



RPD File No. / N° de dossier de la SPR : MB3-02057

Client ID No. / N° ID client : XXXX XXXX XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX

Date(s) of hearing

April 19, 2017
May 24, 2017
June 29, 2017
September 19, 2017
September 21, 2017

Date(s) de l'audience

Place of hearing

Montréal, Quebec

Lieu de l'audience

**Date of decision
and reasons**

January 17, 2018

**Date de la décision
et des motifs**

Panel

Jacqueline Schoepfer

Tribunal

Counsel for the claimant(s)

M^c Stephane Handfield

**Conseil(s) du (de la / des)
demandeur(e)(s) d'asile**

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

Mike Millette

Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

[1] **XXXX XXXX** (the claimant) is a citizen of Croatia and of Serbia and is claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

SUMMARY OF ALLEGATIONS

[2] According to his Basis of Claim Form,¹ the claimant alleges that he is of Serbian descent and that he has both Croatian and Serbian citizenship. He was born in Croatian territory, which was sufficient to acquire Croatian citizenship. Then, by serving as a **XXXX XXXX XXXX XXXX** in the Yugoslav army, the **XXXX XXXX XXXX** (JNA), he obtained his Serbian citizenship by decree in 1992.

Fears regarding Croatia

[3] The claimant alleges that he cannot return to Croatia because of his involvement in the Yugoslav armed forces during the war in Croatia. Although he left Croatia in late January 1992, he returned there as a military instructor in the Yugoslav professional army from 1994 to late 1997. He fears that if he were to return to Croatia, he would be recognized and he would become a target of the Croatian police.

Fears regarding Serbia

[4] The claimant alleges that he and his family have psychological scars from trauma suffered during the war in Croatia and the bombardments in Serbia. The claimant worked as a security officer in the city of Novi Sad since his demobilization in 2003. He states that he was insulted by work colleagues and a neighbour because he was born in Croatia. He states that he could not file a complaint with the Serbian police because it was corrupt. He also states that he is adversely affected by his wife's behaviour.

[5] The claimant made a claim for refugee protection in Canada on June 20, 2013.

¹ Document 1 – Basis of Claim Form.

[6] On April 29, 2014, his claim for refugee protection was suspended pursuant to subsection 103(1) of the IRPA until April 8, 2015, when the proceedings before the Refugee Protection Division (RPD) resumed.

MINISTER'S INTERVENTION

[7] On May 11, 2015, the Minister of Public Safety and Emergency Preparedness (the Minister), through his representative, informed the RPD of a notice of intervention regarding this refugee protection claim.

[8] Given that the claimant stated having served in the JNA from 1979 to 2003, notably during the armed conflict between Croats and Serbs in the early 1990s, the Minister alleges that there are serious reasons for considering that the claimant may have participated or been complicit in war crimes under Article 1F(a) of the United Nations *Convention Relating to the Status of Refugees* (the Convention).

[9] The Minister's representative attended the hearings to ask questions, and he submitted evidence.²

INTERLOCUTORY ISSUES

[10] On January 19, 2017, the claimant, through his counsel, filed a motion to stay the proceedings for unreasonable delay. On February 2, 2017, the Minister filed his written submissions in response to the claimant's motion.

[11] On February 20, 2017, the panel dismissed the claimant's motion to stay the proceedings for unreasonable delay. The reasons for the decision were forwarded to the parties and are on the record.

[12] On October 18, 2016, the first day of the hearing was held in this case. However, the Minister alleged that interpretation errors made by the interpreter during that hearing could raise a reasonable doubt as to the entire interpretation of the hearing. After requesting an analysis of the interpretation at the hearing of October 18, 2016, the panel held a hearing *de novo* on April 19, 2017.

² Document 7 – Exhibits M-1 to M-25 and Document 10, Exhibit M-26.

[13] On April 19, 2017, the claimant, through his counsel, made an application for the panel to recuse itself. Counsel's arguments were that the panel, having heard a full-day hearing on October 18, 2016, in this case, may have been negatively influenced with respect to the claimant's credibility. The Minister objected to the motion for the panel's recusal, arguing that he did not see a reasonable apprehension of bias and pointing out the delays already incurred in the case.

[14] The legal test for establishing reasonable apprehension of bias is set out in *Committee for Justice and Liberty v. Canada (National Energy Board)*.³ The test is as follows: "What would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude?"

[15] The panel found that the apprehension of bias or appearance of bias argued by the claimant's counsel was not based on concrete elements pointing to an apprehension of bias or a simple appearance of an apprehension of bias on the decision-maker's part. In fact, at the hearing of October 18, the main topic discussed was the claimant's training within the Yugoslav army. Those facts are not contested by the claimant, and the panel did not note any contradiction or inconsistency issues in the claimant's testimony regarding his training at the October 18 hearing that could in some way influence the decision-making process, especially since the heart of the matter, namely, the claimant's alleged involvement in the war in Croatia in 1991, had not yet been raised.

[16] After hearing the parties, the panel dismissed, on April 13, 2017, the claimant's recusal motion and held the hearings with a new interpreter.

[17] In his written submissions, after the hearings, the claimant's counsel pointed out that there had been numerous interpretation issues during the hearings, which led him to believe that the claimant did not receive a full and complete hearing.

[18] In his reply to the claimant's arguments, the Minister was rather of the opinion that the interpreter had acted with great professionalism and that she carried out her duty well overall.

³ *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 SCR 369.

