



Jasenka Ferizović

Prosecution of Crimes of Appropriation of Private Property before the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals

JASENKA FERIZOVIĆ

PROSECUTION OF CRIMES OF APPROPRIATION OF
PRIVATE PROPERTY BEFORE THE INTERNATIONAL
CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA
AND THE INTERNATIONAL RESIDUAL MECHANISM FOR
CRIMINAL TRIBUNALS

FOREWORD

The Global Campus of Human Rights is a unique network of more than one hundred participating universities around the world, seeking to advance human rights and democracy through regional and global cooperation for education and research. This global network is promoted through seven Regional Programmes which are based in Venice for Europe, in Sarajevo/Bologna for South East Europe, in Yerevan for the Caucasus, in Pretoria for Africa, in Bangkok for Asia-Pacific, in Buenos Aires for Latin America and the Caribbean, and in Beirut for the Arab World.

Every year each regional master's programmes select the best master thesis of the previous academic year that is published online as part of the GC publications. The selected seven GC master theses cover a range of different international human rights topics and challenges.

The Global Campus Awarded Theses of the academic year 2018/2019 are:

- Begaliev, Nuriza, *From Democracy to Autocracy? Growing Threats to Civil Society and Media in Kyrgyzstan*, Supervisor: Arusyak Aleksanyan, Yerevan State University. Master's Programme in Human Rights and Democratisation in the Caucasus (CES), coordinated by Yerevan State University

- El-Hawary, Nouran *Refugees and Migrant Access to Health in Transit Countries: Politics of Adaptability, Enactment of Slow Death and Inevitability of Pain: an Ethnography of Poor Urban Neighborhood in Rabat (Morocco)*, Supervisor: Jeremy Gunn, International University of Rabat (UIR). Arab Master's Programme in Democracy and Human Rights (ARMA), coordinated by Saint Joseph University (Lebanon).

- Ferizović, Jasenka *Prosecution of Crimes of Appropriation of Private Property before the ICTY and the IRMCT*, Supervisor: Hans-Joachim Heintze, Ruhr University Bochum. European Regional Master's Programme in Democracy and Human Rights in South East Europe (ERMA), coordinated by University of Sarajevo and University of Bologna

- Frías Sampaio, Emmanuel, *Politics of Memory of the Recent Past in Brazil: The Federal Government's Role in Constructing Collective Memory Between 2003 and 2016*, Supervisor: Ana De Maio, University of Buenos Aires. Master's Programme in Human Rights and Democratisation in Latin American and the Caribbean (LATMA), coordinated by National University of San Martin (Argentina)

- Guzmán Torán, Juan José, *When the Forest Screams. The Rights of Nature and Indigenous Rights as a Mutually Reinforcing Resistance Platform for the Indigenous Peoples of the Ecuadorian Amazon*, Supervisor: Felipe Gómez Isa, University of Deusto Bilbao. European Master's Programme in Human Rights and Democratisation (EMA), coordinated by Global Campus of Human Rights Headquarters.

- Hasanah, Mahesti *Between the Domination of Transnational Companies and Its Discourse on Business and Human Rights: Contract Farming and Banana Small Farmers in the Davao Region (The Philippines)*, Supervisor: Ryan Jeremiah D. Quan, Manila University. Master's Programme in Human Rights and Democratisation in Asia Pacific (APMA), coordinated by Mahidol University.

- Nyemba, Chisomo *Right to Data Privacy in the Digital Era: a Critical Assessment of Malawi's Data Privacy Protection Regime*, Supervisor: Akinola E Akintayo, University of Lagos. Master's Programme in Human Rights and Democratisation in Africa (HRDA), coordinated by Centre for Human Rights, University of Pretoria.

This publication includes the thesis *Prosecution of Crimes of Appropriation of Private Property before the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals* written by Jasenka Ferizović and supervised by Hans-Joachim Heintze, Ruhr University Bochum.

BIOGRAPHY

Jasenka Ferizović is a Legal Advisor at the Court of Bosnia and Herzegovina. She holds LL.M. degree from the Faculty of Law, University of Sarajevo and in 2019 she graduated from the ERMA programme. Jasenka's research interests cluster around prosecution of war crimes, international criminal and humanitarian law and transitional justice.

ACKNOWLEDGEMENTS

I want to express gratitude to my mentor professor Hans-Joachim Heintze for his guidance throughout my work on this thesis and to my academic tutor Alina Trkulja for her invaluable feedback and practical advice and assistance at crucial stages of this process.

I conducted an essential part of this research during my internship at the Youth Initiative for Human Rights Croatia, and I thank them for hosting me.

Last, but not least, I thank Nedim for encouraging me to enrol in the ERMA programme and for all his love and support.

ABSTRACT

Property rights enjoy protection not only during peacetime, but also in times of armed conflict. However, despite the existence of a well-established legal framework, these rights continue to be violated in armed conflicts around the world. Violent conflicts that took place in the former Yugoslav countries during the last decade of the 20th century were no exception. This thesis analyses crimes of appropriation of private property committed during armed conflicts in the former Yugoslavia and the criminal justice response of the International Criminal Tribunal for the former Yugoslavia (ICTY) and its successor the International Residual Mechanism for Criminal Tribunals (IRMCT) to these crimes. The ICTY and the IRMCT undertook prosecutions of several individuals for breaches of norms of international humanitarian law prohibiting unlawful appropriation of property. These prosecutions generated a comprehensive record of committed crimes and resulted in the establishment of criminal responsibility of a number of perpetrators, including the highest-ranking wartime officials in military, police and political structures. Examination of the ICTY's/IRMCT's cases reveals that crimes of appropriation of private property were committed on a large scale and in a variety of conflict-related settings. These cases shed light on the multitude of forms of these crimes, involvement of an array of perpetrators and a variety of categories of unlawfully appropriated property. Research findings also show that these crimes were deeply embedded in systematic violence and utilised as a tool in persecution campaigns. Additionally, the ICTY's/IRMCT's cases provide insight into approaches and practices applied in prosecution of crimes of appropriation of property, and this study identifies some of the key lessons learned. Experience of the ICTY/IRMCT with prosecution of these crimes teaches us, among other things, 1) that prosecutions should encompass crimes against property as a constituent component of the systematic violence, 2) that they should capture different manifestations and dimensions of criminal conduct, a range of actors involved in the commission of these crimes and a variety of modes of perpetration and 3) that crimes must be adequately contextualised within the broader system of violence through the appropriate use of legal characterisations and modes of liability. These good practices can serve as a guide in the process of devising adequate strategic and practical approaches to prosecution of conflict-related crimes of appropriation of property in other jurisdictions.

Keywords: unlawful appropriation of property, armed conflict, war crimes, ICTY, IRMCT

TABLE OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ARK	Autonomous Region of Krajina
BiH	Bosnia and Herzegovina
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EULEX	European Union Rule of Law Mission in Kosovo
FYR Macedonia	Former Yugoslav Republic of Macedonia
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ICRC	International Committee of the Red Cross

ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IHL	International humanitarian law
IRMCT	International Residual Mechanism for Criminal Tribunals
KLA	Kosovo Liberation Army
RSK	Republic of Serbian Krajina
SFRY	Socialist Federative Republic of Yugoslavia
SCSL	Special Court for Sierra Leone
SPSC	East Timor Special Panels for Serious Crimes
SS	Schutzstaffel (Protection Squadrons)
UDHR	Universal Declaration of Human Rights
UNMIK	United Nation Mission in Kosovo
US	United States of America
WW I	World War I
WW II	World War II

TABLE OF CONTENTS

Foreword	II
Biography	IV
Abstract	V
Table of abbreviations	VI
INTRODUCTION	1
Research problem	2
Research questions and aims	4
Relevance of the topic	5
Research design	7
Thesis structure	9
1. LEGAL FRAMEWORK FOR THE PROTECTION OF PRIVATE PROPERTY	10
1.1 Protection of property under international human rights law	10
1.2 Protection of property under international humanitarian law	14
1.3 Crimes of appropriation of property in international criminal law	22
2. PROSECUTION OF CONFLICT-RELATED CRIMES OF APPROPRIATION OF PROPERTY: HISTORICAL OVERVIEW	25
2.1 Prosecution of crimes of appropriation of property committed during World War II	26
<i>Trials before International Military Tribunals in Nuremberg and Tokyo</i>	26
<i>Subsequent trials of war criminals before the US Military Tribunals in Nuremberg</i>	28
2.2 Prosecution of crimes of appropriation of property committed in armed conflicts after World War II	35

3. PROSECUTION OF CRIMES OF APPROPRIATION OF PRIVATE PROPERTY BEFORE THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS	39
3.1 Unlawful appropriation of private property committed during conflicts in the former Yugoslavia	40
3.1.1 Overview of crimes of appropriation of property committed in the territories of former Yugoslav countries	40
<i>Croatia</i>	40
<i>Kosovo</i>	42
<i>Former Yugoslav Republic of Macedonia</i>	44
<i>Bosnia and Herzegovina</i>	45
3.1.2 Analysis of crimes of appropriation of property committed in the former Yugoslavia	52
<i>Prevalence of crimes</i>	53
<i>Context of criminal events within which crimes of appropriation of property occurred</i>	54
<i>Forms of unlawful appropriation of property</i>	55
<i>Perpetrators</i>	56
<i>Categories of unlawfully appropriated property</i>	56
<i>Other aspects of crimes of appropriation of property</i>	57
3.2 Prosecution of crimes of appropriation of private property committed during conflicts in the former Yugoslavia	60
3.2.1 Overview of prosecuted cases	60
<i>Croatia</i>	60
<i>Kosovo</i>	62
<i>FYR Macedonia</i>	63
<i>BiH</i>	63
3.2.2 Analysis of prosecutions of crimes of appropriation of property	67
<i>Charges and verdicts</i>	67
<i>Jurisprudence</i>	72
CONCLUSION	78
BIBLIOGRAPHY	83
Annex A: List of analysed cases and documents of the ICTY and IRMCT	94
Annex B: List of keywords used for text searches in the process of identification of relevant sections of analysed indictments and judgments of the ICTY and the IRMCT	103

INTRODUCTION

Right to property is one of the fundamental rights in modern democratic societies. While the philosophical foundations of property as well as the question of what constitutes the ‘contents’ of the right to property are still debated in academic circles, this right is in practice most commonly understood as the right to own property. The right of ownership entails, among others, that owned property be respected and protected from infringement, which is why legal norms proscribing unlawful interference with private property make up an integral part of both human rights documents and legal systems worldwide. Property remains under protection even in the extraordinary circumstances of armed conflict when many other legal norms cease to apply. In the time of armed conflict, protection of property is regulated primarily by rules of international humanitarian law (IHL) and international criminal law which stipulate the prohibition of arbitrary destruction and appropriation of both public and private property. Legal instruments regulating the conduct of warfare contain provisions relating to protection of private property and many of these legal norms have by now acquired the status of customary international law as a result of being accepted as obligatory by most states. The right to property continues to be protected also under human rights law which is generally considered to remain applicable during armed conflict, although subject to certain limitations. This was affirmed in the recent jurisprudence of the European Court of Human Rights (ECtHR), which recognised that infringement of property rights during armed conflict constitutes a violation of human rights.

