. Participants should be directed to focus on the facts to discuss how these facts could be relied on to prosecute and prove war crimes cases. Participants should be free to discuss how the case could be approached before international and/or national courts—the comparisons between the different courts would themselves be useful to consider.
4. There are no right answers to the case study. It aims to provoke discussion in which different views can be expressed and argued. The main point is for participants to consider and apply the legal principles and rules that they are being taught. In this way, their understanding of the legal issues will be enhanced and deepened.
5. There are certain legal points that trainers should have in mind when using the case study:
 - a. The factual scenario in essence concerns an alleged campaign of ethnic cleansing against the X ethnic group by the Y ethnic group in which various crimes were allegedly committed. A key issue is whether this campaign amounts to genocide and/or crimes against humanity. In particular, the question of whether the evidence can be relied on to infer that the accused harboured the specific intent to destroy X ethnic group must be addressed.
 - b. Trainers should also focus on what particular war crimes could be charged on the basis of the facts of the case study before international and national courts. An initial point to consider is when it could be determined that an armed conflict came into existence and whether, on the facts, the conflict could be characterised as an international armed conflict.
 - c. A key question to pose is what forms of participation in the various alleged crimes could be proved against the accused on the facts. The case study does not include all of the possible evidence that may be available in a real case. Participants should be encouraged to identify what kind of evidence they would need to investigate in order to determine and support the charges brought against the accused.
 - d. Participants must analyse the probative value of the evidence that arises from the facts in the case study. They must consider what evidence would be admissible before international and national courts, and how evidence could be gathered and requested from States and international organisations. They should also take witness protection issues into account.

6. The manner in which the case study can be used by trainers to facilitate discussion is highlighted in the notes to trainers for each Module. Certain questions arising from the facts of the case study have also been identified in each Module that are relevant to the different legal topics addressed. Trainers should use these as a guide and add additional questions that can be raised. Trainers should embellish the facts of the case study as is necessary to ensure that all relevant legal issues that trainers think should be addressed can be discussed by using the case study as a training tool.
7. In addition to the facts in the case study, two further sets of hypothetical facts that extend from the case study are included for the Modules on war crimes and joint criminal enterprise, as these are two important legal issues. Particular questions have been included with these two “hypotheticals” for trainers to use in the training of these Modules. Trainers should add other questions that they think will best engage the participants and focus on the issues that are relevant to those persons being trained.

INDICTMENT

THE PROSECUTOR

v.

PETER PANZ

PETER PANZ is charged with the following offences:

Statement of the Offences

Genocide

Crimes against Humanity

War Crimes

Particulars of the Offences

In 2005, when a state of international and/or internal armed conflict existed in the territory of State X, Peter Panz planned, instigated, ordered, committed, and aided and abetted the offences charged. It is also alleged that he was a participant in a joint criminal enterprise to commit these offences, alternatively, that he is criminally responsible under the doctrine of superior responsibility as the offences were committed by his subordinates over whom he had effective control.

STATEMENT OF FACTS

1. In February 2005, a referendum was held in State X to decide on the independence of a part of State X, the province of Y. The result of the referendum was against independence.
2. The Government of State X was in favour of keeping the country united. The majority of the people of State X were from the X ethnic group. In the province of Y, the Y National Party (YNP) had campaigned for the independence of Y province from State X.
3. In Y province, the majority of the citizens were from the Y ethnic group, while the minority were from the X ethnic group. The YNP was supported by a large part of the Y ethnic group.
4. The leader of the YNP was the accused, Peter Panz.
5. The YNP received support from the neighbouring country of Z which historically had strong relations with the YNP. The majority of the people living in Y province were of the same ethnic group as the population of the neighbouring State Z, namely, the Y ethnic group.
6. The YNP alleged after the referendum that the voting had been rigged by the Government of State X.
7. Before the referendum, those perceived to be against independence had been harassed in Y province and in other provinces of State X by supporters of the YNP. There were some instances of violence when YNP members assaulted supporters of the Government of State X after anti-independence rallies had been held in different parts of the country.
8. After the referendum, results were announced and there were peaceful protests organised by the YNP on the streets of the capital of State X and in towns in Y province. The protests continued for many days under the watchful eye of the police.
9. The leader of the YNP, Peter Panz, went on television urging his supporters to engage in peaceful protest only. He also stated that all those in the Y ethnic group should unite for independence as they had the right to self-determination.
10. At this time it was reported in the press of neighbouring State Z that militia from this country had crossed the border to provide military training to members of the YNP. There were also rumours that State Z was supplying the YNP with arms.
11. In early March 2005, a violent incident occurred outside the police station of a main town in the province of Y. Supporters of the YNP who had been protesting outside the police station for days and demanding that the police chief should step down as he was a Government agent, stormed the building and set fire to it. The police opened fire and 20 protestors were killed and many were injured.
12. An emergency session of the Parliament of State X was held. It was decided to deploy the army on the streets to seek to maintain law and order. A state of emergency was declared in Y province.

13. The YNP leadership reacted with outrage and threatened that more police stations would be attacked unless the army withdrew from Y province. The YNP decided to declare that Y province was independent and to seek international recognition. Peter Panz travelled to New York to consult the UN. He was told that Y province would not be recognised as a State but that the UN could facilitate negotiations about the future of the region. UN mediators were dispatched to State X to try to negotiate between the two sides. ICRC representatives were also present in State X to monitor the situation on the ground.
14. Panz returned to find that YNP supporters had started attacking Government police stations in many towns in Y province. Panz decided to approach the Government of State Z for help and support. They told him their militia were already available to assist in Y province.
15. Panz consulted his party leadership who unanimously decided to form their own armed groupings with the assistance of the militia from State Z. The YNP released a declaration in which it ordered all those of Y ethnicity to join the militia fighting for freedom. In order to increase the numbers of fighting men, the YNP decided to release serving prisoners from the prisons they controlled on condition they joined the YNP armed groupings.
16. The pattern that emerged in the days that followed was very similar in all areas of Y province. It began with roadblocks being set up by armed members of the YNP. All those who could not produce a passport confirming their Y ethnicity were arrested on suspicion of supporting the Government of State X, taken to make-shift detention camps and subsequently expelled from Y province.
17. While at the camps, detainees claimed that they were blindfolded and strip-searched. Some detainees claimed that they had been beaten and asked questions about their links to the Government. The YNP leadership stated in meetings with UN mediators and the ICRC that persons who were a threat to the YNP and its people had to be detained for security reasons, and that many detainees had been found carrying weapons issued by the Government. Some of the detainees were State X Army and police personnel.
18. Peter Panz stated on national TV that those who sought to undermine Y's independence would be detained to prevent them from achieving their objectives.
19. Houses and businesses of those not of Y ethnicity were reportedly looted and destroyed. An historic church was attacked and destroyed by YNP militia who claimed that the Government army had been using it as a place for their soldiers to sleep at night. This claim appears to be confirmed by satellite imagery from State Q which depicts military vehicles collecting soldiers from in front of the church. Some residents who live near the church, however, claim that they never saw any soldiers or military vehicles near the church.
20. In some of the notorious detention camps, reports emerged of killings of detainees. A camp commander was overheard by a detainee stating that the YNP needed to make Y province "pure". It is also alleged that he had raped a woman detainee and told her that her baby would be of Y ethnicity. When these allegations were made in the media, Panz denied that they were true, labelling them as propaganda, and he refused to investigate them any further. The commander was known to be a good friend of Panz. There is no evidence that

he was appointed by Panz or reported directly to him. However, Panz did meet regularly with the commanders of the YNP militia.

21. There were also sporadic attacks on inhabitants in other parts of State X by the YNP. Some police stations were targeted and in a well-publicised incident, a restaurant often frequented by State X's leading politicians was blown up with a home-made device, killing 12 people, none of whom were leading politicians. There were a number of military officers, who were off-duty, at the restaurant on the night of the attack and some of them were killed and injured.
22. In response, the Government Army stepped up its military campaign. Troops were ordered to attack YNP militia. Battles occurred in some towns in Y province. In the weeks thereafter, fighting was reported on each day. The Government forces encountered fierce resistance from the YNP armed groups and militia from State Z. It was reported in the press that many civilians were being killed in the fighting and displaced as they fled the violence. Various NGO reports were published that detailed some of these incidents based on the statements of victims.
23. After debates in the Security Council and General Assembly, the Security Council decided to refer the situation of State X to the ICC for investigation. The police of State X had commenced local investigations into the allegations of crimes being committed in Y province, but no indictments had yet been issued.

SPECIFIC ALLEGATIONS AGAINST PETER PANZ

1. Peter Panz is the elected leader of the YNP. He has held that position for the last ten years. Before that he served in the Army of State X, but left as he felt the Army was not permitting those of his ethnicity to rise through the ranks.
2. He was prosecuted before the military courts for assaulting a senior military officer of State X who had refused to promote him and for calling him a "scumbag", a derogatory term for the X ethnic group. Panz had apparently said that he would not rest until all those of the X ethnic group in Y province had disappeared.
3. Peter Panz had been a nightclub bouncer before joining the Army. He had been in trouble with the law during this time and was convicted on various assault charges.
4. The events which form the basis of the charges took place in 2005, shortly after the referendum. It is alleged that Peter Panz planned, ordered, and instigated an attack on the X ethnic group in Y province and other parts of State X. He is alleged to have acted in a joint criminal enterprise with the YNP leadership, the commanders of its militia, and detention camp commanders (including the camp commander referred to above) to ethnically cleanse Y province.