[19] The panel shares that opinion. Although the interpreter sometimes searched for words with regard to specific military terms and had trouble translating certain words a few times, notably when the claimant used a Serbian dialect, as opposed to Serbo-Croatian, she immediately and professionally mentioned it during the hearing and made the necessary corrections each time to clarify any misunderstandings. The interpreter also used a military lexicon to ensure an accurate translation of the military terms used. The panel finds that the interpretation errors or hesitations were minor and did not impact the good quality of the interpretation.

[20] In *Muhendanganyi v. Canada*,⁴ the Federal Court states the following:

In *Mohammadian*, it was pointed out that the interpretation need not be perfect as long as it is “continuous, precise, competent, impartial and contemporaneous” (paras 4, 6). Although Madam Justice Gleason leaned to the view in *Mah* that errors need not be material to the outcome of the decision...she went on to say at paragraph 24 that the claimed errors must be more than trifling.

[21] In this case, although the translation was not always perfect, the panel finds that, as a whole, the interpretation over the course of the hearings was “continuous, precise, competent, impartial and contemporaneous.”⁵ Consequently, the panel is of the opinion that there was no breach of the claimant’s rights under section 14 of the Charter.

ANALYSIS

Identity

[22] The panel is satisfied as to the identity of the claimant, which was established by means of the identity documents filed on the record.⁶

Analysis of the exclusion under Article 1F(a) of the Convention

The Minister’s arguments and evidence

[23] In his written submissions, the Minister alleges that the documentary evidence is clear on the numerous crimes committed by the JNA in the conflict with Croatia. The Minister cites

⁴ *Muhendanganyi v. Canada (Citizenship and Immigration)*, 2015 FC 269, paragraph 10.

⁵ *Mohammadian v. Canada (Citizenship and Immigration)*, 2001 FCA 191, paragraph 4.

⁶ Document 2 – Information package provided by the Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC), formerly Citizenship and Immigration.

several documents referring to various strategies used by the JNA for the destruction of Croatian cities and villages and that had tragic consequences for the Croatian civilian population.⁷

[24] The Minister notes that the JNA's mass bombings of civilian targets caused a large number of fatalities and injuries. The Minister also argues that, according to the documentary evidence, the JNA was guilty of the forced displacement of the population⁸ and of the creation of concentration camps in which civilians and prisoners of war were transferred and where some 300 people died.⁹ The JNA is also said to be guilty of extrajudicial executions of civilians and disarmed combatants.¹⁰

[25] The Minister adds that various documentary sources also report acts of looting by JNA soldiers¹¹ and the fact that the JNA collaborated with rebel Serb groups,¹² notably those known as Arkan's Tigers, especially notorious for their acts of violence.¹³

[26] The Minister argues that the acts committed by the JNA during the war in Croatia constitute war crimes under various international instruments and that it acted for a criminal purpose during its intervention in Croatia.

[27] The Minister is also of the opinion that the claimant was complicit in the war crimes committed while he served in the JNA's 12th mechanized brigade in Croatia. He cites documentary evidence that reports on the active participation of the 12th mechanized brigade in the war in Croatia and its direct contribution to attacks on Croatian towns, especially Vukovar and Klisa, as well as other Croatian villages.¹⁴

[28] The Minister also refers to an indictment by the Osijek County Prosecutor's Office against officers who held commander positions within the 12th mechanized brigade and the

⁷ Document 7 – Exhibits M-7, p. 418 and p. 423; M-9, p. 577; M-16, p. 1019; M-18, p. 1082; M-19, pp. 1101–1102 and pp. 1091–1092.

⁸ Document 7 – Exhibits M-7, pp. 450–490; M-9, pp. 549 and 554; M-19, p. 1100.

⁹ Document 7 – Exhibit M-17, p. 1038.

¹⁰ Document 7 – Exhibits M-6, p. 324; M-7, p. 441; M-9, p. 573.

¹¹ Document 7 – Exhibit M-7, p. 435.

¹² Document 7 – Exhibits M-7, pp. 435 and 450; M-10, pp. 618–619.

¹³ Document 7 – Exhibits M-4, pp. 207 and 210; M-9, pp. 555 and 570; M-12, pp. 718 and 730; M-13, pp. 783–785; M-14, pp. 950, 961 (with p. 980) and 962–963.

¹⁴ Document 7 – Exhibits M-12, pp. 717 and 729 and 723–724; M-14, pp. 894–896 (with p. 965) and 904, 949, 961 (with p. 980).

36th armoured mechanized brigade. According to the Minister, the document provides details of over 100 attacks on civilian areas by those military units during the war.¹⁵

[29] The Minister therefore argues that the 12th mechanized brigade, in which the claimant served, actively took part in combat in the war in Croatia and that it committed war crimes during military operations.

[30] The Minister raises doubts as to the testimony of the claimant, when the latter stated at the hearing that he had not been involved in the bombardments of civilian areas and that he had played only a peacekeeping role within the 12th brigade while he was on the site of the conflict in Croatia in 1991. The Minister states that considering the claimant's role within the JNA and the places where he was deployed, it is not possible for him to have not known about the military actions of the JNA and their consequences.

[31] The Minister is rather of the opinion that the claimant's involvement in the buffer zone, where he was deployed during the conflict in Croatia, was key to conducting JNA operations and military strategy. The Minister points out that the documentary evidence has probative value with respect to the use of buffer zones and the important role of armoured and mechanized military units during the war,¹⁶ whose goal was to contain the Croat forces, thereby enabling the other military and paramilitary units to attack and bomb Croatian cities and villages. The Minister is of the opinion that the claimant's participation in the 12th mechanized brigade made him complicit in the criminal acts it committed.

[32] Consequently, the Minister is asking the panel to find that Article 1F(a) of the Convention applies to the claimant.