However, practices of unlawful appropriation of property still make up part and parcel of armed conflicts and rules proscribing appropriation of private property continue to be violated despite the existence of the binding legal framework. Seized property belonging to the conquered

enemy population is exploited for different purposes, ranging from enrichment of political and military elites to financing of wars. In the context of the latter, since ancient times such property has been used to compensate soldiers for their service, to supplement their modest salaries or to reward them for military victories.¹ Thus, it is utilised for funding the cost of armed forces and for enhancing lucrativeness and attractiveness of participation in warfare in order to secure obedience of soldiers and steady inflow of new fighters. During World War II (WW II), plundered private property was also used to maintain or to increase the living standards of military officials and the German population in order to preserve favourable political atmosphere and popular support.² The value of private property thus extends beyond purely economic dimension – not only does it serve the purpose of covering some of the costs of war but it also plays an important role in maintaining of morale and loyalty of soldiers and among people in times when it is most needed.

Research problem

Armed conflicts that took place during the 1990s in the territory of the former Yugoslavia were marked by mass violations of IHL and a broad range of human rights, including property rights. Records of war crimes trials conducted before the International Criminal Tribunal for the former Yugoslavia (ICTY or Tribunal) and its successor the International Residual Mechanism for Criminal Tribunals (IRMCT or Mechanism) reveal that crimes against property have been among the most widespread crimes committed in the context of these conflicts. A significant proportion of the population in conflict areas were deprived of their property either through destruction or through different forms of unlawful appropriation. Citizens lost their homes and businesses, as well as all sorts of movable property ranging from money, jewellery and other valuables to furniture, agricultural machinery, livestock and home appliances. Many lost their entire assets acquired through decades of work or even over generations. The ICTY and the IRMCT undertook prosecutions of several individuals for breaches of norms of international

¹ Gerard Aalders, *Nazi Looting: The Plunder of Dutch Jewry During the Second World War* (Arnold Pomerans and Erica Pomerans tr, Berg 2004) 11.

² Aly Götz, *Hitler's Beneficiaries - Plunder, Racial War, and the Nazi Welfare State* (Metropolitan Books/Henry Holt 2007).

criminal law and IHL prescribing prohibition of unlawful appropriation of private property. Legal and factual findings established in the judgments of the ICTY and the IRMCT, as well as records of criminal proceedings in the cases prosecuted before these judicial institutions, shed light on the multitude of practices of unlawful appropriation of property and the extent of their commission. All this indicates that crimes of unlawful appropriation of property and property loss as a conflict-related harm warrant both scholarly and judicial attention.

Nevertheless, notwithstanding the efforts of the ICTY and the IRMCT, crimes against property have generally received much less consideration compared to other crimes when it comes to both the criminal justice response and scholarly research. While a considerable body of research on war crimes committed during conflicts in the former Yugoslavia and their prosecution before the Tribunal has been produced over past two decades, the focus of academic attention has been mainly on crimes considered to be most egregious such as genocide, extermination, torture, sexual violence and so on, whereas crimes against property remained mostly unexplored. Some research has been done on crimes of destruction of cultural property committed in the former Yugoslavia and the ICTY's legal response to these crimes,³ but there has been no examination of crimes of appropriation of private property and the Tribunal's case-law relating to prosecution of these crimes.

Moreover, the topic of war crimes against property seems to be neglected not just when it comes to research of conflicts in the former Yugoslavia, but in general. It has also been overlooked in the scholarship concerning other conflicts and scholarly examination of the jurisprudence of other international judicial institutions. Analysis of the literature in the English language demonstrates that there exists some research on crimes of appropriation of private property committed during WW II. However, the existing studies do not investigate prosecutions of these crimes before post-WW II international and domestic tribunals, but rather focus on the research of crimes committed

³ Sanja Zgonjanin, 'The Prosecution of War Crimes for the Destruction of Libraries and Archives during Times of Armed Conflict' (2005) 40(2) *Libraries & Culture* 128; Serge Brammertz and others, 'Attacks against Cultural Heritage as a Weapon of War. Prosecutions at the ICTY' (2016) 14 *Journal of International Criminal Justice* 1143.

in individual countries,⁴ crimes which targeted specific property such as books and artworks,⁵ the effects of wartime spoliation on individuals' private lives⁶ or examine unlawful appropriation of property within broader topics, for example in the context of analysis of economy of WW II⁷ or examination of the post-WW II restitution practices.⁸

The only identified piece of literature providing a brief analysis of the practice of post-WW II and contemporary international tribunals concerning prosecution of crimes of appropriation of property examines prosecution of the war crime of pillage, but only in relation to acts of illegal exploitation of natural resources.⁹ The overall lack of analysis of the practical application of rules concerning protection of private property in armed conflicts is surprising taking into account that they constitute well-established, even customary norms of IHL and that implementation of the legal framework regulating protection of property rights is considered very important in peacetime, especially in liberal-democratic societies.

Research questions and aims

This thesis brings to light widespread, yet neglected crimes committed during armed conflicts in the former Yugoslavia and the under-researched segment of the jurisprudence of the Tribunal and the Mechanism. It investigates crimes of appropriation of private property and the criminal justice response to these crimes through analysis of prosecutions before the ICTY and IRMCT. The goal is to discover how crimes of appropriation of private property have been prosecuted before these judicial institutions in terms of charges (How often have these crimes been charged? How were they charged in terms of legal characterisations and modes of responsibility? Who was prosecuted

⁴ Aalders (n 1).

⁵ Kenneth D Alford, *Nazi Plunder: Great Treasure Stories of World War II* (Da Capo Pr 2003); Kenneth D Alford, *Allied Looting in World War II: Thefts of Art, Manuscripts, Stamps and Jewellery in Europe* (McFarland & Company 2011); Anders Rydell, *The Book Thieves. The Nazi Looting of Europe's Libraries and the Race to Return a Literary Inheritance* (Henning Koch tr, Viking 2015).

⁶ Shannon Lee Fogg, *Stealing Home: Looting, Restitution, and Reconstructing Jewish Lives in France, 1942-1947* (OUP 2017).

⁷ Götz (n 2).

⁸ Avi Beker, *The Plunder of Jewish Property during the Holocaust* (New York UP 2001).

⁹ Larissa Van den Herik and Daniëlla Dam-De Jong, 'Revitalizing the Antique War Crime of Pillage: The Potential and Pitfalls of Using International Criminal Law to Address Illegal Resource Exploitation during Armed Conflict' (2011) 22(3) Criminal Law Forum 237.

for these crimes?), verdicts (What is the structure of verdicts – how many convictions/acquittals?) and jurisprudence (How has the law been interpreted and applied in adjudication of these crimes?). These questions will be answered through analysis of the case-law of the Tribunal and the Mechanism concerning charges, judicial rulings and the underlying interpretation of law. As part of the examination of charging practices and judicial approaches to adjudication of this type of crimes, this research also encompasses analysis of criminal acts underlying criminal charges and convictions. It provides an overview of identified acts and practices of unlawful appropriation of property,¹⁰ laying thereby the groundwork for further research of patterns of these crimes committed in the context of conflicts in the former Yugoslavia. The main aim of this study is to draw scholarly attention to crimes against private property as an aspect of conflict-related criminality and to property loss as a conflict-related harm and to start filling the existing research gap. It will hopefully contribute to the already existing body of war crimes research and research of jurisprudence of the ICTY and IRMCT by bringing to light these neglected crimes and an understudied segment of the ICTY's/IRMCT's jurisprudence.

Relevance of the topic

I have chosen this research topic for two reasons. Firstly, proper understanding of the violent history of the former Yugoslav countries, of criminal events which took place in the context of conflicts of the 1990s and of the nature and scope of conflict-related harms is vital for the process of coming to terms with the past, which remains one of the most pressing issues in this region. Legal and factual findings established in the judgments of the ICTY and the IRMCT provide a valuable source of information about human rights violations and different types of harms that were inflicted on the population by crimes committed during these conflicts and thus constitute an important object of study. Secondly, the Tribunal and the Mechanism through their rich jurisprudence contributed to affirmation and development of IHL and international criminal law,¹¹ and set legal standards which are accepted and applied

¹⁰ For the purpose of this thesis, the term 'property' should be understood to refer to private property, unless otherwise stated.