5. It is alleged that this campaign amounted to genocide in that the YNP sought to destroy the X ethnic group in Y province.
6. The Prosecution alleges in the alternative that Peter Panz exercised effective control over the YNP militia and camp commanders, and is thus responsible for their acts under the doctrine of superior responsibility.

INVESTIGATIONS AND EVIDENCE

1. In January 2006, following a large-scale Government offensive, the YNP surrendered and their leader, Peter Panz, was arrested by the national authorities for prosecution.
2. Peter Panz was interviewed by police officers and claims to have been forced to sign a confession. A copy of the document has been circulated in the press.
3. ICC investigators also interviewed him while he was in custody and took a statement from him in which he denied any criminal responsibility. This interview was video-recorded.
4. Panz was refused bail by the national courts of State X and he is appealing this decision.
5. National investigations have discovered an intercept of Panz on the telephone to his friend, the camp commander (who was overheard stating that Y province should be made “pure”). Panz is recorded as saying that the commander should be very careful as international prosecutions could follow.
6. When Panz was arrested a large cache of weapons was found in the basement of his home. He claimed at the time of his arrest that they were stored there by a militia group from State Z and that they did not belong to him.
7. It has to be decided whether the case will be prosecuted by the ICC or the national authorities, and how evidence gathered by the ICC could be admitted before the courts of State X (if the trial takes place there).
8. State Z is denying that it was actively involved in the conflict and has refused to cooperate with the ICC or the authorities of State X.
9. The ICRC has stated in response to a request for assistance that it cannot provide any information about its dealings with the parties to the conflict on the basis that the material is confidential.
10. State Q which has satellite imagery (as described above) has stated that it cannot release this material for national security reasons.
11. The detainee who allegedly overheard the camp commander comment that Y province should be made “pure” is very afraid to testify. He is only prepared to come to court if the accused does not know his name and he can testify without revealing his identity to the accused. He claims to have received threatening phone calls and wants to withdraw his statement.

12. One of the commanders of the YNP militia wishes to plead guilty to war crimes only under the doctrine of superior responsibility. He has not given a statement to the Prosecution yet as he insists on a reduction in his sentence for cooperating with the Prosecution.

HYPOTHETICAL FOR WAR CRIMES

Based on the case study above, these additional facts can be used to address particular issues related to war crimes.

1. Peter Panz issued an order to the YNP militia to move civilians in Y province to neighbouring provinces for their own protection. There were daily clashes taking place between the Government forces and the YNP militia.
2. As a result, the militia rounded up many civilians from their homes and drove them to surrounding provinces in buses. Some of them were dropped off at refugee camps that had been set up by the UN. Some were transported out of State X and left in neighbouring States.
3. The majority of the persons who were driven out were men of military age from the X ethnic group. They were reassured that they could return after the war. Panz made a public announcement to this effect on national TV. He also said that no-one could return until the Government stopped committing crimes against the people of Y province.
4. There is evidence from witnesses being driven in one of the buses that it was stopped on route by a YNP special unit. Three women on the bus were sexually assaulted by this unit. They were threatened with death if they did not tell the soldiers where their husbands were stationed. The soldiers alleged that these men were policemen working for the Government who had tortured YNP soldiers. They said that they had been given orders to do whatever was necessary to get this information.

Questions

- a. Which war crimes could be charged against Panz? What evidence could be relied upon in support of these charges?
- b. Does he have a legitimate defence to any of these crimes on account of the military situation and the need to protect civilians?
- c. Is it a defence for Panz to assert that he only moved civilians in order to stop the Government committing crimes?

HYPOTHETICAL FOR JCE

Based on the case study above, these additional facts can be used to address particular issues related to joint criminal enterprise.

1. Peter Panz is alleged to have planned an attack on a Government military base in a town in Y province. The base housed Government tanks and heavy artillery which the YNP feared would be used against their forces and civilians in Y province. Panz, in consultations with commanders of his militia, decided to destroy this equipment before it could be deployed by the Government.
2. The operation was successful, but soon thereafter reports began to emerge about civilian casualties in the town itself. Those killed were mainly from the X ethnic group, although some members of the Y ethnic group were killed as well. One of the family members of a person from the Y ethnic group who was murdered claims that he was killed because he was viewed as a Government sympathiser. He had provided medical care to some of the Government soldiers who worked at the military base.
3. The Prosecution have in their possession an order purportedly signed by Panz which outlines that the objective of the attack is to destroy the military base and states that no-one should stand in the way of achieving the mission.
4. Witnesses from the town claim that their houses were looted after the attack by YNP soldiers who were celebrating the success of their operation. Some of them say that they recognised certain of the soldiers as being well-known common criminals who must have been released from prison by the YNP.

Questions

- a. Could Panz be charged with participating in a JCE for the civilian deaths that were committed as part of the military attack? Which type of JCE could be relied on: JCE I, II, or III?
- b. If JCE III was charged, what evidence could be relied on or should be gathered to prove that the crimes were foreseeable, and that Panz proceeded regardless of the risk?
- c. Would it be preferable to charge Panz as an aider and abettor or under the doctrine of superior responsibility instead of with participation in a JCE?

ANNEX D: TABLE OF CASES

INTERNATIONAL JURISPRUDENCE

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

These cases can be found on the ICTY Website at:

<http://www.icty.org/action/cases/4>

Ante Gotovina et al., Case No. IT-06-90-T, Trial Judgement 15 April 2011
Anto Furundžija, Case No. IT-95-17/1-T, Trial Judgment, 10 Dec. 1998 Anto Furundžija, Case No. IT-95-17/1-A, Appeal Judgment, 21 July 2000
Blagoje Simić et al., Case No. IT-95-9-T, Trial Judgement, 17 Oct. 2003
Dario Kordić et al., Case No. IT-95-14/2-T, Trial Judgement, 26 Feb. 2001 Dario Kordić et al., Case No. IT-95-14/2-A, Appeal Judgement, 17 Dec. 2004
Dragan Nikolić, Case No. IT-94-2-A, Appeal Judgment, 4 Feb. 2005
Dragoljub Kunarac et al., Case No. IT-96-23-T, Trial Judgment, 22 Feb. 2001 Dragoljub Kunarac et al., Case No. IT-96-23-A, Appeal Judgment, 12 June 2002
Dragomir Milošević, Case No. IT-98-29/1-A, Appeal Judgement, 12 Nov. 2009
Dusko Sikirica et al., Case No. IT-95-8-T, Trial Judgment, 13 Nov. 2001
Duško Tadić, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, 10 Aug. 1995 Duško Tadić, Case No. IT-94-1-T Decision on the Defence Motion for Interlocutory on Jurisdiction, Appeal Chamber, 2 Oct. 1995 Duško Tadić, Decision on the Defence Motion on the Principle of <i>Non bis in Idem</i> , Case No. IT-94-1-T, 14 Nov. 1995 Duško Tadić, Case No. IT-94-1-T, Trial Judgment, 7 May 1997 Duško Tadić, Case No. IT-94-1-A, Appeal Judgment, 26 Jan. 2000
Enver Hadžihasanović, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, Appeal Chamber, 16 July 2003 Enver Hadžihasanović, Case No. IT-01-47, Appeals Chamber, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 Enver Hadžihasanović, Case No. IT-01-47-T, Decision on Defence Motion Regarding Cross-Examination of

Witnesses by the Prosecution, 9 Dec. 2004
Fatmir Limaj et al., Case No. IT-03-66-T, Trial Judgement, 30 Nov. 2005 Fatmir Limaj et al., Case No. IT-03-66-A, Appeal Judgement, 27 Sept. 2007
Goran Jelisić, Case No. IT-95-10T, Trial Judgement, 14 Dec. 1999 Goran Jelisić, Case No. IT-95-10A, Appeal Judgment, 5 July 2001
Jadranko Prlić et al., Case No. IT-04-74, Decision on Admission of Transcript, 23 Nov. 2007 Jadranko Prlić et al., Case No. IT-04-74, AC, Reconsideration of Appeal Decision, 3 Nov. 2009
Krajisnik & Plavsic, Case No. IT-00-39 & 40-PT, Amended Consolidated Indictment, 7 March 2002
Ljube Boškoski et al., Case No. IT-04-82-T, Trial Judgement, 10 July 2008 Ljube Boškoski et al., Case No. IT-04-82-A, Appeal Judgement, 19 May 2010
Milan Babić, Case No. IT-03-72-A, Appeal Judgment, 18 July 2005
Milan Lukić & Sredoje Lukić, Case No. IT-98-32/1, Order on Milan Lukić's Request for Protective Measures, 23 July 2008
Milan Martić, Case No. IT-95-11-R61, Decision on the Review of the Indictment Under Rule 61, 8 March 1996 Milan Martić, Case No. IT-95-11-T, Trial Judgement, 12 June 2007 Milan Martić, Case No. IT-95-11-A, Appeal Judgement, 8 Oct. 2008
Milan Milutinović et al. (Šainović et al.), Case No. IT-05-87-T, Trial Judgement, 26 Feb. 2009
Mile Mrkšić et al., Case No. IT-95-13/1-T, Trial Judgment, 27 Sept. 2007 Mile Mrkšić, Case No. IT-97-24-A, Appeal Chamber, Decision on the Motion for Release by the Accused Slavko Dokmanovic, 22 Oct. 1997 Mile Mrkšić et al., Case No. IT-95-13/1-A, Appeal Judgment, 5 May 2009
Milomir Stakić, Case No. IT-97-24-T, Trial Judgement, 31 July 2003 Milomir Stakić, Case No. IT-97-24-A, Appeal Judgement, 22 March 2006
Milorad Krnojelac, Case No. IT-97-25-T, Trial Judgement, 15 March 2002 Milorad Krnojelac, Case No. IT-97-25-A, Appeal Judgement, 17 Sept. 2003
Miodrag Jokic, Case No. IT-01-42/1-S, Trial Judgment, 18 March 2004
Miroslav Deronjic, Case No. IT-02-61-A, Appeal Judgment, 20 July 2005
Miroslav Kvočka et al., Case No. IT-98-30/1-T, Trial Judgment, 2 Nov. 2001 Miroslav Kvočka et al., Case No. IT-98-30/1-A, Appeal Judgment, 28 Feb. 2005