The arguments of the claimant's counsel

[33] The claimant's counsel points out that the Minister did not provide any material fact against the claimant and that the Minister's arguments are speculative.

[34] He also argues that the Minister acknowledges in his written submissions that the documentary evidence does not establish that the claimant personally committed a war crime and

¹⁵ Document 7 – Exhibits M-4, pp. 151–185 and 201–217.

¹⁶ Document 7 – Exhibits M-10, p. 608; M-12, pp. 729–730.

that the documentary evidence does not establish that the JNA acted as an organization with a limited and brutal purpose.

[35] The claimant's counsel points out that according to the claimant's testimony, the claimant never witnessed clashes between soldiers and civilians and never participated in attacks. He or the members of his platoon also never personally fired on civilians or personally took part in the destruction of civilian buildings. Neither he nor the members of his platoon ever personally committed human rights violations.

[36] The claimant's counsel argues that the Minister did not discharge his burden of proof and asks the panel not to exclude the claimant under Article 1F(a) of the Convention.

Standard of proof

[37] The onus is on the Minister to establish that there are serious reasons for considering that the claimant committed war crimes or crimes against humanity under Article 1F(a) of the Convention. The Supreme Court of Canada confirms that the standard of proof in such cases is "serious reasons for considering," a threshold of evidence less strict than the balance of probabilities, but stricter than a suspicion.¹⁷

Legal framework

[38] Section 98 of the IRPA provides that "[a] person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection."

[39] Article 1F(a) of the Convention provides the following:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect to such crimes.¹⁸

[40] Article 150 of the Office of the United Nations High Commissioner for Refugees (UNHCR) Handbook¹⁹ refers to the London Agreement and the Charter of the

¹⁷ *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 SCR 678, para. 101.

¹⁸ UNHCR Handbook: United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, January 1992.

International Military Tribunal to determine what constitutes a crime against humanity. The Rome Statute of the International Criminal Court and Canadian case law will serve as a guide for the panel to determine what constitutes a crime against humanity or a war crime, notably articles 7 and 8 of the Rome Statute.²⁰

[41] In Canada, section 4 of the *Crimes Against Humanity and War Crimes Act* defines war crime as follows:

war crime means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

[42] Similarly, in *Mugesera*,²¹ the Supreme Court of Canada sets out the conditions for a criminal act to be considered a crime against humanity:

- An enumerated proscribed act was committed...;
- The act was committed as part of a widespread or systematic attack;
- The attack was directed against any civilian population or any identifiable group of persons; and
- The person committing the proscribed act knew of the attack and knew or took the risk that his or her act comprised a part of that attack.

Crimes against humanity and war crimes committed by the JNA

[43] The documentary evidence reports that following the death of Josip Broz Tito in 1980, the Socialist Federal Republic of Yugoslavia (SFRY) plunged into crisis. The rise of Serbian expansionist nationalism directed toward the federal state deeply inspired the JNA.²²

[44] In 1991, Yugoslavia fell apart with Croatia and Slovenia proclaiming independence. Serb separatists at the eastern end of Croatia, along the border with Serbia, proclaimed the Serbian Autonomous Oblast of Slavonia, Baranja and Western Syrmia.

¹⁹ *Idem.*

²⁰ Rome Statute of the International Criminal Court, articles 7 and 8 (see Reference appended to these reasons).

²¹ *Mugesera v. Canada*, [2005] SCC 40.

²² Document 7 – Exhibits M-11, pp. 645–648; M-12, p. 708.

[45] On June 25, 1991, Croatia declared its independence from Yugoslavia. Croatia's decision to secede was strongly disputed, not only by Yugoslav federal military forces, but also by the large Serb minority living in the Republic of Croatia.²³

[46] The sources consulted indicate that human losses during the four years of war (1991–1995) were considerable. In addition to the bombing of civilian populations, the JNA created concentration camps in which the civilian population of seized cities and prisoners of war were interned.²⁴ In Croatia, in eastern Slavonia and Baranja, atrocities were committed against Croat civilians, notably in the city of Vukovar in the fall of 1991.²⁵

[47] A report by European Community (EEC) observers clearly indicates that, with the help of Serb militias, the JNA conducted ethnic cleansing operations in cities and villages in Croatian territory between July 1991 and January 1992. It is noted that in some cases, the JNA deliberately attacked civilian or symbolic targets, such as schools, museums, churches, radio or television stations, and especially hospitals.²⁶

[48] According to Helsinki Watch, the JNA committed serious human rights violations by attacking civilian targets in collaboration with the Serb insurgents. According to the organization, [translation] “the JNA initiated military actions during which it commanded irregulars and operated in liaison with or in the place of those militias. Local insurgents and militias from Serbia were directly or indirectly armed by the JNA, which also provided them with uniforms and perhaps even military intelligence information.”²⁷

[49] The panel is of the opinion that in light of the documentary evidence on the record and given the various international instruments mentioned above, the JNA was guilty of perpetrating crimes against humanity and war crimes during the conflict in Croatia between July 1991 and January 1992.

[50] As mentioned by the Minister in his written submissions, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) specified that

²³ Document 7 – Exhibit M-11, p. 648.

²⁴ Document 7 – Exhibit M-17, p. 1038.

²⁵ Document 7 – Exhibit M-17, p. 1042.

²⁶ Document 7 – Exhibit M-10, pp. 618–619.

²⁷ Document 7 – Exhibit M-9, p. 570.