¹¹ Criminal offences related to breaches of norms of IHL concerning protection of property have been incorporated in statutes and laws of almost all subsequently established international and internationalised courts and tribunals, including the ICC.

in the prosecution of war crimes before other international and internationalised criminal tribunals, but also before domestic courts, especially in Bosnia and Herzegovina (BiH). In this context, exploring the ICTY's/IRMCT's case-law and its experience with prosecution of crimes of appropriation of property is essential because it has the potential to be utilised for shaping of strategic approaches and practices for prosecution of these crimes in other jurisdictions, especially before national judiciaries in the region which, after the IRMCT completes its mandate, will become the sole bearers of responsibility for delivering criminal justice to victims of war crimes.

Crimes of appropriation of property are an important object of study also in the context of the research of war economies. According to Kaldor, in new globalised war economies which are characterised by the decline of domestic production and tax revenues, unlawful appropriation of private property belonging to the defeated enemy population becomes one of the funding sources of war effort.¹² For this reason, analysis of crimes of appropriation of property is essential for understanding war economies of contemporary conflicts, including conflicts in the former Yugoslav countries which also fall in this category of 'new wars'.¹³ Research of crimes of appropriation of property is essential also for a better understanding of the causes and motivations that underpin the wars, particularly for understanding the complex interaction between economic motives, wars and wartime violence. Keen argues that during the war, an alternative system of profit emerges in lieu of the collapsed one and that violence is an integral part of that system.¹⁴ In this context, he further contends that violence often has other local and more immediate functions that extend beyond or even hinder the accomplishment of military victory which is traditionally considered the primary goal in the war.¹⁵ These other functions, economic functions being among them, often tend to be overlooked precisely because violence is usually perceived only as a means to an end, where 'an end' is winning the war.¹⁶ Keen challenges this firmly entrenched conception according to which violence is purely the means and winning the only end and points

¹² Mary Kaldor, *New and Old Wars* (3rd edn, Polity Press 2012) 10.

¹³ *ibid* 51.

¹⁴ David Keen, *Complex Emergencies* (Polity Press 2008) 15.

¹⁵ *ibid* 19.

¹⁶ *ibid* 20.

out to another possibility, namely, that engaging in violence for the purpose of immediate (economic and other) gains can also be an end in itself, in which case war and perpetuation of war practically become the means.¹⁷ Analysis of crimes of appropriation of property as one of the standard methods of pursuing gratification of economic motives and furthering various economic agendas in the times of conflict is crucial for understanding the multitude of complex aspects, causes and purposes of conflicts and conflict-related violence both in the context of the conflicts that took place in the former Yugoslavia and in general.

Research design

This study is situated in the field of law. The research is based on legal analysis and interpretation of indictments and judgments in cases prosecuted before the ICTY and the IRMCT between 1994 and 30 June 2019. For the purpose of this research, the term ‘case’ refers to all cases in which indictments have been issued regardless of the outcome of the process and includes: 1) cases concluded by final and binding judgment, 2) cases which were transferred to national judiciaries, 3) cases in which criminal proceedings were terminated due to death of the accused or discontinued as a result of withdrawal of indictment and 4) cases in which criminal proceedings are still ongoing. In transferred cases and cases in which proceedings were terminated, discontinued or are still in progress, analysis was limited to indictments only. Legal materials used as sources of information and object of analysis comprise final indictments and all the judgments. In cases where only one indictment was filed during proceedings, that indictment is considered final. In cases where more than one indictment exists due to filing of amended versions in the course of criminal proceedings, the last indictment as determined by the final date of submission is considered the final indictment. Analysed judgments encompass all types of judgments rendered in these cases: trial judgments, appeal judgments, sentencing judgments and appeal judgments on sentencing.

The research was conducted in four phases: 1) identification of the ICTY’s/IRMCT’s caseload, 2) collection of documents, 3) analysis of documents and collection of data and 4) data analysis. During the first phase, I compiled information about all prosecutions before the

¹⁷ Keen (n 14) 20.

ICTY and the IRMCT in order to identify the set of cases that will be encompassed by the analysis. In the second phase, I collected final indictments and judgments in these cases from the official websites of these judicial institutions. The third phase of research was conducted in two stages. At the first stage, I undertook a preliminary analysis of indictments and judgments and compiled data on all charges brought against accused in these cases, as well as information on outcomes of the proceedings. At the second stage, I employed qualitative data analysis software (NVivo) for analysis of sources, collection and organisation of data. The list of analysed indictments and judgments is provided in Annex A. In the fourth phase, I undertook the analysis of the collected data.

Using data analysis software for examination of sources and data collection was necessary because analysing the set of 215 indictments and judgments comprising over 37,000 pages would have otherwise been impossible given the time constraints. NVivo was used primarily to identify relevant parts of text in analysed documents where property-related crimes are discussed. Relevant sections of the text were identified by conducting searches for specific words or phrases based on the lexicon I developed for this purpose. The lexicon contains the list of keywords and phrases compiled based on my previous knowledge of discussions related to crimes of appropriation of property in the ICTY's documents which I have acquired through reading of indictments, judgments and transcripts in several ICTY cases. The lexicon is contained in Annex B. NVivo was further used for storage and organisation of materials, organisation and categorisation of relevant information through coding and further analysis of coded information.

Considering constraints of time, space and scope of the master thesis, this research was limited only to analysis of indictments and judgments. As judgments usually focus on discussion of evidence relevant to the adjudication of charges brought in the indictments, information about other, non-charged crimes that constitute part of the trial records (because they were mentioned in witness testimonies or documentary evidence) are often not discussed. Consequently, the analysis may not encompass all accounts of violations of private property rights presented to the Tribunal, which constitutes the main limitation of this study and offers potential avenue for further research.

Thesis structure

This thesis consists of three chapters. The first chapter explores the status of private property under international human rights law, IHL and international criminal law. This chapter comprises three sections which provide analysis of relevant norms concerning the protection of private property under each of these three legal regimes. The second chapter presents a historical summary of the prosecution of crimes of appropriation of property before international judicial institutions. It is composed of two sections. The first section investigates how crimes of appropriation of property committed during WW II have been prosecuted before International Military Tribunals in Nuremberg and Tokyo and during subsequent Nuremberg trials held before the United States (US) Military Tribunals. The second section provides a brief reflection on prosecutions of this type of crimes committed in various conflicts after WW II before international(ised) courts and tribunals, including the International Criminal Court (ICC).

The third chapter tackles prosecution of crimes of appropriation of private property at the ICTY and the IRMCT. This chapter is divided into two sections. The first section analyses crimes of appropriation of property committed during conflicts in the former Yugoslavia through analysis of the judicial factual findings and other relevant information provided in the indictments and judgments. This section is further divided into two subsections which present an overview of forms, practices and patterns of unlawful appropriation of property in individual conflicts under examination and comparative analysis thereof. The second section examines prosecution of crimes of appropriation of property in the cases adjudicated before the ICTY and the IRMCT. This section comprises two subsections which present a summary of prosecuted cases and analysis of prosecution practices and the jurisprudence.

1.

LEGAL FRAMEWORK FOR THE PROTECTION OF PRIVATE PROPERTY

This chapter analyses the legal framework regulating the protection of private property under international human rights law, IHL and international criminal law. The first section explores the treatment of private property in international human rights instruments and regional treaties, the second section examines the status of property in international humanitarian treaty and customary law, whereas the third section analyses protection of private property in international criminal law through analysis of criminalisation of breaches of IHL in statutes of international and internationalised criminal tribunals and courts.

1.1 PROTECTION OF PROPERTY UNDER INTERNATIONAL HUMAN RIGHTS LAW

Provisions prescribing property-related rights, including the prohibition of unlawful infringement thereof, are enshrined in many human rights instruments. The Universal Declaration of Human Rights (UDHR) of 1948 as the core human rights document sets forth the right to own property and prohibits arbitrary deprivation of property.¹⁸ The right to own property was also prescribed in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) adopted 17 years later.¹⁹ However, two other important human rights instruments adopted under auspices of the United Nations in the

¹⁸ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 17 <www.un.org/en/universal-declaration-human-rights/> accessed 25 September 2019.

¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969) 660 UNTS 195 (CERD) art 5 <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=en> accessed 2 October 2019.

same year as CERD, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, contain no provisions concerning (protection of) property-related rights.²⁰ The right to property was not incorporated in the two covenants because the drafters had different opinions on various elements constituting the right to property and could not reach an agreement on the formulation and scope of this right.²¹

Nevertheless, subsequently adopted United Nations treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) of 1990 and the most recent Convention on the Rights of Persons with Disabilities (CRPD) adopted in 2006, stipulate property-related rights belonging to the respective protected categories of persons. The CEDAW prescribes that in the context of marriage and family life women shall have the same rights as men ‘in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property’.²² The ICRMW prohibits arbitrary deprivation of property owned by migrant workers and members of their families and establishes their right to fair and adequate compensation in the case of lawful expropriation of property,²³ whereas the CRPD obliges states to ensure the equal right of persons with disabilities to own or inherit property and to protect them from arbitrary deprivation thereof.²⁴

²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en> accessed 25 September 2019; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en> accessed 25 September 2019.

²¹ William A Schabas, ‘The Omission of the Right to Property in the International Covenants’ in A-Ch Kiss and Johan G Lammers (eds), *Hague Yearbook of International Law / Annuaire de La Haye de droit international*, Vol 4 (Brill | Nijhoff 1992) 136; Theo RG Van Banning, *The Human Right to Property* (Intersentia 2002) 46.

²² Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 16(1) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en> accessed 2 October 2019.

²³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (ICRMW) art 15 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en> accessed 2 October 2019.

²⁴ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CERD) art 12(5) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en> accessed 2 October 2019.