Mitar Vasiljević, Case No. IT-98-32-T, Trial Judgment, 29 Nov. 2002
Mitar Vasiljević, Case No. IT-98-32-A, Appeal Judgment, 25 Feb. 2004
Mladen Naletilić et al., Case No. IT-98-34-T, Trial Judgement, 31 March 2003
Mladen Naletilić et al., Case No. IT-98-34-A, Appeal Judgement, 3 May 2006
Momčilo Krajišnik, Case No. IT-00-39-T, Trial Judgement, 27 Sept. 2006
Momčilo Krajišnik, Case No. IT-00-39-A, Appeal Judgement, 17 March 2009
Naser Orić, Case No. IT-03-68-T, Trial Judgement, 30 June 2006
Naser Orić, Case No. IT-03-68-A, Appeal Judgement, 3 July 2008
Nikola Šainović et al., Case No. IT-05-87-T, Trial Judgement, 26 Feb. 2009
Pavle Strugar (“Dubrovnik”), Case No. IT-01-42-T, Trial Judgment, 31 Jan. 2005
Pavle Strugar (“Dubrovnik”), Case No. IT-01-42-A, Appeal Judgment, 17 July 2008
Radislav Krstić, Case No. IT-98-33-T, Trial Judgement, 2 Aug. 2001
Radislav Krstić, Case No. IT-98-33-A, Appeal Judgement, 19 April 2004
Radoslav Brđanin, Case No. IT-99-36-T, Trial Judgement, 1 Sept. 2004
Radoslav Brđanin, Case No. IT-99-36-A, Appeal Judgement, 3 April 2007
Radovan Karadžić, Case No. IT-95-5-D, In the Matter of a Proposal for a Formal Request for Deferral to the Competence of the Tribunal Addressed to the Republic of Bosnia and Herzegovina in Respect of Radovan Karadžić, Ratko Mladić and Mico Stanišić, Trial Chamber, 16 May 1995
Radovan Karadžić, Case No. IT-95-5/18-AR72.4, Appeals Chamber, Decision on Prosecution's Motion Appealing Trial Chamber's Decision on JCE III Foreseeability on JCE, 25 June 2009
Radovan Karadžić, Case No. IT-95-5, Decision on Accused's Motion for Modification of Protective Measures: Witnesses KDZ490 and KDZ942, 25 Mar. 2010
Ramush Haradinaj et al., Case No. IT-04-84, Decision on Second Haradinaj Motion to Life Redactions of Protected Witness Statements, 22 Nov. 2006
Ramush Haradinaj et al., Case No. IT-04-84, Decision on Motion by Witness 28 to Set Aside Subpoena or Alternate Relief, 5 Sept. 2007
Rasim Delić, Case No. IT-04-83-T, Trial Judgement, 15 Sept. 2008
Ratko Mladić, Case No. IT-09-92, Prosecution's Second Amended Indictment, 1 June 2011
Sefer Halilović, Case No. IT-01-48-A, Appeal Judgement, 16 Nov. 2005
Slobodan Milošević, Case No. IT-02-54, Trial Chamber's Order, 19 Feb. 2002, Annex B
Slobodan Milošević, Case No. IT-02-54-D, Reasons for decision on prosecution interlocutory appeal from

<p>refusal to order joinder, AC, 18 April 2002</p> <p>Slobodan Milošević, Case No. IT-02-54-D, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, 1 Nov. 2004</p> <p>Slobodan Milošević, Case No. IT-02-54-T, Decision on Contempt of the Tribunal, 13 May 2005</p>
<p>Stanislav Galić, Case No. IT-98-29-T, Trial Judgement, 5 Dec. 2003</p> <p>Stanislav Galić, Case No. IT-98-29-A, Appeal Judgement, 30 Nov. 2006</p>
<p>Stevan Todorovic, Case No. IT-95-9/1-S, Trial Judgment, 31 July 2001</p>
<p>Tihomir Blaškić, Case No. IT-95-14-T, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeal Chamber, 29 Oct. 1997</p> <p>Tihomir Blaškić, Case No. IT-95-14-T, Trial Judgment, 3 March 2000</p> <p>Tihomir Blaškić, Case No. IT-95-14-A, Appeal Judgement, 29 July 2004</p>
<p>Vidoje Blagojević et al., Case No. IT-02-60-T, Trial Judgement, 17 Jan. 2005</p> <p>Vidoje Blagojević et al., Case No. IT-02-60-A, Appeal Judgement, 9 May 2007</p> <p>Vidoje Blagojević et al., Case No. IT-02-60-T, Decision on Request of the Court of BiH for Variation of Protective Measures Pursuant to Rule 75(H), 13 Dec. 2007</p>
<p>Vlastimir Đorđević, Case No. IT-05-87/1-T, Trial Judgement, 23 Feb. 2011</p>
<p>Vojislav Šešelj, Case No. IT-03-67-AR-73.3, Decision on Appeal against the Trial Chamber's Decision on Assignment of Counsel, 20 Oct. 2006</p> <p>Vojislav Šešelj, Case No. IT-03-67-T, Decision on Vojislav Šešelj's Motion for Reconsideration of the Decision of 30 Aug. 2007 on Adopting Protective Measures, 11 Jan. 2008</p> <p>Vojislav Šešelj, Case No. IT-03-67-T, Decision on Vojislav Šešelj's Appeal Against the Trial Chamber's Oral Decision of 7 Nov. 2007, 24 Jan. 2008.</p>
<p>Vujadin Popović et al., Case No. IT-05-88-T, Trial Judgement, 10 June 2010</p>
<p>Zejnir Delalić et al. (Čelebići), Case No. IT-96-21-T, Trial Judgement, 16 Nov. 1998</p> <p>Zejnir Delalić et al. (Čelebići), Case No. IT-96-21-A, Appeal Judgement, 20 Feb. 2001</p>
<p>Zlatko Aleksovski, Case No. IT-95-14/1-T, Trial Judgement, 25 June 1999</p> <p>Zlatko Aleksovski, Case No. IT-95-14/1-A, Appeal Judgement, 24 March 2000</p>
<p>Zoran Kupreškić et al., Case No. IT-95-16-T, Trial Judgment, 14 Jan. 2000</p> <p>Zoran Kupreškić et al., Case No. IT-95-16-A, Appeal Judgment, 23 Oct. 2001</p>

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

These cases can be found on the ICTR Website at:

<http://unictr.org/Cases/tabid/204/Default.aspx>

Alfred Musema, Case No. ICTR-96-1-I, Amended Indictment, 12 June 1996
Alfred Musema, Case No. ICTR-96-13, Trial Judgement, Jan. 27 2000
Alfred Musema, Case No. ICTR-96-13-A, Appeal Judgment, 16 Nov. 2001
Aloys Ntabakuze, Case No. ICTR-97-30, Trial Judgement, 18 Dec 2008
Aloys Simba, Case No. ICTR-01-76-A, Appeal Judgment, 27 Nov. 2007
André Ntagerura et al., Case No. ICTR-96-10A, Appeal Judgement, 7 July 2006
André Ntagerura et al., Case No. ICTR-96-10T, Trial Judgement, 1 Sept. 2009
Athanase Seromba, Case No. ICTR-2001-66-T, Trial Judgement, 13 Dec. 2006
Athanase Seromba, Case No. ICTR-2001-66-A, Appeal Judgement, 12 March 2008
Augustin Bizimungu et al., Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses, 2 Feb. 2005
Augustine Ndindiyimana et al., Case No. ICTR-00-56, Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Witnesses, 3 Nov. 2004
Clément Kayishema et al., Case No. ICTR-95-I-T, Trial Judgement, 21 May 1999
Clément Kayishema et al., Case No. ICTR-95-I-A, Appeal Judgement, 1 June 2001
Eliézer Niyitegeka, Case No. ICTR-96-14-T, Trial Judgement, 16 May 2003
Elizaphan Ntakirutimana et al., Case No. ICTR-96-10-T and ICTR-96-17-T, Trial Judgement, 21 Feb. 2003
Elizaphan Ntakirutimana et al., Case No. ICTR-96-10-A and ICTR-96-17-A, Appeal Judgement, 13 Dec. 2004
Emmanuel Ndindabahizi, Case No. ICTR-01-71, Trial Judgement, 15 July, 2004
Emmanuel Rukundo, Case No. ICTR-01-70-T, Trial Judgement, Feb 27, 2009
Emmanuel Rukundo, Case No. ICTR-01-70-A, Appeal Judgement, Oct. 20, 2010
Ferdinand Nahimana, Case No. ICTR-96-11A, Appeal Judgement, 28 Nov. 2007
Ferdinand Nahimana, Case No. ICTR-96-11T, Trial Judgement, 3 Dec. 2003
François Karera, Case No. ICTR-01-74-T, Trial Judgement, 7 Dec. 2007