[translation] “an armed conflict exists whenever there is a resort to armed force between States or protracted violence between government authorities and organised armed groups or between such groups within a State.”²⁸ International case law requires a level of combat intensity and organization of armed groups to determine the existence of a non-international armed conflict within the meaning of Common Article 3 of the Geneva Conventions and to distinguish it from a state of unrest or internal tensions. That case law made it possible to include the definition of war crimes in internal armed conflicts, as is the case here.

[51] The above-mentioned evidence clearly indicates that during the armed conflict in Croatia in 1991, the JNA committed serious violations of the Geneva Conventions of August 12, 1949, and of the laws and customs applicable in armed conflict, within the established framework of international law, and notably the following: “wilfully causing great suffering, or serious injury to body or health;” “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;” “intentionally directing attacks against civilian objects, that is, objects which are not military objectives;” “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which be clearly excessive in relation to the concrete and direct overall military advantage anticipated;” “attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;” “killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion,” as defined under Article 8 of the Rome Statute of the International Criminal Court. All these acts committed by the JNA constitute war crime acts.

[52] The panel is of the opinion that the criminal acts committed by the JNA during the conflict in Croatia in 1991 were committed “as part of a widespread or systematic attack directed against any civilian population or any identifiable group, with knowledge of the attack” and constitute crimes against humanity as set out above in *Mugesera*. The above-mentioned documentary evidence unequivocally describes the multiple widespread and systematic large-

²⁸ Minister’s submissions, paragraph 12.

scale attacks committed by the JNA, conducted in an organized manner against the Croatian population, notably against civilian populations, causing numerous victims.

Complicity

[53] It was established that the claimant was part of the JNA from 1979 to 2003. The documentary evidence also reports that the JNA committed crimes against humanity and war crimes in Croatia between 1991 and 1992, a period during which the claimant was posted in Croatia. Now, the panel must determine whether there are serious reasons for considering that the claimant was guilty of such crimes as a perpetrator or an accomplice in the performance of his duties within the JNA during that period.

[54] The most recent Supreme Court case law, *Ezokola*,²⁹ establishes the following with regard to the notion of complicity:

To exclude a claimant from the definition of “refugee” by virtue of art. 1F(a), there must be serious reasons for considering that the claimant has voluntarily made a significant and knowing contribution to the organization’s crime or criminal purpose. Decision makers should not overextend the concept of complicity to capture individuals based on mere association or passive acquiescence. In Canada, the personal and knowing participation test has, in some cases, been overextended to capture individuals on the basis of complicity by association. It is therefore necessary to rearticulate the Canadian approach to bring it in line with the purpose of the *Refugee Convention* and art. 1F(a), the role of the Refugee Protection Division, the international law to which art. 1F(a) expressly refers, the approach to complicity under art. 1F(a) taken by other state parties to the *Refugee Convention*, and fundamental criminal law principles. These sources all support the adoption of a contribution-based test for complicity — one that requires a voluntary, knowing, and significant contribution to the crime or criminal purpose of a group.

[55] In *Ezokola*,³⁰ the Supreme Court identifies the six factors to consider when assessing complicity:

including (i) the size and nature of the organization; (ii) the part of the organization with which the claimant was most directly concerned; (iii) the claimant’s duties and activities within the organization; (iv) the claimant’s position or rank in the organization; (v) the length of time the claimant was in the organization, particularly after acquiring knowledge of the group’s crime or criminal purpose; and (vi) the method by which the claimant was recruited and claimant’s opportunity to leave the organization.

²⁹ *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 SCR 678.

³⁰ *Ezokola v. Canada (Citizenship and Immigration)*, [2013] 2 SCR 678, para. 91.

The size and nature of the organization

[56] According to the information sources on the record, the Yugoslav armed forces were made up of the JNA and the Territorial Defence Forces (TDF). The JNA was the well-armed federal component that was operationally ready.³¹

[57] The professional army comprised three components: ground forces; air force and defence; and navy.³² In 1990, the ground forces had the most personnel with 140,000 active-duty soldiers (including 90,000 conscripts). It was split over three military regions: Slovenia and northern Croatia; eastern Croatia, Vojvodina and Serbia; Kosovo and Macedonia. The ground forces were restructured into brigades by converting 10 of their 12 infantry divisions into 29 tank and mechanized infantry brigades. In 1990, the frontline infantry units had some 50,000 soldiers.³³

[58] According to the documentary evidence, in 1991, when war broke out in Croatia, the JNA, which was to first serve as an intervention force, quickly positioned itself in favour of the Serb population.³⁴ The strategic offensive plan of the general staff of the JNA anticipated the subdivision of Croatia and a military victory to force the surrender of Croat political leaders and the renegotiation of a Yugoslav confederation.³⁵

[59] Having been unable to recruit all trained reservists who did not report for the mobilization, the JNA recruited Serb volunteers described as [translation] “often brutal, motivated by fervent xenophobia” in order to fill positions within the army ranks.³⁶ One of the best-known volunteer units was the Serb Volunteer Guard (Srpska Dobrovolijacka Garda – SDG), known as “Arkan’s Tigers,” organized and formed by the Serb Ministry of Internal Affairs (MUP). It is reported that the SDG was under the operational control of the JNA during

³¹ Document 7 – Exhibit M-12 , p. 709.

³² Document 7 – Exhibit M-5, pp. 288–289.

³³ Document 7 – Exhibit M-5, pp. 295 to 298.

³⁴ Document 7 – Exhibit M-18, p. 1076.

³⁵ Document 7 – Exhibit M-13, p. 779.