Legal norms concerning property-related rights are included in all human rights treaties adopted at regional level. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as the oldest regional human rights treaty actually contains no provisions related to the protection of property,²⁵ but the Protocol No 1 to the ECHR stipulates the right to peaceful enjoyment of possessions and prohibits unlawful deprivation.²⁶ According to this provision, lawful deprivation of possessions requires that it be conducted in the public interest and in line with the conditions provided for by law and by the general principles of international law.²⁷ The Charter of Fundamental Rights of the European Union adopted almost 50 years later contains a very similar provision.²⁸

The American Convention on Human Rights of 1969 (ACHR) sets forth that ‘everyone has the right to the use and enjoyment of his property’ and that this right can be limited only by law and in the interest of society.²⁹ Deprivation of property can be permitted under condition that it is undertaken ‘for reasons of public utility or social interest’, in accordance with law and upon payment of just compensation.³⁰ The right to property is also guaranteed in the African Charter on Human and Peoples’ Rights of 1981 (ACHPR). Article 14 of the ACHPR prescribes that this right can be limited only according to law, when ‘public need’ and ‘general interest of the community’ require so.³¹ Unlike other regional human rights instruments, the ACHPR further expressly establishes the right of dispossessed people to the lawful

²⁵ European Convention on Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS No. 005 (ECHR) <www.echr.coe.int/Documents/Convention_ENG.pdf> accessed 25 September 2019.

²⁶ Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS no. 009 art 1 <www.coe.int/en/web/conventions/search-on-treaties/-/conventions/rms/0900000168006377c> accessed 25 September 2019.

²⁷ *ibid.*

²⁸ Charter of Fundamental Rights of the European Union (adopted 7 December 2000, entered into force 1 December 2009) 2007/C 303/01 art 17 <www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed 26 September 2019.

²⁹ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No. 36 (Pact of San Jose) art 21 <www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed 25 September 2019.

³⁰ *ibid.*

³¹ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (Banjul Charter) art 14 <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 25 September 2019.

recovery of spoliated property and adequate compensation.³² Similarly to the UDHR, the Arab Charter on Human Rights of 2004 stipulates the right of everyone to own private property as well as prohibition against unlawful deprivation of property.³³

Redress for violations of human rights prescribed in the ECHR, ACHR and ACHPR can be sought before regional human rights courts which have been entrusted with the mandate to decide on applications on alleged violations of provisions of these human rights instruments. Through adjudication of cases brought before them, all these courts have developed rich jurisprudence. When it comes to jurisprudence in cases related to violations of the right to property, case-law of the ECtHR is of significance for the present topic as it encompasses rulings concerning violations of this right during armed conflict. In its jurisprudence, the ECtHR affirmed that the ECHR and its protocols apply both in peacetime and in times of armed conflict and that consideration of applications concerning violations of the ECHR rights committed during the conflict is therefore within the scope of the ECtHR's jurisdiction.

In several cases the ECtHR considered such applications alleging, among others, violations of the right to property stipulated in article 1 of the Protocol No 1. In some of these cases, the ECtHR found that the right to property had indeed been violated. These cases concerned violations of property rights committed in the context of the Turkey-Cyprus issue,³⁴ during the conflict between Turkish security forces and the Workers' Party of Kurdistan,³⁵ conflict in Chechnya,³⁶ and most recently, during the conflict between Armenia and Azerbaijan over Nagorno-Karabakh.³⁷ This case-law of the ECtHR is important because it affirms the already recognised view that international human rights law and IHL apply concurrently during armed conflict,³⁸ that private

³² African Charter on Human and Peoples' Rights (n 31) art 21(2).

³³ Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008) art 31 <www.lasportal.org/ar/sectors/dep/HumanRightsDep/Documents/%D8%A7%D9%86%D8%AC%D9%84%D9%8A%D8%B2%D9%8A.pdf> accessed 25 September 2019.

³⁴ *Cyprus v Turkey* App no 25781/94 (10 May 2001).

³⁵ *Orban v Turkey* App no 25656/94 (18 June 2002).

³⁶ *Esmukhambetov and others v Russia* App no 23445/03 (29 March 2011).

³⁷ *Chiragov and others v Armenia* App no 13216/05 (16 June 2015); *Sargsyan v Azerbaijan* App no 40167/06 (16 June 2015).

³⁸ United Nations Office of the High Commissioner. 'International Legal Protection of Human Rights in Armed Conflict' (United Nations Office of the High Commissioner 2011) 5-6.

property enjoys protection under both IHL and international human rights law and that infringements of property rights in times of conflict thus constitute not just breaches of IHL but also violations of human rights.

It follows from this brief summary that unlawful deprivation of property is almost universally prohibited. It is proscribed in major human rights instruments either expressly or implicitly as an integral element of the right to own property. Provisions of international human rights treaty law proscribing unlawful infringement of property rights, which continue to be applicable in times of conflict as affirmed by the jurisprudence of the ECtHR, complement rules of IHL regulating protection of property and thus additionally strengthen the status of private property as a protected category in armed conflict.

1.2 PROTECTION OF PROPERTY UNDER INTERNATIONAL HUMANITARIAN LAW

Until the 18th century, pillage used to be a regular and uncontested feature of wars. According to Inal, the 18th century brought about two significant developments which influenced the change of attitude towards the practice of pillage and the protection of private property during the war.³⁹ Firstly, with the emergence of the modern state, structure of armies and methods of financing wars changed and thus changed the concept of warfare. War booty through which soldiers were compensated for their service lost its function as taxation and became the primary source of financing of wars.⁴⁰ Also, large armies composed of mercenaries were replaced by small standing professional armies.⁴¹ With war booty losing its function, the professionalisation of military service and the introduction of new sources of funding of armies and wars, pillage became distractive, unnecessary, discipline-breaking and thus costly practice insofar as it diverted the focus of soldiers from pursuing military objectives.⁴² Secondly, the system of values in Europe changed with the adoption of liberal ideas. Among the embraced ideas

³⁹ Tuba Inal, *Looting and Rape in Wartime. Law and Change in International Relations* (University of Pennsylvania Press 2013) 42.

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *ibid.*

were the concept of the sanctity of private property and the idea of Europe being a group of ‘civilised’ nations streaming towards even higher forms of civilisation. These ideas influenced the emergence of a highly negative attitude towards the practice of pillaging, which started to be viewed as barbaric.⁴³ Also, wars began to be understood differently – as a fight between states rather than between individuals – which led to an idea that individuals and their property need to be protected during the war.⁴⁴ As a result of all these factors, pillage became contempt and started to be avoided in practice.

This change of attitude was formalised by incorporation of prohibition of pillage in the national legal frameworks regulating military codes of conduct.⁴⁵ At that time, there were no efforts to codify it at the international level. However, during the Napoleonic and Revolutionary wars which took place in the late 18th and early 19th century, the practice of pillaging was revitalised due to the new reconceptualisation of warfare and other circumstances surrounding these wars.⁴⁶ The destructiveness of these wars, the extensive infringements of customary rules of war including the recurrence of pillage as a war practice, pointed to the necessity of codification of laws of war, including rules prohibiting pillage.⁴⁷ Thus, the prohibition regime against pillage at the international level came about as a result of historical developments, ie when both material factors (costs outweighing benefits of pillage as a result of development of modern state and evolution of warfare) and ideational factors (favourable normative context valuing private property in combination with the ‘normative shock’ caused by the regress that occurred during the Napoleonic and Revolutionary wars when practice of pillaging was revived after almost a century of efforts to curb it) allowed for emergence of such a regime.⁴⁸

International treaty law regulating the conduct of warfare started to develop in the second half of the 19th century, and provisions related to the protection of private property have constituted part thereof ever since. The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field adopted in Geneva in 1864 prescribed

⁴³ Inal (n 39) 44.

⁴⁴ *ibid.*

⁴⁵ *ibid* 168.

⁴⁶ *ibid* 47-51.

⁴⁷ *ibid.*

⁴⁸ *ibid* 170.

the first legal norm relating to unlawful appropriation of property. This provision concerned religious and medical staff attached to military hospitals, stipulating that, on withdrawing, they were entitled to take with them their personal property.⁴⁹ Ten years later, the International Declaration Concerning the Laws and Customs of War which contained detailed provisions prescribing protection of property was adopted during the Brussels Conference. It stipulated prohibition of pillage⁵⁰ and confiscation of private property,⁵¹ restricted taking possession of movable property to state property only,⁵² limited seizure of the enemy's property to situations of imperative military necessity,⁵³ prescribed that all personal belongings of prisoners of war shall remain their property⁵⁴ and set forth the rules of requisition.⁵⁵

This declaration never entered into force, but it nevertheless played an important role in further evolution of IHL insofar as it formed the basis for the development of the Oxford Manual of 1880 and later on for drafting of the Hague Conventions of 1899 and 1907 regulating land warfare and the Regulations annexed to them.⁵⁶ Consequently, provisions relating to protection of private property contained in the Oxford Manual and the Regulations Concerning the Laws and Customs of War on Land of 1899 and 1907 to a great extent reflect those prescribed in the Brussels Declaration. They proscribe pillage,⁵⁷ as well as other

⁴⁹ Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (adopted 22 August 1864, entered into force 22 June 1865) art 4 <<https://ihl-databases.icrc.org/ihl/INTRO/120?OpenDocument>> accessed 10 July 2019.

⁵⁰ Project of an International Declaration concerning the Laws and Customs of War (Brussels Declaration) (27 August 1874) arts 18, 39 <<https://ihl-databases.icrc.org/ihl/INTRO/135>> accessed 11 July 2019.

⁵¹ *ibid* arts 38, 40.

⁵² *ibid* art 6.

⁵³ *ibid* art 13.

⁵⁴ *ibid* art 23.

⁵⁵ *ibid* art 42.

⁵⁶ International Committee of the Red Cross, 'Treaties, States Parties and Commentaries. Project of an International Declaration concerning the Laws and Customs of War. Brussels, 27 August 1874' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/ihl/INTRO/135>> accessed 11 July 2019.