François Karera, Case No. ICTR-01-74-A, Appeal Judgement, 2 Feb. 2009
Georges A. N. Rutaganda, Case No. ICTR-96-3-T, Trial Judgment, 6 Dec. 1999 Georges A. N. Rutaganda, Case No. ICTR-96-3-T, Appeal Judgment, 26 May 2003
Ignace Bagilishema, Case No. ICTR-95-1T, Trial Judgement, 7 June 2001 Ignace Bagilishema, Case No. ICTR-95-1A, Appeal Judgement, 3 July 2002
Jean De Dieu Kamuhanda, Case No. ICTR-99-54A-T, Trial Judgement, 22 Jan. 2004 Jean De Dieu Kamuhanda, Case No. ICTR-99-54A-A, Appeal Judgement, 19 Sept. 2005
Jean Kambanda, Case No. ICTR-97-23-T, Trial Judgement, 4 Sept. 1998 Jean Kambanda, Case No. ICTR-97-23-A, Appeal Judgment, Oct. 19, 2000
Jean-Paul Akayesu, Case No. ICTR-96-4-T, Trial Judgement, 2 Sept. 1998 Jean-Paul Akayesu, Case No. ICTR-96-4-A, Appeal Judgement, 1 June 2001
Juvènal Kajelijeli, Case No. ICTR-98-44A-T, Trial Judgement, 1 Dec. 2003 Juvènal Kajelijeli, Case No. ICTR-98-44A-A, Appeal Judgement, 23 May 2005
Laurent Semanza, Case No. ICTR-97-20-T, Trial Judgment, 15 May 2003 Laurent Semanza, Case No. ICTR-97-20-A, Appeal Judgment, 20 May 2005
Mikaeli Muhimana, Case No. ICTR-95-1B, Trial Judgement, 28 April, 2005 Mikaeli Muhimana, Case No. ICTR-95-1-A, Appeal Judgement, 21 May 2007
Pauline Nyiramasuhuko et al., Case No. ICTR-97-21, Decision on Nyiramasuhuko's Strictly Confidential Ex Parte Under Seal Motion for Additional Protective Measures for Some Defence Witnesses, March 1, 2005
Protais Zigiranyirazo, Case No. ICTR-01-7-T, Trial Judgement, 18 Dec. 2008 Protais Zigiranyirazo, Case No. ICTR-01-7-A, Appeal Judgement, 16 Nov. 2009
Siméon Nchamihigo, Case No. ICTR-2001-63-T, Trial Judgement, 12 Nov. 2008 Siméon Nchamihigo, Case No. ICTR-2001-63-A, Appeal Judgement, 18 March 2010
Simon Bikindi, Case No. ICTR-01-72-T, Trial Judgement, 2 Dec. 2008
Sylvestre Gacumbitsi, Case No. ICTR-01-64-T, Trial Judgment, 17 June 2004 Sylvestre Gacumbitsi, Case No. ICTR-01-64-A, Appeal Judgement, 7 July 2006
Théoneste Bagosora et al., Case No. ICTR-96-7, Decision on Interlocutory Appeals of Decision on Witness Protection Orders, 6 Oct. 2005 Théoneste Bagosora et al. Case No. ICTR-98-41-T, Trial Judgement 18 Dec. 2008

INTERNATIONAL CRIMINAL COURT (ICC)

These cases can be found on the ICC Website at:

<http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Cases/>

Abdallah Banda Abakaer Nourain et al., Case No. ICC-02/05-03/09-121-Corr-Red, Decision on the Confirmation of Charges, 8 March 2011
Bahar Idriss Abu Garda, Case No. ICC-02/05-02/09-243-Red, Pre-Trial Chamber, Decision on the Confirmation of Charges, 8 Feb. 2010
Decision on the "Prosecution's Request for Non-Disclosure of the Identity of Twenty-Five Individuals providing Tu Quoque Information of 5 Dec. 2008", April 9, 2009, ICC-01/04-01/06-1814-Conf as referred to in 'Redacted Decision on the application to disclosure the identity of intermediary 142', 10 Dec. 2009, ICC-01/04-01/06-2190-Red
Germain Katanga et al., Case No. ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 Sept. 2008 Germain Katanga et al., Case No. ICC-01/04-01/07, Decision on "Victims and Witnesses Unit's considerations on the system of witness protection and the practice of 'preventive relocation'" and "Prosecution's request for leave to file a response to 'Victims and Witnesses Unit's considerations on the system of witness protection and the practice of 'preventive relocation'"", 27 June 2008 Germain Katanga et al., Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, 25 Sept. 2009
Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, Confirmation of Charges Decision, Pre-Trial Chambers, 12 Jan. 2009 Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Pre-Trial Chamber II, 15 June 2009 Jean-Pierre Bemba Gombo, Decision on the Admissibility and Abuse of Process Challenges, ICC-01/05-01/08-802, 24 June 2010
Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 3 March 2009
Situation in the Republic of Kenya, Case No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010 Situation in the Republic of Kenya, Case No. ICC-01/09-01/1, Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing, Pre-Trial Chamber II, 6 March, 2011
Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision on Applications for Participation in Proceedings a/0004/06 to a/0009/06, a/0016/06, a/0063/06, a/0071/06 to a/0080/06 and a/0105/06,

Oct. 20, 2006

Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 Jan. 2007

Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06-1119, Trial Chamber I, Decision on various issues related to witness' testimony during trial, 18 Jan. 2008

Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision on various issues related to witness' testimony during trial, 28 Jan. 2008

William Samoei Ruto et al., Case No. ICC-01/09-01/11, Dissenting Opinion by Judge Hans-Peter Kaul to Pre-Trial Chamber II's "Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang", 15 March, 2011

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

These cases can be found on the ECCC Website at:

<http://www.eccc.gov.kh/en/caseload>

Kaing Guek Eav, Case No. 001/18-07-2007/ECCC/TC, Trial Judgement, 26 July 2010

SPECIAL COURT FOR SIERRA LEONE (SCSL)

These cases can be found on the SCSL Website at:

<http://www.sc-sl.org/CASES/tabid/71/Default.aspx>

Alex Tamba Brima et al. (AFRC Case), Case No. SCSL-04-16-T , Trial Judgement, 20 June 2007

Alex Tamba Brima et al. (AFRC Case), Case No. SCSL-04-16-A , Appeal Judgement, 22 Feb. 2008

Charles Taylor, Case No. SCSL-2003-01-I, Decision on Immunity From Jurisdiction, Appeal Chamber, 31 May 2004

Issa Hassan Sesay et al. (RUF Case), Case No. SCSL-04-15-T, Trial Judgement, 25 Feb. 2009

Issa Hassan Sesay et al. (RUF Case), Case No. SCSL-04-15-A, Appeal Judgement, 26 Oct. 2009

Moinina Fofana et al., Case No. SCSL-2003-11-T, Trial Judgement, 2 Aug. 2007

Moinina Fofana et al., Case No. SCSL-2003-11-A, Appeal Judgement, 28 May 2008

Morris Kallon and Brima Kamara, Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Appeal Chamber, 13 March 2004

International Court of Justice (ICJ)

This information can be found on the ICJ website:

<http://www.icj-cij.org/homepage/index.php>

International Court of Justice, Advisory Decision: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004

International Court of Justice, Advisory Opinion, Legality of the Threat or Use of Nuclear Weapons, 8 July 1996

International Court of Justice, Advisory Opinion on Reservations to the Convention on the Prevention and Punishment to the Crime of Genocide, 28 May 1951

International Court of Justice, Case concerning Armed Activities on the Territory of the Congo (DRC v. Rwanda), Jurisdiction of the Court and Admissibility of the Application, ICJ Judgement of 3 Feb. 2006

International Court of Justice, Case Concerning Military and Paramilitary Activities in and Against Nicaragua, Merits Judgement, 27 June 1986

EUROPEAN COURT OF HUMAN RIGHTS

Tsonto Tsonev v. Bulgaria, Case No. 2376/03, Eur. Ct. HR., 14 Jan. 2010

Ould Dah v. France, Case No. 13113/03, Eur. Ct. HR. 17 March 2009

Sergey Zolotukhin v. Russia ([GC], Case No. 14939/03, Eur Ct. H. R. 2009

S.W. v. United Kingdom, Case No. 20166/92, Eur. Ct. H.R. 22 Nov. 1995

INTER-AMERICAN COURT OF HUMAN RIGHTS

Case of Barrios Altos v. Peru, Series C No. 75 [2001], Inter-Am. C.H.R. 5, 14 March 2001

NATIONAL JURISPRUDENCE

BOSNIA AND HERZEGOVINA

CONSTITUTIONAL COURT OF BIH

BiH Constitutional Court, Maktouf, Case No. AP-1785/06, Decision on Admissibility and Merits, 30 March 2007

Sarajevo Municipal Court, Orić, Case No. 65 0 K 064513 08 K, Defence submission of 19 Feb. 2009, 29 April 2009

COURT OF BIH

Abduladhim Maktouf, Case No. KPZ-32/05, Second Instance Verdict, 4 April 2006

Dragoje Paunović, Case No. X-KR-05/16, First Instance Verdict, 26 May 2006

Dragoje Paunović, Case No. X-KR-05/16, Second Instance Verdict, 27 Oct. 2006

Dragan Damjanović, Case No. X-KR-05/51, First Instance Verdict, 15 Dec. 2006

Dušan Fuštar, Case No. X-KR06/2001-1, First Instance Verdict, 21 April 2008

Dušan Fuštar, Case No. X-KR06/2001-1, Second Instance Verdict, 21 April 2008

Gojko Janković, Case No. X-KR-05/161, First Instance Verdict, 16 Feb. 2007

Gojko Janković, Case No. X-KR-05/161, Second Instance Verdict, 23 Oct. 2007

Goran Damjanović et al., Case No. X-KR/05/107, First Instance Verdict., 18 June 2007