³⁶ Document 7 – Exhibit M-13, pp. 780–781 and 783–784.

combat operations and operated as an assault infantry, mainly in support of the 12th corps (Novi Sad) of the JNA. The SDG also committed numerous war crimes and atrocities in Croatia.³⁷

[60] Beginning in July 1991, the JNA, in collaboration with Serb volunteers and militias, intensified their attacks against the Croatian population. A European study describes the Serb army tactic as follows:

[translation]

...first, soldiers open fire with heavy artillery on a specific target to force the enemy to capitulate; next, their rear, supported by Serb irregulars, advances on foot to occupy the terrain. The army then advances with its armament to take control.... In the case of small villages, Croatian inhabitants are killed or forced to flee and their houses are levelled. European observers note that the federal army destroys every Croatian village it seizes. In some cases, the Yugoslav army deliberately chooses civilian or symbolic targets, such as schools, museums, churches, radio or television stations, and especially hospitals. They note that the number of attacks on and bombardments of civilian targets is on the rise.³⁸

[61] It is true that the JNA cannot be characterized as an organization with a limited and brutal purpose per se. However, in light of the documentary evidence, the panel finds that between July 1991 and January 1992, during its intervention in Croatia, the JNA acted with a common criminal purpose, the goal being to force the majority of the Croatian population and the rest of the non-Serb population to evacuate part of Croatia's territory in order to be able to integrate it into a new Serb-dominated state.

The part of the organization with which the claimant was most directly concerned

[62] The claimant explained that after his four years of training in a military school, he chose to specialize in mechanized brigades, specifically the handling of light and heavy military equipment, such as T55 tanks, T34 tanks and OTM 60 vehicles. He specified that three OTM 60 vehicles in his platoon were equipped with a 12.7-mm machine gun, and one OTM 60 had an 82-mm recoilless rifle.

[63] After a few years of training in Sombor, Serbia, within the 36th brigade, where he commanded 30 men in the mechanized OTM carrier platoon, the claimant stated that he was

³⁷ Document 7, Exhibit M-14, pp. 962-963.

³⁸ Document 7, Exhibit M-10, pp. 618-619.

transferred to Osijek, in Croatian territory, to the Milan Stanivukovic barracks, located in downtown Osijek in January 1990. He stated that, there, he rejoined the 12th brigade, within the 3rd mechanized company under the command of XXXX XXXX. His battalion was under the command of XXXX XXXX or his replacement, XXXX XXXX.

[64] The claimant stated that during the war in Croatia, he commanded a platoon of 30 men within one of the two mechanized battalions of the 12th brigade. According to the documentary evidence, [translation] “the mechanized brigades had a total wartime force of 3,500 soldiers.”³⁹ Regarding the documentary evidence on the composition of the mechanized brigades,⁴⁰ the claimant confirmed that his brigade’s composition was as described in the evidence.

[65] The claimant’s testimony regarding where his platoon operated in Croatia in 1991 was specific. He stated that he was transferred to Borovo Selo on May 8 or 10, 1991, to hold the line of defence there and to establish, with the 12th brigade, a buffer zone, because beginning in May 1991, shots were increasingly being fired between Croat and Serb protagonists. On July 7, 1991, he, his platoon and part of the 12th brigade were moved to Tenja. The claimant stated that after spending a few days in Tenja, he, his platoon and his mechanized company went to the Klisa farm because their position was being bombed by Croatian artillery. In mid-September, the Osijek barracks were taken by Croatian forces and part of the brigade reached their troops on the Klisa farm, including his superiors XXXX XXXX and XXXX XXXX. At that time, the 12th brigade was merged with the 17th Novi Sad corps. Then, toward late September 1991, the claimant was ordered to leave the Klisa farm to defend the buffer line.⁴¹ His battalion’s three companies made their way there. They remained there until December 10, 1991, when they went to the Klisa airport (also known as the Osijek airport) with his battalion’s mechanized companies. In late December 1991, they left the airport and stayed in the village of Klisa until early February 1992, when they were ordered to return to Serbia.

[66] The documentary evidence indicates that the JNA’s 12th mechanized brigade actively participated in JNA military operations during the war in Croatia. In fact, according to information sources, the 12th brigade was one of the mechanized brigades deployed during the

³⁹ Document 7 – Exhibit M-14, p. 919.

⁴⁰ Document 7 – Exhibit M-14, p. 919, third paragraph.

⁴¹ Document 7 – Exhibit M-26, area marked with an *.

war in Croatia, led by Colonel XXXX XXXX.⁴² The evidence on the record indicates that the JNA used the 12th brigade together with other brigades to ensure its tactical direction.⁴³ The 12th brigade was notably involved in combat in Osijek⁴⁴ and Vukovar.⁴⁵ The documentary evidence also shows that the 12th brigade bombed Croatian villages and Klisa.⁴⁶

[67] The leaders of the 12th brigade, including XXXX XXXX, XXXX XXXX and XXXX XXXX, the claimant's superiors, were named, along with other JNA officers who participated in the war in Croatia, in an indictment established on November 17, 2008, by the Osijek County Prosecutor's Office.⁴⁷ The indictment states:

[translation]

After they occupied parts of eastern Slavonia and Baranja, together with Serb paramilitary rebels and the Territorial Defence, by carrying out the orders of General XXXX XXXX, commander of the army corps of Novi Sad, despite knowing that no armed forces of the Republic of Croatia were in those parts of the city or in the other areas under attack, ordered their junior officers and their soldiers to systematically and continuously fire from the occupied areas, using various heavy weapons and for no military purpose, in a non-selective manner, on the entire area of the city of Osijek and on other non-occupied villages located behind the demarcation line with the Croatian army.⁴⁸