⁵⁷ Institute of International Law, The Laws of War on Land (9 September 1880) (Oxford Manual) arts 19, 32 <<https://ihl-databases.icrc.org/ihl/INTRO/140?OpenDocument>> accessed 11 July 2019; Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 29 July 1899, entered into force 4 September 1900) arts 28, 47 <<https://ihl-databases.icrc.org/ihl/INTRO/150?OpenDocument>> accessed 10 July 2019; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) arts 28, 47 <<https://ihl-databases.icrc.org/ihl/INTRO/195>> accessed 10 July 2019.

forms of appropriation of private property such as seizure of personal belongings of prisoners of war and confiscation or requisition of private property.⁵⁸ The Oxford Manual additionally reaffirms entitlement of medical personnel to keep their private property on withdrawing,⁵⁹ whereas the Hague Regulations further oblige states to ensure that all valuables and objects of personal use found on the battlefields or left by prisoners who have died are returned.⁶⁰

Another convention that was adopted in 1899 and revised in 1907 concerned regulation of maritime warfare. Both the initial and the revised version of this convention reaffirmed the rule relating to protection of private property belonging to medical personnel.⁶¹ The same rule was also prescribed in the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field adopted in Geneva in 1906.⁶² This convention, which replaced the Geneva Convention of 1864, additionally stipulated that parties are obliged to undertake necessary measures to secure prevention of robbery of the sick and wounded members of the armies,⁶³ and restated the obligation to return to interested persons all personal effects which are found in the battlefield, or have been left by the sick or wounded who have died.⁶⁴ Similar provision prescribing mandatory return of private property found in the captured ships was introduced in the already mentioned

⁵⁸ Oxford Manual (1880) (n 57) arts 54-58, 60, 64; Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (n 57) arts 4, 23, 46, 48, 52-53; Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land (n 57) arts 4, 23, 46, 52-53.

⁵⁹ Oxford Manual (1880) (n 57) art 38.

⁶⁰ Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (n 57) art 14; Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land (n 57) art 14.

⁶¹ Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864 (adopted 29 July 1899, entered into force 4 September 1900) art 7 <<https://ihl-databases.icrc.org/ihl/INTRO/155?OpenDocument>> accessed 10 July 2019; Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (adopted 18 October 1907, entered into force 26 January 1910) art 10 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&docId=E5397A0FB560D0A9C12563CD002D6832>> accessed 10 July 2019.

⁶² Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (adopted 6 July 1906, entered into force 9 August 1907) art 12 <<https://ihl-databases.icrc.org/ihl/INTRO/180?OpenDocument>> accessed 10 July 2019.

⁶³ *ibid* art 28.

⁶⁴ *ibid* art 4.

convention concerning regulation of maritime warfare of 1907.⁶⁵ This convention, as well as another convention related to the similar subject matter which was adopted in the same year, also reaffirmed prohibition of pillage.⁶⁶ The Geneva Convention of 1906 was revised in 1929. The revised convention prescribed obligations to protect wounded and dead from pillage and to return personal belongings found on the battlefield or on the dead.⁶⁷ Another treaty adopted in 1929 was the Convention Relative to the Treatment of Prisoners of War. This convention reaffirmed general prohibition of seizure of personal effects belonging to prisoners of war which was initially stipulated in the Hague Regulations of 1899 and 1907.⁶⁸ It further specified this rule by introducing certain limitations concerning possession of cash and established procedures relating to handling the money withdrawn from prisoners of war.⁶⁹

The horrendous experiences of WW II indicated that there was a need for further development of IHL. Four conventions regulating treatment of wounded and sick members of armed forces, prisoners of war and civilian persons during armed conflict were adopted in Geneva in 1949. These treaties are presently ratified by 194 countries and thus universally applicable.⁷⁰ All four conventions contain provisions regulating the protection of private property of respective categories of protected persons. Geneva Conventions I and II which concern treatment of wounded and sick in armies in the field and of wounded, sick and shipwrecked members of armed forces at sea respectively, reaffirm rules obliging parties to the conflict to protect wounded,

⁶⁵ Convention (X) (n 61) art 17.

⁶⁶ *ibid* arts 16, 21; Convention (IX) Concerning Bombardment by Naval Forces in Time of War (adopted 18 October 1907, entered into force 26 January 1910) art 7 <<https://ihl-databases.icrc.org/ihl/INTRO/220?OpenDocument>> accessed 10 July 2019.

⁶⁷ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (27 July 1929) arts 3-4 <<https://ihl-databases.icrc.org/ihl/INTRO/300?OpenDocument>> accessed 10 July 2019.

⁶⁸ Convention Relative to the Treatment of Prisoners of War (27 July 1929) art 6 <<https://ihl-databases.icrc.org/ihl/INTRO/305>> accessed 10 July 2019.

⁶⁹ *ibid* art 24.

⁷⁰ International Committee of the Red Cross, 'The Geneva Conventions of 1949 and their Additional Protocols' (International Committee of the Red Cross) <www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> accessed 11 July 2019.

sick and shipwrecked from pillage⁷¹ and to forward personal items belonging to dead enemy soldiers to their countries or armies so these can be returned to interested persons,⁷² as well as the longstanding rule prescribing entitlement of medical and religious personnel to take their personal belongings with them on departure.⁷³

Geneva Convention III, which replaced the 1929 convention concerning treatment of prisoners of war,⁷⁴ regulated in detail rules and procedures of handling private property belonging to prisoners of war. It follows from these rules that personal property of prisoners of war should remain in their possession, although certain types of belongings such as money and articles of value can be temporarily seized but must be returned to them at the end of captivity.⁷⁵ Following escape, repatriation, release or death of prisoners of war, their personal belongings must be transmitted to the party to which they belong.⁷⁶ Finally, the convention even sets forth that parties to the conflict are obliged to ensure that, in the event of transfer from one camp to another, prisoners can either carry with them their belongings or that these are later forwarded to them.⁷⁷

Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, as the most relevant convention for protection of the civilian population, contains corresponding provisions regulating the protection of private property belonging to internees.⁷⁸ In addition

⁷¹ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) art 15 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>> accessed 11 July 2019; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) art 18 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/370?OpenDocument>> accessed 11 July 2019.

⁷² Geneva Convention I (1949) (n 71) art 16; Geneva Convention II (1949) (n 71) art 19.

⁷³ Geneva Convention I (1949) (n 71) arts 30, 32; Geneva Convention II (1949) (n 71) art 37.

⁷⁴ Following the universal acceptance of the Geneva Conventions of 1949, the 1929 Convention relative to the Treatment of Prisoners of War is no longer in operation. See International Committee of the Red Cross, 'Convention relative to the Treatment of Prisoners of War' (Geneva, 27 July 1929) <<https://ihl-databases.icrc.org/ihl/INTRO/305>> accessed 10 October 2019.

⁷⁵ Geneva Convention (III) Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) art 18 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/375?OpenDocument>> accessed 11 July 2019.

⁷⁶ *ibid* art 122.

⁷⁷ *ibid* arts 48, 65, 68, 119.

⁷⁸ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) arts 97, 114, 128, 139 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380?OpenDocument>> accessed 11 July 2019.

to these rules, it also proscribes pillage⁷⁹ and sets limits to requisition of foodstuffs, articles or medical supplies available in the occupied territory.⁸⁰ In all four treaties, extensive appropriation of property is included in the list of grave breaches of conventions.⁸¹

The Geneva Conventions of 1949 were supplemented by two additional protocols in 1977. Additional Protocol I relating to the protection of victims of international conflict establishes the obligation of contracting parties to conclude agreements in order to facilitate the return of the remains and personal effects of the deceased to the home country upon its request or upon the request of the next of kin.⁸² Additional Protocol II concerning the protection of victims of non-international armed conflict proscribes pillage 'at any time and in any place whatsoever'⁸³ and obliges contracting parties to protect the wounded, sick and shipwrecked from pillage and the dead from despoliation.⁸⁴

It follows from this brief overview that legal norms related to protection of property have been an integral part of international humanitarian treaty law ever since the beginning of its development 120 years ago and that private property enjoys a high level of protection under this legal regime. Presently, treaty law relating to protection of private property comprises the following instruments which are officially in force: the Hague Regulations of the Laws and Customs of War on Land 1899 and 1907, the Convention Concerning Bombardment by Naval Forces in Time of War of 1907 and the Geneva Conventions of 1949 and additional protocols of 1977. These treaties, most of which are binding for almost all states either because they are nearly universally ratified or because they are considered to be part of customary international law, contain numerous provisions establishing protection of private property of different categories of persons ranging from medical and religious

⁷⁹ Geneva Convention (IV) (n 78) arts 16, 33.

⁸⁰ *ibid* art 55.

⁸¹ Geneva Convention I (1949) (n 71) art 50; Geneva Convention II (1949) (n 71) art 51; Geneva Convention III (1949) (n 75) art 130; Geneva Convention IV (1949) (n 78) art 147.

⁸² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva, 8 June 1977) (entered into force 7 December 1978) art 34 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470?OpenDocument>> accessed 11 July 2019.

⁸³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) art 4 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument>> accessed 11 July 2019.

⁸⁴ *ibid* art 8.

personnel, wounded, sick and shipwrecked members of armed forces to prisoners of war, civilians and deceased belonging to any of these categories of protected persons.