Goran Damjanović et al., Case No. X-KRZ-25/107, Second Instance Verdict, 19 Nov. 2007

Gordan Đurić, Case No. X-KR-08/549-2, First Instance Verdict, 10 Sept. 2009

Jadranko Palija, Case No. X-KR-06/290, First Instance Verdict, 28 Nov. 2007

Krešo Lučić, Case No. X-KRZ- 06/298, Second Instance Verdict, 16 Dec. 2008

Marko Samardžija, Case No. X-KRZ-05/07, Second Instance Verdict, 15 Oct. 2008

Mensur Memić et al., Case No. X-KR-09/786

Mensur Memić et al., Case No. X-KR-09/786, Nihad Bojadzic defence motion regarding serious violation of suspect Nihad Bojadzic right to defence, 30 March 2010

Mensur Memić et al., Case No. X-KR-09/786, Transcript of 28 Sept. 2010; Transcript of 20 Sept. 2010; Transcript of 9 Nov. 2010

Miladin Stevanović, Case No. X-KR-05/24-2, First Instance Verdict, 29 July 2008

Milorad Trbić, Case No. X-KR-07/386, First Instance Verdict, 16 Oct. 2009

Milorad Trbić, Case No. X-KR-07/386, Second Instance Verdict, 21 Oct. 2010

Miloš Stupar et al., Case No.X-KR-05/24, First Instance Verdict, 29 July 2008

Miloš Stupar et al., Case No. X-KRZ-05/24, Second Instance Verdict, 9 Sept. 2009

Miloš Stupar et al., Case No. X-KRZ-05/24, Second Instance Verdict, 28 April 2010

Mirko Pekez et al., X-KRŽ-05/96-1, First Instance Verdict, 15 April 2008

Mirko Pekez et al., X-KRŽ-05/96-1, Second Instance Verdict, 5 May 2009

Mirko Todorović et al., Case No. X-KRŽ-07/382, Second Instance Verdict, 23 Jan. 2009
Mitar Rašević et al., Case No. X-KRZ- 06/275, First Instance Verdict, 28 Feb. 2008 Mitar Rašević et al., Case No. X-KRZ- 06/275, Second Instance Verdict, 6 Nov. 2008
Momčilo Mandić, Case No. X-KRZ-05/58, Second Instance Verdict, 1 Sept. 2009
Momir Savić, Case No. X-KR-07/478, First Instance Verdict, 3 July 2009 Momir Savić, Case No. X-KR-07/478, Second Instance Verdict, 19 Feb. 2010
Neđo Samardžić, Case No. X-KRZ-05/49, Second Instance Verdict, 13 Dec. 2006
Nenad Tanasković, Case No. X-KR/06/165, First Instance Verdict, 24 Aug. 2007
Nikola Andrun, Case No. X-KRŽ-05/42, Second Instance Verdict, 19 Aug. 2008
Nikola Kovacević, Case No. X-KR-05/40, First Instance Verdict, 3 Nov. 2006
Niset Ramić, Case No. X-KRZ-06/197, Second Instance Verdict, 21 Nov 2007 Niset Ramić, Case No. X-KR-06/197, First Instance Verdict, 17 July 2007
Petar Mitrović, Case No. X-KR-05/24-1, First Instance Verdict, 29 July 2008 Petar Mitrović, Case No.X-KRZ-05/24-1, Second Instance Verdict, 7 Sept. 2009
Predrag Kujundžić, Case No. X-KR-07/442, First Instance Verdict, 30 Oct.2009 Predrag Kujundžić, Case No. X-KRZ-07/442, Second Instance Verdict, 4 Oct. 2010
Radisav Ljubinac, Case No. X-KR-05/154, First Instance Verdict, 8 March 2007
Radomir Vuković et al., Case No.X-KR-06/180-2, First Instance Verdict, 22 April 2010 Radomir Vuković et al., Case No.X-KR-06/180-2, Second Instance Verdict, 2 Sept.2008
Radovan Stanković, Case No. X-KRŽ-05/70, First Instance Verdict, 14 Nov. 2006 Radovan Stanković, Case No. X-KRŽ-05/70, Second Instance Verdict, 28 March 2007
Slavko Šakić, Case No. X-KR-0541-1, First Instance Verdict, 29 Oct. 2008
Veiz Bjelić, Case No. X-KR-07/430-1, First Instance Verdict, 28 March 2008
Vrdoljak Ivica, Case No. X-KRZ-08/488, Second Instance Verdict, 29 Jan. 2009
Zdravko Božić et al., Case No. X-KRZ-06/236, First Instance Verdict, 6 Nov. 2008 Zdravko Božić et al., Case No. X-KRZ-06/236, Second Instance Verdict, 5 Oct. 2009
Željko Lelek, Case No. X-KRŽ-06/202, First Instance Verdict, 23 May 2008 Željko Lelek, Case No. X-KRŽ-06/202, Second Instance Verdict, 12 Jan. 2009
Željko Mejakić et al., Case No. X-KRŽ-06/200, First Instance Verdict, 30 May 2008 Željko Mejakić et al., Case No. X-KRŽ-06/200, Second Instance Verdict, 16 Feb. 2009

Zijad Kurtović, Case No. X-KRZ-06/299, First Instance Verdict, 30 April 2008

Zijad Kurtović, Case No. X-KRZ-06/299, Second Instance Verdict, 25 March 2009

Zrinko Pinčić, Case No. X-KRŽ-08/502, Second Instance Verdict, 2 Dec. 2009

Zoran Janković, Case No. X-KR-06/234, First instance verdict of 19 June 2007

SUPREME COURT OF FBİH

Borislav Berjan, Case No. 070-0-Kz-08-000002, Second Instance Verdict, 5 March 2008

Edin Hakanović, Case No. 070-0-Kz-06-000053, Second Instance Verdict, 15 Jan. 2008

Nihad Vlahovljak *et al.*, Case No. 070-0-KZ-07-000484, Second Instance Verdict, 18 Sept. 2008

Predrag Misković, Case No. 070-0-Kz-07-000225, Second Instance Verdict, 2 Aug. 2007

Sabahudin Operta *et al.*, Case No. KT-05/01, 8 Sept. 2010

SUPREME COURT OF REPUBLIKA SRPSKA

Case No. 118-0-Kz-K-06-000-018, Second Instance Verdict, 18 April 2006

Case No. 118-0-Kzz-06-000 191, Second Instance Verdict, 7 Nov. 2006

Case No. 118-0-Kz-K-06-000-006, Second Instance Verdict, 22 Feb. 2007

Case No. 118-0-Kz-07-000 020, Second Instance Verdict, 15 March 2007

Nikola Dereta, Case No. Kz-z-07-000 008, Second Instance Verdict, 29 June 2007

Goran Petic, Case No. 118-0-Kz-07-000 240, Second Instance Verdict, 3 April 2008

CANTONAL & OTHER COURTS

Cantonal Court in Mostar, Dzemail Vlahovljak *et al.*, Case No. 007-0-K-07-00 006, First Instance Verdict, 8 Aug. 2007

Cantonal Court in Mostar, Dzemail Vlahovljak *et al.*, Case No. 007-0-K-07-00 006, Second Instance Verdict

Cantonal Court in Mostar, Nihad Vlahovljak *et al.*, Case No. 007-0-K-07-00 006, First Instance Verdict, 8 Aug. 2007

Cantonal Court Sarajevo, Borislav Berjan, Case No. 009-0-K-06-000088, First Instance Verdict, 15 Oct. 2007

Sarajevo Cantonal Prosecutor's Office, *Orić*, No. KT-2757/08, Letter of 26 Jan. 2009

Sarajevo Cantonal Prosecutor's Office, <i>Orić</i> , No. KT-2757/08, Letter of 2 Feb. 2009
Sarajevo Municipal Court, <i>Orić</i> , Case No. 65 0 K 064513 08 K, Defence Submission of 19 Feb. 2009
Sarajevo Municipal Court, <i>Orić</i> , No. KT-2757/08, Defence Counsel Letter to the Sarajevo Chief Cantonal Prosecutor dated 28 January 2009
Zenica Cantonal Prosecutor's Office, <i>Mittal</i> , Report of the Expert Team in the Case No. KTA 67/07, Oct. 2007

CROATIA

SUPREME COURT OF CROATIA

Ademi and Norac (Medački džep), Case No. Kž-1008/08, Second Instance Verdict, 18 Nov. 2009
Artuković, Case No. Kz-706/1986, Second Instance Verdict, 24 July 1986
Cerna, Case No. Kz - 910/08, Second Instance Verdict, 25 March 2009
Koprivna (Stojan Živkovic et al.), Case No. I Kz 865/01-3, Verdict of 14 Jan. 2004
Koranski Most, Case Nos. K-7/04 and Kž 738/07, Second Instance Verdict, 4 May 2009
Marino Selo, Case No. KZ No. 585/09, Second Instance Verdict, 23 March 2010
Mikluševci, Case No. I Kz 683/09-8, Second Instance Verdict, 17 Nov. 2009
Nedjeljko Janković, Case No. I Kz 363/10-6, 20 Oct. 2010
Novak Simić et al. (Dalj III), Case No. I-Kz 791/08-9, Second Instance Verdict, 3 Dec. 2008
Stojan Živkovic et al., Case No. I Kz-865/01-3, 14 Jan. 2004
Tomislav Madi et al. (Cerna), Case No. I Kz 910/08-10, Second Instance Verdict, 25 March 2009