Considering the intensity of the destruction and the armament used, there is no doubt that only the JNA was equipped with such arms, that is, tanks, large-calibre guns, MRLs and mortars. JNA units within which the accused performed command functions were located in the region of the city of Osijek. There is therefore no doubt that the destruction of the city and the neighbouring residential areas, as well as the extermination of the population, resulted from operations launched by JNA units under the command of the accused.⁴⁹

[68] Although this is an official indictment and not a judgment, the panel gives probative value to this very specific and detailed document, based on the testimony of a large number of people, be they victims or witnesses, including former soldiers of the JNA's 12th mechanized brigade. The document also states that the International Criminal Tribunal in The Hague

⁴² Document 7 – Exhibit M-14, pp. 925 and 930.
⁴³ Document 7 – Exhibit M-12, pp. 717 and 729.
⁴⁴ Document 7 – Exhibit M-14, pp. 894–896, 904.
⁴⁵ Document 7 – Exhibit M-12, p. 723.
⁴⁶ Document 7 – Exhibit M-12, p. 724.
⁴⁷ Document 7 – Exhibit M-4, pp. 148 to 220.
⁴⁸ Document 7 – Exhibit M-4, p. 151.
⁴⁹ Document 7 – Exhibit M-4, p. 201.

cooperated in the investigation by providing them with an expert's report.⁵⁰ In addition, the indictment corroborates the above-mentioned documentary evidence, which reports deliberate attacks by the JNA on civilian or symbolic targets, such as schools, museums, churches, radio or television stations, and especially hospitals.

[69] The panel is of the opinion that the claimant was part of a brigade throughout the entire armed conflict in Croatia and that there are serious reasons for considering that it committed crimes against humanity and war crimes. He participated directly in the brigade's deployment operations in the areas of conflict, where numerous abuses against civilians were committed by the JNA and the armed Serb militias supported by the JNA.

The claimant's duties and activities within the organization

[70] Shortly after his arrival in Osijek in January 1990, the claimant alleged to have been promoted to XXXX XXXX XXXX and to have taken over the command of a XXXX XXXX XXXX of 30 men within one of the mechanized armoured battalions. He stated that he was in charge of their training and exercises inside and outside the barracks, notably in a place called XXXX XXXX, which was a large military training area. He also specified that in Osijek, he attended meetings with battalion commanders. The claimant then stated that he had daily meetings with his company commander, but that the commander did not share much information with him.

[71] The claimant then stated that after holding the line of defence at Borovo Selo beginning in May 1991, his platoon travelled to Tenja on July 7, 1991, where they were ordered to establish and expand the buffer zone. He stated that he did not know how many soldiers had been deployed to that area. He added that he also participated in a large meeting bringing together the platoon commanders, of which he was one, as well as the company commanders and the battalion commander. The battalion commander informed them that the buffer zone had been established and that the soldiers had to be deployed to control and hold the lines of defence.

⁵⁰ Document 7 – Exhibit M-4, p. 213.

[72] When asked about the first massacre at Borovo Selo on May 2, 1991, in which 13 Croatian police officers lost their lives, the claimant stated that he had been aware of only a single fatality.

[73] When also asked about the documentary evidence that reports that violent fighting occurred in Tenja from July 7 to 9, 1991,⁵¹ the claimant reiterated that everything had happened on July 7, the day on which he arrived there. He also stated that he did not know the exact location of the rest of the brigade in the buffer zone, because the zone was very large. He specified that the other members of the brigade were positioned on their left and on their right. Behind them were Croatian Serbs and in front of them, Croats. He specified that the Croatian Serbs did not represent a harmful threat to them. The Croats were the danger.

[74] Although the claimant also stated that he had not witnessed shots fired by the JNA while he was in Tenja, the documentary evidence reports violent fighting between Croats and Serbs in Tenja between July 7 and 9, 1991. On that occasion, the Croats accused the JNA unit of siding with the Croatian Serbs and of causing a large number of Croat victims.⁵²

[75] The claimant alleged that on the Klisa farm, where he was positioned with his platoon from July 9 to September 1991, his role was to maintain the defence with his platoon over a radius of 100 metres or so. He stated that their position had not been bombarded during that time. He also specified that he did not fire shots or take part in attacks from his position. However, he added that he heard shots being fired by the Croat forces and the JNA's responses.

[76] From late September to mid-December 1991, in the buffer zone, the claimant stated that he had been bombarded and shot at every day. He alleged that he had been ordered not to return fire, but to shelter his men. He stated that other units in his battalion may have returned fire to the Croats by using mortars, but he specified that he had not been aware of this, because his superior did not inform him of that. He stated that no one asked questions.

[77] The claimant stated that on December 10, 1991, at the Klisa airport, where the brigade commander had also moved to, he had not received any military mission. He then added that

⁵¹ Document 7 – Exhibit M-14, p. 895.

⁵² Document 7 – Exhibit M-14, p. 895 and p. 965.

three carriers had been positioned on the buffer line toward Tenja. He stated that he had gone to that line of defence once or twice.

[78] The claimant stated that from late December 1991 to February 1992, while he was with his troops in the village of Klisa, they had done nothing in particular but continue their training and maintain their weapons.

[79] The claimant alleged that during the entire conflict in Croatia in 1991, his role had been purely defensive and that he had not personally committed any crime against humanity or war crime.

[80] The claimant's credibility with respect to his role in and knowledge of the crimes perpetrated by the JNA while he served with the 12th brigade is assessed in the reasons that follow.