In the seminal study conducted under the auspices of the International Committee of the Red Cross, Henckaerts and Doswald-Beck thoroughly examined both treaty law and other relevant aspects of the practice of states and identified seven rules of customary IHL related to the protection of private property. These rules prescribe that private property cannot be seized as war booty, prohibit pillage, command that private property must be respected and outlaw confiscation and seizure of the property of an adversary, including private property, except when it is required by imperative military necessity:

Rules of customary IHL related to the protection of private property	
Rules of customary international law applicable during both international and non-international armed conflict	
1.	'Rule 50. The destruction or seizure of the property of an adversary is prohibited unless required by imperative military necessity.' ⁸⁵
2.	'Rule 52. Pillage is prohibited.' ⁸⁶
3.	'Rule 111. Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property.' ⁸⁷
4.	'Rule 122. Pillage of the personal belongings of persons deprived of their liberty is prohibited.' ⁸⁸
5.	'Rule 133. The property rights of displaced persons must be respected.' ⁸⁹
Rules of customary international law applicable during international armed conflict	
6.	'Rule 49. The parties to the conflict may seize military equipment belonging to an adverse party as war booty.' ⁹⁰
7.	'Rule 51. In occupied territory: [...] (c) private property must be respected and may not be confiscated, except where destruction or seizure of such property is required by imperative military necessity.'

⁸⁵ Jean-Marie Henckaerts, 'Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict' (March 2005) 87(857) International Review of the Red Cross 175, 203.

⁸⁶ *ibid.*

⁸⁷ *ibid* 207.

⁸⁸ *ibid* 208.

⁸⁹ *ibid* 210.

⁹⁰ *ibid* 203.

As indicated in this list of rules, not all of them apply in all conflicts – five rules are applicable in both international and non-international armed conflicts, whereas application of the remaining two rules is limited to international armed conflict. However, having acquired status of customary law, all these rules are legally binding for all the states, regardless of whether they accept them or not.

1.3 CRIMES OF APPROPRIATION OF PROPERTY IN INTERNATIONAL CRIMINAL LAW

The idea that individuals responsible for violations of rules of humanitarian law during the war should be penalised appeared for the first time after World War I (WW I). The Investigatory Commission established by the Preliminary Peace Conference in Paris with the purpose to inquire into breaches of laws and customs of war committed during WW I and responsibilities for these offences, drafted in its report a list of perpetrated crimes warranting prosecution which included, among others, the crimes of pillage and confiscation of property.⁹¹ However, the tribunal that was supposed to prosecute over 800 individuals responsible for these crimes never came into existence, and the whole story ended with the prosecution of 17 individuals at the German Supreme Court in Leipzig.⁹²

A quarter of century later, crimes of appropriation of private property were included in the charter of the first international tribunal – the International Military Tribunal at Nuremberg – which was established to prosecute major war criminals of the European Axis for crimes committed during WW II. Article 6 listed plunder of public or private property among violations of laws and customs of war to be prosecuted as ‘war crimes’.⁹³ Control Council Law No 10, which was enacted by occupying powers with an aim to provide a legal basis for the prosecution of war criminals other than those dealt with by the Nuremberg Tribunal,

⁹¹ Commission on the Responsibility of the Authors of War and on the Enforcement of Penalties, ‘Report Presented to the Preliminary Peace Conference’ (29 March 1919) reprinted in (1920) 14(1-2) *American Journal of International Law* 95, 114 <www.jstor.org/stable/pdf/2187841.pdf?refreqid=excelsior%3A40b45929de6df83072069027a380a066> accessed 12 July 2019.

⁹² Alan Kramer, ‘The First Wave of International War Crimes Trials: Istanbul and Leipzig’ (2006) 14(4) *European Review* 441, 448.

⁹³ Charter of the International Military Tribunal (8 August 1945) art 6(b).

also prescribed the same crime.⁹⁴ Unlike the Nuremberg Charter and Control Council Law No 10, the Charter of the International Military Tribunal for the Far East did not encompass crimes of appropriation of property, at least not expressly. Article 5(b) which established the tribunal's jurisdiction over 'Conventional War Crimes' specified only that these comprise violations of laws and customs of war, without listing specific types of offences.⁹⁵

Statutes and other legal instruments defining the jurisdiction of subsequently established international and internationalised tribunals, except for the Law Establishing the Extraordinary Chambers in the Courts of Cambodia (ECCC), incorporated crimes of appropriation of property in the list of criminal offences. According to the Statute of the ICTY, the ICTY's jurisdiction encompassed the crime of extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly in breach of the Geneva Conventions of 1949,⁹⁶ and the crime of plunder of private property committed in violation of laws and customs of war.⁹⁷ The Statute of the International Criminal Tribunal for Rwanda (ICTR), as well as the Statute of the Special Court for Sierra Leone (SCSL), prescribed only the crime of pillage.⁹⁸ The Statute of the ICC establishes the court's jurisdiction over grave breaches of the Geneva Conventions of 1949 which include the extensive appropriation of property not justified by military necessity and carried out unlawfully and wantonly,⁹⁹ as well as over other violations of laws and customs applicable in international and non-international armed conflicts, including pillage and seizure of property of an enemy or adversary not imperatively demanded by necessities of war or conflict.¹⁰⁰

⁹⁴ Control Council, Law No 10 (20 December 1945) art II(b) <www.legal-tools.org/doc/ffda62/pdf> accessed 28 August 2019.

⁹⁵ Charter of the International Military Tribunal for the Far East (19 January 1946) art 5(b).

⁹⁶ Statute of the International Criminal Tribunal for the Former Yugoslavia, UNSC Res 827 (25 May 1993) UN Doc S/RES/827, art 2(d) <www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf> accessed 12 July 2019 (Statute of the ICTY).

⁹⁷ *ibid* art 3(e).

⁹⁸ Statute of the International Criminal Tribunal for Rwanda UNSC Res 955 (8 November 1994) UN Doc S/RES/955 art 4(f) <http://unictr.irmct.org/sites/unictr.org/files/legal-library/100131_Statute_en_fr_0.pdf> accessed 12 July 2019; Statute of the Special Court for Sierra Leone (16 January 2002) art 3(f) <www.rscsl.org/Documents/scsl-statute.pdf> accessed 12 July 2019.

⁹⁹ UN General Assembly, Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 art 8(2)(a)(iv) <www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatutengl.pdf> accessed 12 July 2019.

¹⁰⁰ *ibid* arts 8(2)(b)(xiii), 8(2)(b)(xvi), 8(2)(e)(v), 8(2)(e)(xii).

Identical provisions were incorporated in legal instruments establishing jurisdiction of the East Timor Special Panels for Serious Crimes (SPSC)¹⁰¹ and the Kosovo Specialist Chambers and Specialist Prosecutor's Office.¹⁰² In war crimes trials conducted under the auspices of the United Nations Mission in Kosovo (UNMIK) and the European Union Rule of Law Mission in Kosovo (EULEX) before the establishment of Kosovo Specialist Chambers, the applicable law comprised a combination of the Criminal Code of the Socialist Federative Republic of Yugoslavia (SFRY) which was in force in time of commission of crimes and the Provisional Criminal Code of Kosovo enacted by the UNMIK.¹⁰³ The Criminal Code of the SFRY proscribed the following offences concerning appropriation of private property in the time of war or conflict: confiscation, pillaging, illegal and self-willed stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition¹⁰⁴ as well as unlawful appropriation of belongings from the killed or wounded on battlefield.¹⁰⁵ Provisions related to crimes of appropriation of property prescribed in the Provisional Criminal Code of Kosovo fully reflect those of the ICC Statute.¹⁰⁶

¹⁰¹ United Nations Transitional Administration in East Timor, Regulation No 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences (6 June 2000) UNTAET/REG/2000/15 ss 6.1.(a)(iv), 6.1.(b)(xiii), 6.1.(b)(xvi), 6.1.(e)(v), 6.1.(e)(xii) <www.legal-tools.org/en/doc/c082f8/> accessed 12 July 2019.

¹⁰² Assembly of Republic of Kosovo, Law on Specialist Chambers and Specialist Prosecutor's Office (3 August 2015) Law No 05/L-053 arts 14(a)(iv), 14(b)(xiii), 14(b)(xvi), 14(d)(v), 14(d)(xii) <www.scp-ks.org/en/documents/law-specialist-chambers-and-specialist-prosecutors-office> accessed 12 July 2019.

¹⁰³ Organization for Security and Cooperation in Europe, Mission in Kosovo, 'Kosovo's War Crimes Trials: An Assessment Ten Years On 1999 – 2009' (May 2010) 9-10.

¹⁰⁴ Assembly of the SFRY, Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY No 44/76 art 142.

¹⁰⁵ *ibid* art 147.

¹⁰⁶ United Nations Interim Administration Mission in Kosovo, Provisional Criminal Code of Kosovo (6 July 2003) UNMIK/REG/2003/25 arts. 118(2)4, 119(2)13, 119(2)16, 121(2)5, 121(2)12).

2.

PROSECUTION OF CONFLICT-RELATED CRIMES OF APPROPRIATION OF PROPERTY: HISTORICAL OVERVIEW

The first prosecutions of violations of rules of IHL related to protection of property took place before the German Supreme Court in Leipzig after WW I. Two out of 12 trials conducted before this court included charges related to the unlawful appropriation of property.¹⁰⁷ In these two cases, four defendants stood trial for crimes of plunder and theft punishable under relevant provisions of German law that penalised breaches of rules of IHL related to protection of private property.¹⁰⁸ During WW II unlawful appropriation of private property was carried out on a large scale, and therefore many post-WW II prosecutions of war criminals included charges related to these crimes. Crimes of appropriation of property were also perpetrated in the course of various armed conflicts after WW II, and prosecutions of some of these crimes were undertaken by international and internationalised criminal tribunals established during the 1990s and 2000s. The first section of this chapter analyses the most famous post-WW II war crimes trials which included prosecution of property-related crimes. The second section presents a brief overview of prosecution records of international and internationalised criminal tribunals and courts concerning crimes of appropriation of property committed after WW II.

¹⁰⁷ Mathias Neuner, 'When Justice is Left to the Losers: The Leipzig War Crimes Trials' in Morten Bergsmo, Wui Ling Cheah and Ping Yi (eds), *Historical Origins of International Criminal Law: Volume 1* (Torkel Opsahl Academic EPublisher 2014) 334-337.