WAR CRIMES COUNCIL

War Crimes Council of the Vukovar County Court, Mikluševci, Case No. No.K-7/01, Verdict, 5 Feb. 2009
--

COUNTY COURTS

Karlovac County Court, Mihajlo Hrastov, Case No. K-7/04, First Instance Verdict, 28 March 2007
Karlovac County Court, Zdravko Pašić, Case No. 6 K-2/01-85; Kv-29/10, 03 May 2010, First Instance Verdict, final

Osijek County Court, Margus and Dilber (Čepin), Case No. K-33/06, First Instance Verdict, 21 March 2007
Osijek County Court, Koprivna (Stojan Živković et al.), Case No. K-104/94-123, First Instance Verdict, 12 Dec. 1994
Osijek County Court, Miloš Lonar, Case No. K-18/02, First Instance Verdict, 12 June 2001
Osijek County Court, Novak Simić et al. (Dalj), Case No. Krz-42/07-228, First Instance Verdict, 21 April 2008
Osijek county State Attorney's Office, Mikluševci, Indictment No. KT-37/93, 29 April 1996
Sibenik County Court, Počuča, Case No. K-52/07, First Instance Verdict, 3 July 2008
Sisak County Court, Petrinja, Case No. K-25/06, First Instance Verdict, 25 April 2007
Vukovar County Court, Cerna, Case No. K-5/07, First Instance Verdict, 12 Feb. 2008
Vukovar County Court, Jovan Ćurčić et al. (Borovo selo), Case No. K-12/05, First Instance Verdict, 14 Dec. 2005
Vukovar County Court, Zinaji, Case No. K-11/07, First Instance Verdict, 12 June 2009
Vukovar County State Attorney's Office, Mikluševci, Indictment No. K-DO-71/01, 20 March 2007
Zagreb County Court, Ademi and Norac (Medački džep), Case No. K-rz-1/06, First Instance Verdict, 30 May 2008
Zagreb County Court, Artuković, Case No. K-91/84-61, First Instance Verdict, 14 May 1986
Zagreb County Court, Glavaš et al. Case No. K-rz-1/07, First Instance Verdict, 8 May 2009
Zagreb County Court, Sakić, Case No. V K-242/98-257, First Instance Verdict, 1 Oct. 1999

SERBIA

SUPREME COURT OF SERBIA

Anton Lekaj, Case No. Kz. I RZ 3/06, Second Instance Verdict, 26 Feb. 2007
Boro Trbojević (Velika Peratovica), Case No. Kz.I Rz 2/09, Second Instance Verdict, 27May 2009
Branko Grujić et al., Case No. KZ.II P3 22/08, Decision, 14 April 2008
Sinan Morina, Case No. Kz. I RZ 1/08, Second Instance Verdict, 3 March 2009
Škorpioni (Aleksandar Medić), Case No. Kz I r.z. 1/09, Second Instance Verdict after re-trial, 9 Oct. 2009
Škorpioni, Case No Kz. I p.z. 2/07, Second Instance Verdict, 13 June 2008
Zvornik I (Korac and Slavkovi), Case No. Kz. I RZ 3/08, Second Instance Verdict, 8 April 2009

BELGRADE DISTRICT/HIGH COURT

WCC, Belgrade District Court (pre-trial panel), Peter Egner, Case No. Ki.V. 8/09, Kv.V. 23/09, Judgement, 24 March 2009
WCC, Belgrade District Court, Anton Lekaj, Case No. K.V. 4/05, First Instance Verdict, 18 Sept. 2006
WCC, Belgrade District Court, Boro Trbojević (Velika Peratovica), Case No. K.V.5/08, First Instance Verdict, 27 May 2009
WCC, Belgrade District Court, Boro Trbojević, Case No. K-39/2011-11, First Instance Verdict, 12 April 2011
WCC, Belgrade District Court, Damir Sireta, Case No. K.V. 9/2008, First Instance Verdict, 23 June 2009
WCC, Belgrade District Court, Lekaj, Case No. K.B.br 4/05, First Instance Verdict, 18 Sept. 2006
WCC, Belgrade District Court, Nenad Malić (Stari Majdan), Case No. KV 3/2009, First Instance Verdict, 7 Dec. 2009
WCC, Belgrade District Court, Ovčara, Case No. K.V. 4/2006, First Instance Verdict, 12 March 2009
WCC, Belgrade District Court, Ovčara, Case No. K.B.1/2003, First Instance Verdict, 12 Dec. 2005
WCC, Belgrade District Court, Zdravko Pašić (Slunj), Case No. K.V 42/07, First Instance Verdict, 8 July 2008
WCC, Belgrade District Court, Popović et al., (Bitići case), Case No. K.V. 3/2006, First Instance Verdict, 22 Sept. 2009
WCC, Belgrade District Court, Škorpioni (Aleksandar Medić), Case No. K.V.8/2008
WCC, Belgrade District Court, Škorpioni, Case No. K.V. 6/2005, First Instance Verdict, 10 April 2007
WCC, Belgrade District Court, Slunj, Case No. K.V. 4/2007, First Instance Verdict, 8 July 2008
WCC, Belgrade District Court, Stanko Vujanović, Case No.K-Po2 – 40/2010, First Instance Verdict, 1 Nov. 2010
WCC, Belgrade District Court, Suva Reka (Mitrovi et al). Case No. K.V.2/2006, First Instance Verdict, 23 April 2009
WCC, Belgrade District Court, Zvornik I (Vlajković M. Slavković et al.), Case No. KV 5/05, First Instance Verdict, 29 May 2008
WCC, Belgrade District Court, Zvornik, Case No. K.V. 5/2005, First Instance Verdict, 12 June 2008
WCD, Belgrade High Court, Darko Radivoj (Tenja), Case No. K.Po2 38/2010, First Instance Verdict, 17 Nov. 2010
WCD, Belgrade High Court, Grujić and Popović, (Zvornik II), Case No. K.Po2 28/2010, First Instance Verdict, 22 Nov. 2010
WCD, Belgrade High Court, Lazić et al. (Medak), Case No. K.Po2 36/2010, First Instance Verdict, 23 June 2010

WCD, Belgrade High Court, Lovre et al. (Zupljanin Supporters), Case No. K.Po2 52/10, 13 May 2011

WCD, Belgrade High Court, Španović (Stara Gradiška), Case No. K-Po2 32/2010, First Instance Verdict, 25 Jun 2010

BELGRADE APPELLATE COURT

WCD, Belgrade Appellate Court, Damir Sireta, Case No. Kž1 Po2 2/2010, Second Instance Verdict, 24 Jun 2010

WCD, Belgrade Appellate Court, Dusko Kesar, Case No. Kž1 Po2 11/2010, 28 Feb. 2011

WCD, Belgrade Appellate Court, Jurišić, Case No. Kž1 Po2 5/2010, Second Instance Verdict, 11 Oct. 2010

WCD, Belgrade Appellate Court, Podujevo II (Đukić), Case No. Kž1 Po2 2/2011, Second Instance Verdict, 11 Feb. 2011

WCD, Belgrade Appellate Court, Podujevo II, Case No. Kž1 Po2 3/2010, Second Instance Verdict, 25 May 2010

WCD, Belgrade Appellate Court, Suva Reka, Case No. Kž1 Po2 4/2010, Second Instance Verdict, 30 Jun 2010

WCD, Belgrade Appellate Court, Vujović et al (Ovčara), Case No. Kz1 PO2-1/2010, Second Instance Verdict, 23 June 2010

NATIONAL LAWS AND INSTRUMENTS

BOSNIA AND HERZEGOVINA

Constitution of Bosnia and Herzegovina

BiH Criminal Code, BiH Official Gazette No. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, consolidated version, *available at* www.sudbih.gov.ba

BiH Law on Amnesty, BiH Official Gazette No. 10/01, 16/01, 19/07

BiH Law on Amendments and Additions to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, Official Gazette, No. 61/04

BiH Law on Execution of Criminal Sanctions, Detention and Other Measures, *available at* <http://www.mpr.gov.ba/userfiles/file/Biblioteka/zakoni/bh/ZAKON%20O%20OSNIVANJU%20ZAVODA%20ZA%20IZVRSENJE%20KRIVICNIH%20SANKCIJA/Zakon%20o%20osnivanju%20Zavoda%20za%20izvršenje%20krivicnih%20sankcija.pdf>

BiH Law on Implementation of the Rome Statute of the International Criminal Court and on Cooperation with the International Criminal Court, BiH Official Gazette, No. 84/09