The claimant's position or rank in the organization

[81] After completing his four years of training, the claimant became a XXXX in 1979. He was then promoted several times over the course of his military career, notably from XXXX to XXXX XXXX. During the war in Croatia in 1991, while he was with the 12th brigade under the command of XXXX XXXX, he was promoted to the rank of XXXX XXXX XXXX. He then commanded a XXXX XXXX made up of 30 men.

[82] In 1994, he was promoted to the rank of XXXX, but he stated that he was demoted to the rank of XXXX XXXX following the 1996 Dayton Accord. He alleged that he held that rank until he retired from the army in 2003.

The length of time the claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose

[83] The panel is of the opinion that the claimant voluntarily served in the JNA from 1979 to 2003, or 24 years. Although he had become aware of the atrocities committed by the JNA in Croatia, according to his statements, around December 1991, he continued to serve with the organization for another 12 years.

[84] Although the claimant stated that his brigade's role was to ensure a buffer zone during the conflict and that his role and that of his men was limited to peacekeeping between Croats and Croatian Serbs, his testimony revealed that their enemy was the Croats. The claimant stated that

the Croats did not welcome the JNA in their territory and considered it an army of occupation. He also specified that the JNA sought to maintain Yugoslavia's sovereignty and that it was the only organization authorized to be armed.

[85] The panel noted that the claimant's testimony was eloquent and specific when he provided details about his training, the positions of his brigade before the war and even his movements during the conflict in Croatia in 1991. However, his testimony became evasive regarding the bombardment of civilian areas by units of his brigade or the location of other units within the 12th brigade in the throes of war. He stated that he knew that the JNA had bombed Croat positions, but alleged that he did not know which military units were responsible for that.

[86] The claimant stated that he had been made aware of the atrocities committed by his brigade and his commanders only much later by reading the newspaper and watching television. He alleged that, between May 1991 and December 1991, he had seen nothing, known nothing. In December 1991, while he was in the Klisa region, he learned that the city of Osijek and neighbouring villages had been the targets of artillery fire by the JNA.

[87] When asked how he could not have been aware prior to December 1991 of the atrocities committed by the JNA, the claimant simply stated that he listened and heard shots being fired from within his radius and he drew his own conclusions. When asked to elaborate, the claimant stated that by counting the number of grenades thrown on the city of Osijek, he could guess the extent of the property damage and the number of fatalities caused. He stated that he had been concerned about the children, women and elderly in the city of Osijek.

[88] When the issue of his brigade commanders' responsibility in war crimes was raised by referring to the indictment filed as evidence,⁵³ the claimant stated that some of the things were true about commanders XXXX and XXXX, who committed human rights violations. However, he added that he himself had not been aware of the charges against his commanders before reading about them in the media.

[89] The panel finds that the claimant avoided questions regarding his knowledge of the atrocities committed by his brigade. At times, he stated that he had heard stories, but when asked

⁵³ Document 7 – Exhibit M-4, *supra*.

to specify which stories, he stated that he no longer remembered. Similarly, when asked to specify what he knew about his brigade's intervention in the battle of Vukovar, the claimant first stated that the 12th brigade did not take part in it. He then later added that his brigade's engineer company had been at Vukovar.

[90] Again regarding his knowledge of the atrocities committed, when he was asked how he could not have been aware of what was going on around him, when his unit had a radio linked to the command, the claimant responded that the radio was not always on or even that different units used different frequencies.

[91] The panel is of the opinion that it is reasonable to expect that, as a non-commissioned officer responsible for a platoon of 30 men, the claimant would have known the position of the other units of his brigade, especially during wartime, when it is essential to know the location of all the protagonists.

[92] The panel does not find it plausible, in the circumstances of this case, that the claimant was not aware of the military operations deployed in the region where he was carrying out his duties as a non-commissioned officer within the 12th brigade, or that he knew nothing about the crimes against humanity and war crimes that were committed there, either in his duties as platoon commander or from his brigade colleagues in the field. He held the position of a non-commissioned officer responsible for a 30-man platoon and, as such, was in constant communication with his company commander. The panel does not believe that the claimant had no access to an external source of information that would have led him to become aware of the atrocities committed.

[93] Also according to the claimant's testimony, in December 1991, he was aware that the JNA had committed human rights violations in collaboration with Serb volunteers of the Serb Volunteer Guard (Srpska Dobrovolijacka Garda – SDG), known as “Arkan's Tigers” and responsible for numerous atrocities and war crimes in Croatia.⁵⁴ He testified in particular that when he was in Klisa in December 1991, he was aware that the commander of the 12th brigade, XXXX XXXX, was collaborating with Arkan's Tigers. The claimant stated that he was against

⁵⁴ Document 7 – Exhibit M-14, pp. 962 and 963.

that practice and was aware that those criminals were tarnishing the army's image. Nevertheless, despite the fact that he knew that the 12th brigade was using those criminals to achieve its end, the claimant did not denounce those facts to his superiors, nor did he desert or resign later when the war in Croatia was over and he returned to Serbia in February 1992.

[94] He also knew, when he was in the field between May 1991 and December 1991, that the city of Osijek was surrounded by the JNA, notably by the 12th brigade, as reported in the above-mentioned documentary evidence, and that the city was bombed because the claimant stated that he had thought about the civilians, especially the children, women and elderly people who were caught under fire.

[95] Although the claimant tried to minimize what he knew, the panel is of the opinion that the claimant must have been aware that his brigade and the rest of the Yugoslav army deployed in the region of Osijek and Vukovar were committing war crimes, including bombing civilian areas and destroying entire Croat villages. He told the panel that he had come to the realization that the 12th brigade had not been charged for nothing.