¹⁰⁸ *ibid* 334-337, 367.

2.1 PROSECUTION OF CRIMES OF APPROPRIATION OF PROPERTY COMMITTED DURING WORLD WAR II

According to Fulbrook, between 1946 and 2005, 140,000 individuals stood trial for crimes that took place during WW II.¹⁰⁹ The International Military Tribunals in Nuremberg and Tokyo and military tribunals established by allies in their occupation zones in the aftermath of the war tried only a small number of cases, whereas most war crimes trials took place before domestic civil and military tribunals in Germany and around the world.¹¹⁰ This section focuses on the analysis of 14 trials which have received most scholarly and public attention – two trials conducted before the International Military Tribunals in Nuremberg and Tokyo and 12 subsequent Nuremberg trials conducted before US Military Tribunals under the Allied Control Council Law No 10.

Trials before International Military Tribunals in Nuremberg and Tokyo

Trial against major war criminals conducted before the International Military Tribunal in Nuremberg took place in 1945 and 1946. In this case, 24 defendants (of whom 21 appeared in the courtroom) were charged with three criminal offences prescribed in article 6 of the Charter of the International Military Tribunal and with participation in formulation or execution of the common plan or conspiracy which involved commission of these offences.¹¹¹ Crimes of appropriation of property were prosecuted under the charges of war crimes and crimes against humanity.¹¹² The indictment alleged that the accused individuals charged with war crimes were responsible for ruthless exploitation of public and private property in occupied countries. According to the indictment, the main aim of exploitation of property was 'to strengthen the Nazi war machine, to depopulate and impoverish the rest of Europe,

¹⁰⁹ Mary Fulbrook, *Reckonings: Legacies of Nazi Persecution and the Quest for Justice* (OUP 2018) cited on Jewish Virtual Library, 'The Prosecution of War Criminals' (*Jewish Virtual Library*) <www.jewishvirtuallibrary.org/the-prosecution-of-war-criminals> accessed 27 August 2019.

¹¹⁰ Matthew Lippman, 'Prosecution of Nazi War Criminals Before Post-world War II Domestic Tribunals' (2000) 8 *Miami International & Comparative Law Review* 1, 1-3.

¹¹¹ International Military Tribunal in Nuremberg (Indictment) (18 October 1945) s III <www.cvce.eu/en/obj/indictment-presented-to-the-international-military-tribunal-nuremberg-18-october-1945-en-6b56300d-27a5-4550-8b07-f71e303ba2b1.html> accessed 27 August 2019.

¹¹² *ibid* s VIII (E).

to enrich themselves and their adherents, and to promote German economic supremacy over Europe'.¹¹³

The indictment further alleged that an immense amount of all types of private property belonging to civilians and private enterprises, including money, gold, works of art, books and other cultural property of enormous value, furniture, textiles, raw materials and agricultural stock was plundered from France, Belgium, Norway, Holland, Luxembourg, Czechoslovakia and the Soviet Union.¹¹⁴ Large-scale plunder of Jewish property committed in the context of systematic persecution of Jews in Germany and other occupied countries was also prosecuted under the charge of crimes against humanity.¹¹⁵ The indictment allegations concerning crimes of appropriation of property were proven during the trial. The tribunal's findings on the responsibility of defendant Alfred Rosenberg best illustrate the systematic character of plunder:

Rosenberg is responsible for a system of organized plunder of both public and private property throughout the invaded countries of Europe. Acting under Hitler's orders of January, 1940, to set up the 'Hohe Schule,' he organized and directed the 'Einsatzstab Rosenberg,' which plundered museums and libraries, confiscated art treasures and collections, and pillaged private houses. His own reports show the extent of the confiscations. In 'Action-M' (Moebel), instituted in December, 1941, at Rosenberg's suggestion, 69,619 Jewish homes were plundered in the West, 38,000 of them in Paris alone, and it took 26,984 railroad cars to transport the confiscated furnishings to Germany. By 14th July, 1944, more than 21,903 art treasures, including famous paintings and museum pieces, had been seized by the Einsatzstab in the West.¹¹⁶

Out of 22 defendants indicted on war crimes and/or crimes against humanity charges, eight were expressly accused and found guilty of participation in the plunder of private property.¹¹⁷

Crimes of appropriation of private property were included in the indictment of the International Military Tribunal for the Far East which was brought against 28 Japanese civilian and military leaders. Pillage

¹¹³ International Military Tribunal in Nuremberg (n 111) s VIII (E).

¹¹⁴ *ibid.*

¹¹⁵ *ibid* s X (B).

¹¹⁶ International Military Tribunal in Nuremberg (Judgment) (1 October 1946) 497 <https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf> accessed 27 August 2019.

¹¹⁷ *ibid* 486-529.

and unlawful confiscation of private property were prosecuted under war crimes and crimes against humanity charges, specifically under counts 53 and 54.¹¹⁸ Count 53 which contained conspiracy charges was dismissed on jurisdictional grounds.¹¹⁹ As for count 54, five out of 26 defendants were found guilty, 19 were acquitted, whereas proceedings against the remaining two were discontinued.¹²⁰ Based on evidence presented during the trial, the tribunal established that Japanese troops committed crimes of looting and plundering of private property in the city of Nanking, Kwantung Province and Kwansi Province.¹²¹ However, the judgment did not discuss these crimes at length.

Subsequent trials of war criminals before the US Military Tribunals in Nuremberg

Trial of major war criminals before the International Military Tribunal in Nuremberg was followed by a series of 12 trials conducted before the US Military Tribunals. Jurisdictional foundation for these trials was Law No 10 enacted by the Allied Control Council in 1946 with an aim to establish a uniform legal basis for the prosecution of war criminals in Germany.¹²² Control Council Law No 10 prescribed four criminal offences¹²³ and unlawful appropriation of private property was penalised under the criminal offence of war crimes which expressly listed plunder of private property as one of the violations of the laws or customs of war.

Twelve trials conducted under authority of the Control Council Law No 10 took place between December 1946 and April 1949 in Nuremberg. Nine out of these 12 cases included charges related to crimes of appropriation of private property committed during WW II.¹²⁴ In all cases, crimes of appropriation of private property were prosecuted

¹¹⁸ International Military Tribunal for the Far East (Indictment) (1946) 13 <<http://imtfc.law.virginia.edu/collections/carrington-williams/1/3/full-indictment>> accessed on 27 August 2019.

¹¹⁹ International Military Tribunal for the Far East (Judgment) (12 November 1948) 41 <<http://www.rewi.hu-berlin.de/tokio.pdf>> accessed on 27 August 2019.

¹²⁰ *ibid* 558-585.

¹²¹ *ibid* 494-495, 499.

¹²² Control Council, Law No 10 (n 94) preamble.

¹²³ According to art II of the Control Council Law no 10 (*ibid*), these were crimes against peace, war crimes, crimes against humanity and membership in categories of a criminal group or organisation declared criminal by the International Military Tribunal.

¹²⁴ These were the following cases: *USA v Josef Alstoetter et al*, *USA v Oswald Pohl et al*, *USA v Friedrich Flick et al*, *USA v Carl Krauch et al*, *USA v Ulrich Greifelt et al*, *USA v Otto Ohlendorf et al*, *USA v Alfried Krupp et al*, *USA v Ernst von Weizsäcker et al* and *USA v Wilhelm von Leeb et al*.

under war crimes and/or crimes against humanity charges. In two cases they were also charged under common design and conspiracy counts,¹²⁵ but those charges were eventually dismissed. In these nine cases, indictments were brought against 149 persons – officers of various divisions of the *Schutzstaffel* (SS), officials of ministries of the Reich, members of judiciary, leading industrialists and high-ranking military officers. Out of 149 accused individuals, 141 were charged on counts containing allegations concerning crimes of appropriation of property. Proceedings against six of them were discontinued either before or during the trial due to reasons of their illness or death. Thus, the total number of defendants accused of crimes against property who stood trial was 135. In relation to charges concerning crimes of appropriation of property, criminal proceedings against these 135 defendants resulted in 76 guilty verdicts, 54 acquittals and five dismissals of charges.

The first case in which these crimes were prosecuted was the so-called ‘Justice Case’. In this case, an indictment was brought against 16 officials of the Reich Ministry of Justice, prosecutors and judges.¹²⁶ The defendants were accused of having abused laws and judicial system with an aim to suppress political opposition to the Nazi regime. According to the indictment, this was achieved through:

criminal abuse of judicial and penal process including repeated trials on the same charges; criminal abuse, of discretion, unwarranted imposition of the death penalty, pre-arrangement of sentences between judges and prosecutors, discriminatory trial processes, and other criminal practices, all of which resulted in murders, brutalities, cruelties, tortures, atrocities, plunder of private property, and other inhumane acts.¹²⁷

The indictment also alleged that accused enforced discriminatory laws which had been enacted for the sole purpose of confiscating Jewish property.¹²⁸ These crimes were indicted as both war crimes and crimes against humanity and were included by reference under common design and conspiracy charges.¹²⁹ Allegations made in the indictment were proven during the trial, and the tribunal rendered nine guilty verdicts

¹²⁵ This happened in *USA v Josef Alstoetter et al* and *USA v Oswald Pohl et al*.

¹²⁶ *USA v Josef Alstoetter et al* (Indictment) (4 January 1946) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume III Washington 1951) 15-26.

¹²⁷ *ibid* 23.

¹²⁸ *ibid* 25.