BiH Official Gazette, No. 03/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10,

consolidated version, available at www.sudbih.gov.ba
Komentar Krivičnog/kaznenog zakona Bosne i Hercegovine, Savjet/Vijeće Evrope / Evropska komisija, 2005, (Commentary of the BiH Criminal Code, 2005)
Law on Protection of Witnesses under Threat and Vulnerable Witnesses, Bosnia and Herzegovina, Official Gazette, No. 21/03
Organization for Security and Cooperation in Europe, The Processing of ICTY Rule 11bis cases in Bosnia and Herzegovina: Reflections on findings from five years of OSCE monitoring, Organization for Security and Cooperation in Europe, Jan. 2010
BiH Law on Extradition at the Request of the International Tribunal, BiH Official Gazette, No. 12/95, 33/95
Brčko District of Bosnia and Herzegovina, Official Gazette No. 6/00, 1/01 and 3/03
Brčko District of Bosnia and Herzegovina, Official Gazette No. 10/03
Brčko District Criminal Code
FBiH Criminal Code, FBiH Official Gazette No. 36/03 and 37/03
FBiH Law on Amnesty, FBiH Official Gazette No. 48/99
FBiH Law on Extradition of the Accused Persons at the Request of the International Tribunal, FBiH Official Gazette, No. 9/96
FBiH Official Gazette, No. 36/03
FBiH Official Gazette, No. 43/98
Republika Srpska Criminal Code
Republika Srpska Law on Amnesty, RS Official Gazette No. 95/05
Republika Srpska Law on Cooperation of Republika Srpska with the International Criminal Tribunal in The Hague, Republika Srpska, BiH Official Gazette, No. 52/01
Republika Srpska Official Gazette No. 49/03
Republika Srpska Official Gazette, No. 22/00
Republika Srpska Official Gazette, No. 49/03
The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 4: Constitution of Bosnia and Herzegovina (1995)

CROATIA

Croatia Constitution, Official Gazette of Croatia „Narodne Novine“ No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 (1990)
Civil Obligation Act, Official Gazette of Croatia „Narodne Novine“ No. 53/91, 73/91, 3/94, 7/96, 132/98, 112/99
Criminal Acts against the International Law on War and Humanitarian Law, Official Gazette of Croatia „Narodne Novine“ No. 175/03, Nov. 4, 2003, Art. 13 (2)
Criminal Procedure Act, 24 Dec.2008, Official Gazette of Croatia „Narodne Novine“ No. 152/08, 76/09
Decision on the establishment of the War Crimes Committee, Art. 2, Official Gazette of Croatia „Narodne Novine“ No. 34/1993
Defence Code from 20 Sept. 1991, Art. 48, Official Gazette of Croatia „Narodne Novine“ No. 49/1991
Law on Defence, Official Gazette of Croatia „Narodne Novine“ No. 49/91, 53A/91, 73/91, 19/92, 55/92 and 49/93
Law on Juvenile Courts, Art. 110, Official Gazette of Croatia „Narodne Novine“ No. 111/97, 27/98, 12/02
Law on Responsibility of Republic of Croatia for Damages Caused by the Members of Croatian Armed and Police Forces during the Homeland War; Official Gazette of Croatia „Narodne Novine“ No. 117/2003
Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts against the International Law on War and Humanitarian Law, Official Gazette of Croatia „Narodne Novine“, No. 175/2003, 55/2011
Official Gazette of Croatia „Narodne Novine“ No. 53/91 and 39/92
Official Gazette of Croatia „Narodne Novine“ No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10
Republic of Croatia, Official Gazette of Croatia „Narodne Novine“ No. 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 71/06, 110/07, 152/08

SERBIA

Serbia Constitution, Republic of Serbia Official Gazette No. 98/2006
Federal Republic of Yugoslavia Constitution, FRY Official Gazette, Year I, No. 1, Belgrade, 27 April 1992
Criminal Procedure Code, Official Gazette of the FRY No. 70/2001, 68/2002, and Official Gazette of the Republic of Serbia No. 58/2004, 85/2005, 115/2005, 49/2007, 72/2009

Law on Co-operation of Serbia and Montenegro with the International Criminal Tribunal for the former Yugoslavia, Official Gazette of the FRY, 18/2002 and 16/2003
Law on the Protection Program of Participants in Criminal Proceedings ("Wit Sec Law")
Law on Organisation and Competence of Government Authorities in War Crimes Proceedings (2004)
Republic of Serbia, Law on Juvenile Offenders and Criminal Protection of Juveniles, Official Gazette of the Republic of Serbia" No. 85/05 (2008)
Republic of Serbia, Official Gazette, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009
The Constitutional Covenant of the State Union of Serbia and Montenegro, Official Gazette of Serbia and Montenegro, Year I, No. 1, Belgrade, 4 Feb. 2003

SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

The Constitution of the Socialist Federative Republic of Yugoslavia, SFRY Official Gazette, No. 9, Belgrade, 21 Feb. 1974, Basic Principles, VII
Komentar krivičnog Zakona Socijalističke Federativne Republike Jugoslavije, Savremena administracija, 1978, str.508, (Commentary of the SFRY Criminal Code, Savremena administracija, (1978)
SFRY Criminal Code, Official Gazette of the SFRY no.44/76, 36/77, 34/84, 74/87, 57/89, 3/90, 38/90
SFRY Criminal Code, Official Gazette No. 44/76, 36/77, 34/84, 74/87, 57/89, 3/90, 38/90

ADDITIONAL MATERIALS

AGREEMENTS

Agreement between Bosnia and Herzegovina and Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters of 24 Feb. 2005, BiH Official Gazette, No. 11/05
Agreement between Bosnia and Herzegovina and Serbia and Montenegro on Mutual Execution of Judicial Decisions in Criminal Matters of 24 Feb. 2005 (BiH Official Gazette, No. 11/05) and its Amendments of 26 Feb. 2010 in relation to the Republic of Serbia
Agreement between Bosnia and Herzegovina and the Republic of Croatia on Mutual Execution of Judicial Decisions in Criminal Matters (initially: Agreement between the Governments of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and the Republic of Croatia on Mutual Execution of Judicial Decisions in Criminal Matters) of 26 Feb. 1996, (BiH Official Gazette, No. 1/96), and its amendments of 17 June 2002 (BiH Official Gazette No. 11/05), 5 Dec. 2003 and 11 Feb. 2010
Agreement between Bosnia and Herzegovina and the Republic of Macedonia on Extradition of 27 Jan. 2006

Agreement between Bosnia and Herzegovina and the Republic of Macedonia on Legal Assistance in Civil and Criminal Matters of 13 Sept. 2005

Agreement between Bosnia and Herzegovina and the Republic of Macedonia on Mutual Execution of Judicial Decisions in Criminal Matters of 27 Jan. 2006

Agreement between Bosnia and Herzegovina and the Republic of Slovenia on Extradition of 5 April 2002, BiH Official Gazette, No. 12/05

Agreement between Bosnia and Herzegovina and the Republic of Slovenia on Legal Assistance in Civil and Criminal Matters of 21 Oct. 2009

Agreement between Bosnia and Herzegovina and the Republic of Slovenia on Mutual Execution of Judicial Decisions in Criminal Matters of 5 April 2002, BiH Official Gazette No. 12/05

Agreement between the Governments of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters of 26 Feb. 1996, BiH Official Gazette, No. 1/96

Memorandum on the Agreement on Achieving Mutual Cooperation in Fighting All Forms of Severe Crime between the Republic Public Prosecutor's Office and War Crimes Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina of 2005

Protocol on Agreement in Establishing Mutual Cooperation in Combating All Forms of Serious Crime between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina of 21 Jan. 2005

ARTICLES & REPORTS

R. N. Daniels, *Non Bis in Idem and the International Criminal Court*, Bepress Legal Series, Northwestern University, (2006)

B. Hola, et al., *Is ICTY Sentencing Predictable? An Empirical Analysis of ICTY Sentencing Practice*, 22 LEIDEN J. INT'L L. 79 (2009)

Human Rights Watch, *Courting History*, Report, Human Rights Watch interview with ICC staff, 1 May 2007, available at http://www.hrw.org/es/node/62135/section/10#_ftnref521

Human Rights Watch, *Genocide, War Crimes, Crimes against Humanity, Thematic Collection of Excerpts from the ICTY jurisprudence*, UNDP, Serbia and Montenegro, 2004

Judge Wolfgang Schomburg and Ines Peterson, *Genuine Consent to Sexual Violence Under International Law*, 101:1 AM. J. INT'L L. 121 (2007)

M. Cherif Bassiouni, *The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780*, 88 AM. J. INT'L L. 784 (1994)

Nuremberg IMT, *Judgement and Sentence*, (1947) 41 AM. J. INT'L L. 172

Organization for Security and Co-operation in Europe Mission to Croatia, <i>Background Report, Developments in war crimes proceedings Jan. – Oct. 2007</i> , 3 (2007)
<i>R. v. Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte</i> 1 ALL. ER. 577, HL (1999)
Report of the Commission to the Preliminary Peace Conference, reprinted in (1920) 14 A.J.I.L. 95
Report on the work of the Prosecution of Bosnia and Herzegovina for 2005, <i>available at</i> http://www.tuzilastvobih.gov.ba/files/docs/IZVJESTAJ_ORADU_TUZILASTVA_BIH_2005_BOS.pdf
UN Secretary-General's Report on the establishment of the ICTY, 3 May 1993, S/25704
Yves Sandoz et al. <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 Aug. 1949 (1987)</i> , <i>available at</i> http://www.icrc.org/ihl.nsf/COM/470-750001?OpenDocument