The method by which the claimant was recruited and the claimant's opportunity to leave the organization

[96] In Yugoslavia, soldiers were mainly recruited through conscription. Military service lasted 12 months and reserve service began once active service had been completed. Non-commissioned officers were selected from soldiers having completed a training program or among other qualified youth who directly applied for admission to a school for aspiring non-commissioned officers. They received the rank of sergeant when they graduated and committed to serve three to nine years.⁵⁵

[97] The claimant stated that he voluntarily joined the JNA in 1975, because he wanted to be a soldier and liked wearing the uniform. He added that the military school was state-funded.

[98] Although he was aware, in December 1991, of the atrocities committed by the JNA and his 12th brigade, he did not try to leave the Yugoslav army, because he remained in the army voluntarily until 2003.

⁵⁵ Document 7 – Exhibit M-5, pp. 310 to 312.

[99] When asked to explain why he had mentioned upon his arrival in Canada that he should have deserted in 1991,⁵⁶ the claimant referred to what he had learned at that time, notably the charges laid against his brigade. He added that it had been impossible for him to desert while he was in Croatia, because he feared for his safety and that of his family in Serbia, in Sombor.

[100] When it was pointed out to him that numerous soldiers had deserted the JNA in July 1991, the claimant stated that he knew that soldiers of Croatian or Albanian nationality or even Muslims were allowed to desert. He stated that they had been authorized to leave, but not him. Yet he later stated that one of his friends in the brigade had suggested that he desert at the same time as he did in July 1991, but he had not wanted to, because he wanted to defend Yugoslavia.

[101] The claimant stated that during the war, he had been given permission to visit his family for a few days. When asked why he had not taken advantage of this to desert the army then, the claimant stated that he had been especially concerned about his family's safety.

[102] He was asked the question once more, why had he not left the JNA after 1992, following the ceasefire and when he learned about all the charges that had been laid against his brigade and commanders. The claimant responded that he had been thinking about his daughter and that he had nowhere to go.

[103] The reasons given by the claimant for his not having left the JNA at the first opportunity are not satisfactory to the panel. In fact, the documentary evidence reports that multiple desertions occurred in the JNA during the conflict in Croatia. The claimant had also had the opportunity to desert during the conflict when he received permission to go visit his family. It is reasonable to think that he could have left the country then.

[104] In addition, even after the ceasefire in 1992, and after he had found out about the abuses committed by the JNA on Croatian soil, he did not take the opportunity to resign from the army and to dissociate himself from it. He continued to voluntarily serve the Serb military force until 2003.

⁵⁶ Document 7 – Exhibit M-3, p. 72.

[105] The panel is of the opinion that the claimant could have left the JNA, at the first opportunity, during the war in Croatia and that he chose not to do so. He also had the opportunity to leave the JNA following the conflict in Croatia, but opted to continue to serve in that army for more than a decade.

Knowing, voluntary and significant contribution to the crimes alleged

[106] The Supreme Court examined the key characteristics of the notion of contribution-based complicity: the contribution to the crimes or the criminal purpose must be voluntary; the contribution to the crimes or the criminal purpose must be significant and knowing; the individual must be aware of the crimes or the criminal purpose and that his or her conduct will assist in the furtherance of the crime or criminal purpose.

[107] By taking into account all the above-mentioned criteria, the panel concludes that the claimant was complicit, despite the fact the evidence on the record does not make it possible to conclude that he personally committed crimes against humanity or war crimes.

[108] The panel considers that the claimant's actions, which consisted in expanding and maintaining specific zones called buffer zones while he commanded a platoon of 30 men, enabled the JNA to carry out their operational strategies in the field, as described above in the documentary evidence, notably ethnic cleansing operations in Croatian cities and villages.

[109] The panel is of the opinion that there are serious reasons for considering that the claimant voluntarily made a significant and knowing contribution to the crimes and criminal purpose not only of his commander XXXX XXXX, commander of the 12th brigade, but also of the JNA as a whole during the conflict in Croatia.

[110] For these reasons, the panel finds that there are grounds to exclude the claimant's refugee protection claim under section 98 of the IRPA.

DECISION

[111] After considering all the evidence, including the claimant's testimony, the panel determines that this refugee protection claim must be excluded under Article 1F(a) of the Convention, because it is of the opinion that there are serious reasons for considering that the claimant was complicit in war crimes and crimes against humanity.

Jacqueline Schoepfer

Jacqueline Schoepfer

January 17, 2018

Date

IRB translation

Original language: French

2018 CanLII 140555 (CA IRB)

Reference

Rome Statute of the International Criminal Court

Article 7 – CRIMES AGAINST HUMANITY

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) “Torture” means the intentional infliction or severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This

definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

ARTICLE 8 – WAR CRIMES

2. For the purpose of this Statute, “war crimes” means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully

depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages;

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; Rome Statute of the International Criminal Court 7 (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and

wounded are collected, provided they are not military objectives; (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war; (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons; (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, material or devices; (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; Rome Statute of the International Criminal Court 8 (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; xxiii) Utilizing the presence of a

civilian or other protected person to render certain points, areas or military forces immune from military operations; xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; Rome Statute of the International Criminal Court 9 (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable;

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against

buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault; (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (vii) Conscripting or enlisting children under the age of fifteen years into the armed forces or groups or using them to participate actively in hostilities; (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; Rome Statute of the International Criminal Court 10 (ix) Killing or wounding treacherously a combatant adversary; (x) Declaring that no quarter will be given; (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.⁵⁷

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Rome Statute of the International Criminal Court, articles 7 and 8.