BOOKS

Albin Eser <i>in</i> THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY (Cassese <i>et al.</i> 2002)
Ana Garačić, <i>Komentar Kaznenog zakona</i> , Organizator (Zagreb, 2009)
Bahia Thahzib-lie and Olivia Swaak-Goldman, <i>Determining the Threshold</i> , <i>in</i> MAKING THE VOICE OF HUMANITY HEARD: ESSAYS ON HUMANITARIAN ASSISTANCE AND INTERNATIONAL HUMANITARIAN LAW 248 (Liesbeth Lijnzaad <i>et al.</i> eds., 2004)
Bouterse, 51 NEDERLANDSE JURISPRUDENTIE 302 (2000)
Dapo Akande, <i>The Sources of International Criminal Law</i> , <i>in</i> OXFORD COMPANION TO INTERNATIONAL CRIMINAL LAW AND JUSTICE 41-53 (Cassese, <i>et al.</i> eds. 2009)
Florian Jessberger, <i>Incitement to Commit Genocide</i> , <i>in</i> THE OXFORD COMPANION TO INTERNATIONAL CRIMINAL JUSTICE pp. 373-4 (Cassese <i>et al.</i> , ed. in chief, 2009)
Guénaél Mettraux, THE LAW OF COMMAND RESPONSIBILITY (Oxford: Oxford University Press, 2009)
Kai Ambos <i>in</i> COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (Otto Triffterer ed., 1999)
Otto Triffterer, O. (ed.), COMMENTARY ON THE ROME STATUTE OF THE CRIMINAL COURT (1999)
Robert Cryer, <i>et al.</i> , An Introduction to International Criminal Law and Procedure (2d ed. 2010)
Stefano Maffei, The European Right to Confrontation in Criminal Proceedings, Confrontation of Adverse Witnesses as a Fundamental Right of the Accused Person, European and International Criminal Law Series (Groningen: Europa Law Publishing, 2006)
Vanessa Thalmann, Rwandan Genocide Cases, <i>in</i> The Oxford Companion to International Criminal Justice (Cassese <i>et al.</i> ed. in chief, 2009)

CONVENTIONS/TREATIES

Beijing Declaration and Platform for Action, Fourth World Conference on Women (15 Sept. 1995)
Convention on the Prevention and Punishment of the Crime of Genocide (1948)
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. res. 2391 (XXIII), Annex (1968)
Council of the European Union, Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA of 15 March 2001) and Council Framework Decision on combating trafficking in human beings (2002/629/JHA of 19 July 2002).
Council of Europe, European Convention on the International Validity of Criminal Judgments <i>available at</i> http://conventions.coe.int/Treaty/EN/Treaties/Html/070.htm
European Convention on Human Rights (1950)
European Convention on Human Rights, Additional Protocol No. 6 (1983)
European Convention on the Compensation of Victims of Violent Crimes of 24 Nov. 1983 (ETS 116), and Recommendation of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and Procedure of 28 June 2005 (R(85)11)
Geneva Convention I; Geneva Convention II; Geneva Convention III; Geneva Convention IV (1949) International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (1949) <i>available at</i> http://www.unhcr.org/refworld/docid/3ae6b36c.html
Geneva Convention Additional Protocols I & II (1977)
International Covenant on Civil and Political Rights (1966)
International Covenant on Civil and Political Rights, Second Optional Protocol (1989)
Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M. 1429 (1994)
International Convention for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005)
International Convention on the Suppression and Punishment of the Crime of Apartheid ("Apartheid Convention"), 30 Nov. 1973, <i>available at</i> http://www.unhcr.org/refworld/docid/3ae6b3c0.html
United Nations Convention on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984)

Vienna Convention on the Law of Treaties (1969)

INTERNATIONAL COURT DOCUMENTS

ICC ASP RC/Res.6, The Crime of Aggression, 11 June 2010
ICC ASP, Report on programme performance of the International Criminal Court for the year 2007, ICC-ASP/7/8/Add.1
ICC, Rome Statute for the International Criminal Court (2002)
ICC Elements of Crimes
ICC Rules of Procedure and Evidence
ICC Office of the Prosecutor, <i>Policy Paper on the Interests of Justice</i> , 3 – 4, Sept. 2007
ICC, Regulations of the Registry, Case No. ICC-BD/03-01-06Rev.1, Sept. 25, 2006, <i>available at</i> http://www.icc-cpi.int/library/about/officialjournal/ICC-BD_03-01-06-Rev1_English.pdf
ICC, Office of the Prosecutor, Policy Paper (Sept. 2003)
ICC, Regulations of the Registry, ICC-BD/03-01-06, 6 March 2006
ICTR, Statute for the International Criminal Tribunal for Rwanda (1994)
ICTR, Report on the completion strategy of the International Criminal Tribunal for Rwanda (25 May 2010)
ICTY, Statute of the International Criminal Tribunal for the Former Yugoslavia (1993)
ICTY Rules of Procedure and Evidence
ICTY Press Release, <i>President McDonald Reports the continued Non-Cooperation by the Federal Republic of Yugoslavia to the Security Council</i> , 18 March 1999, JL/PIU/386-E
ICTY Press Release, <i>The president of the International Tribunal reports to the Security Council “the refusal of Croatia to Cooperate with the Tribunal” and Requests that “sufficiently compelling measures” be taken</i> , 25 Aug. 1999, CC/P.I.S./433-E
ICTY Press Release, <i>Letter from President McDonald to the President of the Security Council concerning Outstanding Issues of State Non-Compliance</i> , 2 Nov. 1999, JL/PIS/444-E
ICTY Press Release, <i>Judge Claude Jorda, President of the ICTY, reports the Continued Non-Cooperation by the Federal Republic of Yugoslavia to the Security Council</i> , 23 Oct 2002, JDH/P.I.S./706-E
ICTY Press Release, <i>Judge Theodor Meron, President of the International Criminal Tribunal for the former Yugoslavia, Reports Serbia and Montenegro's non-cooperation to the Security Council</i> , 4 May 2004,

/P.I.S./840-E

SCSL, Statute of the Special Court for Sierra Leone (2000)

SCSL, Seventh Annual Report of the President of the Special Court for Sierra Leone (June 2009 – May 2010)

UNITED NATIONS' DOCUMENTS

Affirmation of the Principles of International Law Recognized by the Charter of the Nuremburg Tribunal, G.A. Res. 95(I), UN Doc A/64/Add.1 (Dec. 11, 1946)

Agreement between the UN (on behalf of the ICTY) and the USA, Agreement on Surrender of Persons, 5 Oct. 1994

Agreement between the UN (on behalf of the ICTR) and the USA, Agreement on Surrender of Persons, 24 Jan. 1995

Agreement between the UN and the Netherlands, Agreement Concerning the Headquarters of the ICTY, 29 July 1994

Annual Report of ICTY 2002, S/2002/985

Annual Report of the ICTY, UN Doc. A/49/342-S/1994/1007

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (Apr. 19, 2005)

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Council of Europe Recommendation (97) 13 concerning intimidation of witnesses and the rights of the defense, Council of Europe Recommendation Rec (2005) 9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice, and Council of Europe Recommendation (06)8 of the Committee of Ministers to member states on assistance to crime victims.

Charter of the United Nations, Art. 25 (1945)

Declaration of Basic Principles for Victims of Crime and Abuse of Power, UNGA Res. 40/34 of, 29 Nov. 2005

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR Supp. (No. 53) at 214, U.N. Doc. A/40/53 (Nov. 29 1985)

Declaration on the Protection of All Persons from Enforced Disappearances, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992)

Establishing a Commission of Experts to Examine and Analyze Information Submitted Pursuant to Resolution 771, S.C. Res. 780, U.N. DOC. S/RES/780 (1992)

Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), transmitted to the Security Council by a letter from the Secretary-General to the President of the Security Council dated 27 May 1994 (S/1994/674)
G.A. RES. 96/1 U.N. DOC. A/RES/96/1 (Dec. 11, 1946)
Statement by Justice Hassan B. Jallow, Prosecutor of the ICTR, to the United National Security Council, 18 June 2010, available at http://www.unict.org/Portals/0/.ictr.un.org/tabid/155/Default.aspx?id=1144 (accessed June 16, 2011)
Report on the work of the Prosecution of Bosnia and Herzegovina for 2005, available at http://www.tuzilastvobih.gov.ba/files/docs/IZVJESTAJ_ORADU_TUZILASTVA_BIH_2005_BOS.pdf
Resolution on Establishing an international Tribunal of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, UN Doc. S/Res/827 (1993), 25 May 1993
S.C. Res. 1503, U.N. Doc. S/RES/1503 (Aug. 28, 2003)
S.C. Res. 1534, U.N. Doc. S/RES/827 (March 26, 2004)
S.C. Res. 1966, U.N. Doc. S/RES/1966 (Dec. 22, 2010)
S.C. Res. 827, Preamble, U.N. Doc. S/RES/827 (Oct. 6, 1993)
S.C. Res. 935, U.N. DOC. S/RES/935 (March 26, 1994)
S.C. Res. 955, U.N. DOC. S/RES/955 (Nov. 8, 1994)
S.C. Res. 1593, U.N. Doc. S/RES/1593 (2005)
S.C. Res. 1970, U.N. Doc. S/RES/1970 (2011)
UN-Cambodia, for the Establishment of the Extraordinary Chamber in the Courts of Cambodia, attached to GA Res. 57/228B of 13.5.2003; See also CRYER, <i>supra</i> note 1, at p. 185
UN Doc. A/CN.4/596, 31 March 2008
UN Secretary-General's Report on the establishment of the ICTY, 3 May 1993, S/25704
United Nations War Crime Commission, Law Reports of Trials of War Criminals: United States v. Wilhelm List and others, vol. VIII, 34, 49 (1949)
UNODC: Justice in Matters involving Child Victims and Witnesses of Crime, Model Law and Related Commentary (2009)
Vienna Declaration, World Conference on Human Rights, UN Doc. A/CONF.157/24 (1993)