¹²⁹ *ibid* 5, 8, 12, 14.

and five acquittals on war crimes and crimes against humanity charges,¹³⁰ whereas the common design and conspiracy charges were dismissed.¹³¹ Public officials who participated in exploitation and other crimes against property in the occupied countries and territories were also prosecuted in the 'Ministries Case'. In this case, plunder and spoliation charges were brought against 16 out of 21 accused officials of various Reich ministries.¹³² The tribunal found nine of them guilty of these crimes, two were acquitted, whereas charges against five defendants were dismissed.¹³³

In the 'Pohl Case' 18 officers of the Economics and Administrative Department of the SS were prosecuted for, among others, plunder of private property. This crime constituted part of the war crimes charge and of the common design and conspiracy charge which was eventually dismissed by the tribunal. In the judgment, crimes of appropriation of public and private property were discussed at length. The tribunal concluded that 'the story of systematic pillage of occupied countries ... is a tale of ruthless depravity unequalled in history'.¹³⁴ It found that massive plunder in occupied territories was not motivated by economic reasons, but was used in furtherance of the most horrendous aspects of persecution policy:

In pursuance of this policy of deliberate plunder, Poland, the Ukraine, and the occupied parts of Russia were stripped of agricultural supplies, food, raw materials, manufactured articles and such machinery as could not be used for German purposes where it stood. Obviously, this left large numbers of the population of these countries to starve, a fact which did not concern the German forces in the least. [...] To call such inhuman policy, 'a harsh necessity,' is the acme of understatement. It was deliberate murder by starvation, nothing less.¹³⁵

¹³⁰ Seven defendants were found guilty of both war crimes and crimes against humanity, whereas two defendants were convicted of crimes against humanity and acquitted of war crimes charges. In relation to two accused, proceedings were discontinued due to reasons of illness and death.

¹³¹ *USA v Josef Alstoetter et al* (Judgment) (4 December 1946) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume III Washington 1951) 954-1117.

¹³² *USA v Ernst von Weizsäcker et al* (Indictment) (1 November 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume XII Washington) 50-56.

¹³³ *USA v Ernst von Weizsäcker et al* (Judgment) (13 April 1949) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume XIV Washington) 680-794.

¹³⁴ *USA v Oswald Pohl et al* (Judgment) (3 November 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume V Washington 1950) 976.

¹³⁵ *ibid.*

The judgment also established that policies of plunder and extermination of the Jewish population were interconnected and provided an illustrative description of the systematic character of looting and the lucrateness of the Holocaust:

Running hand in hand with the extermination program, and definitely part of it, was the appropriation of all Jewish property, personal, real, and mixed. Every live Jew gave up his house, his land, his money, all his personal property. Every dead Jew gave up not only all this, including his watch, fountain pen, jewelry, clothing, and shoes, but also the gold teeth and fillings torn from his mouth after his murder. In some instances the dental gold was removed prior to the killings.

The property taken ran the entire gamut from estates, factories, and houses, down to the last little item of baby shoes. Nothing was omitted from this gigantic thieving program: everything from automobiles and locomotives down to the last suit of underwear was stripped from the defenseless and unoffending Jew. The thievery was on a scale not only to shame the fabulous pirates of the Spanish Main, but to stagger imagination and prostrate credulity. Were it not for the accurate and full records kept by the Nazis themselves, no one could believe that so vast a plan of thievery could be devised and carried into execution. Although no Nazi, alive or dead, has ever answered the question as to why the Jew had to die, there is no lack of evidence that his death enriched his captor, fattened his oppressor, and filled the blood-stained pocket of his assassin. All those whom the Nazi hierarchy represented detested, hated, and loathed the Jews, but nonetheless they carried their watches, wrote with their fountain pens, wore their clothing, and inserted the gold taken from the deceased Jews into their own mouths.¹³⁶

The tribunal found 15 defendants guilty on the war crimes charge under which crimes against property were prosecuted, whereas three were acquitted.

According to the indictment in the 'RuSHA Case' which was brought against 14 officials of the SS Race and Settlement Main Office, this office closely cooperated in commission of crimes against property with the Economics and Administrative Department of the SS whose employees were prosecuted in the previously discussed 'Pohl Case'.¹³⁷ In the 'RuSHA Case' the crime of plunder of private property was prosecuted

¹³⁶ *USA v Oswald Pohl et al* (n 134) 1145-1146.

¹³⁷ *USA v Ulrich Greifelt et al* (Indictment) (1 July 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IV Washington 1950) 616-617.

under both war crimes and crimes against humanity charges. However, the trial resulted in two verdicts of guilt and 12 acquittals for these crimes.¹³⁸ Members of SS were also prosecuted in the 'Einsatzgruppen Case'. In this case, 24 former members of the SS mobile death squads were accused of mass murder of the Jewish population in Eastern territories and of confiscation of property of 36,916 murdered Jews.¹³⁹ These crimes were legally characterised in the indictment as war crimes and crimes against humanity.¹⁴⁰ Out of 22 defendants who stood trial,¹⁴¹ 20 were found guilty on both charges, whereas two accused were acquitted.¹⁴² In its judgment, the tribunal reflected on the economic side of the extermination project and the lowest motives behind it:

Although engaged in an ideological enterprise, supposedly undertaken on the highest ethnic and cultural level, executants of the program were not above the most petty and loathsome thievery. In the liquidation of Jews in Zhitomir and Kiev the reporting Einsatzkommando collected 137 trucks full of clothing. The report does not say whether the clothing was torn from the victims while they were still alive or after they had been killed. This stolen raiment was turned over to the National Socialist People's Welfare Organization.

One of the defendants related how during the winter of 1941 he was ordered to obtain fur coats for his men, and that since the Jews had so much winter clothing, it would not matter much to them if they gave up a few fur coats. In describing an execution which he attended, the defendant was asked whether the victims were undressed before the execution. He replied, 'No, the clothing wasn't taken-this was a fur coat procurement operation.'¹⁴³

Unlawful appropriation of property was also prosecuted in three cases against leading industrialists of Nazi Germany. Directors and officials of Flick's group of companies, the IG Farben conglomerate of chemical firms and Krupp Group were accused of, among others,

¹³⁸ *USA v Ulrich Greifelt et al* (Judgment) (10 March 1948) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume V Washington 1950) 154-167.

¹³⁹ *USA v Otto Ohlendorf et al* (Indictment) (30 July 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IV Washington 1950) 15-21.

¹⁴⁰ *ibid.*

¹⁴¹ Proceedings against two accused were discontinued.

¹⁴² *USA v Otto Ohlendorf et al* (Judgment) (8 April 1948) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IV Washington 1950) 510-586.

¹⁴³ *ibid.* 440.

plunder of public and private property, exploitation, spoliation and other offences against property in countries and territories occupied by Germany. According to the indictments, these enterprises were heavily engaged in spoliation and plundering activities from which they benefited immensely.¹⁴⁴ In this respect, the indictment in the 'Krupp Case' described the types of targeted property and methods of plunder:

The KRUPP legal department participated in spoliation deals and negotiations and attempted to give them the colour of lawfulness. Industrial property, machinery, raw material, patent rights and other property rights and human labor were the targets of KRUPP's economic plans and activities to encourage, assist and take advantage of German criminal invasions and wars. Through the defendants and their representatives, KRUPP acquired, and benefited from, numerous immovable properties in occupied territories, employing devices including: seizure, purchases and leases influenced by force, 'trusteeships' (Treuhandschaften), and 'sponsorships' (Patenschaften). KRUPP acquired and benefited similarly from acquisition of movable property seized in the occupied countries for use there or in Germany in the interest of the German war effort.¹⁴⁵

The involvement of these companies and their officials in the commission of crimes of appropriation of property was established during the trials. The outcome of proceedings in these three cases were 16 guilty verdicts and 22 acquittals on charges related to crimes against property.

Crimes of appropriation of private property were incorporated in the last trial conducted before the US Military Tribunals in Nuremberg. In the 'High Command Case', 14 high-ranking military officers of the German Wehrmacht were accused of, among others, plunder of private property committed during military operations in the Russian front.¹⁴⁶ Five out of 13 defendants who stood trial¹⁴⁷ were found guilty of these crimes, whereas eight accused were acquitted.¹⁴⁸

¹⁴⁴ *USA v Friedrich Flick et al* (Indictment) (18 March 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume VI Washington 1952) 11-27; *USA v Carl Krauch et al* (Indictment) (3 May 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume VII Washington 1950) 10-80; *USA v Alfried Krupp et al* (Indictment) (17 August 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IX Washington 1950) 7-51.

¹⁴⁵ *USA v Alfried Krupp et al* (Indictment) (n 144) 25-26.

¹⁴⁶ *USA v Wilhelm von Leeb et al* (Indictment) (28 November 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume X Washington 1951) 39-40.

¹⁴⁷ Proceedings against defendant Blaskowitz were discontinued.

¹⁴⁸ *USA v Wilhelm von Leeb et al* (Judgment) (28 October 1948) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume XI Washington 1950) 553-695.

It follows from this brief analysis of 14 cases prosecuted before the International Military Tribunals in Nuremberg and Tokyo and the US Military Tribunals that crimes of appropriation of property were extensively discussed during proceedings. In total, 189 out of 237 defendants, ie almost 80% of the total number of prosecuted individuals, were accused of crimes of appropriation of property. The trials resulted in important factual findings regarding perpetration of this type of criminal offence in WW II. It has been established in judgments that there existed general military policy of exploitation of occupied countries and territories and that plundering was carried out on a vast scale and systematically in pursuance of this policy. The tribunals found that methods of appropriation of private property ranged from unscrupulous thefts to more 'sophisticated' approaches which involved 'negotiations' under obviously coercive circumstances with owners of property for its acquisition, purchase of property under the pretence of paying for it and the abuse of the legal system with an aim to create the appearance of legality of clearly unlawful acts of seizure and confiscation. In respect of the latter, trial records reveal that looting was profoundly institutionalised. It was established in the judgments of the tribunals that high-ranking civil and military officials and public institutions of the German Reich, including the judiciary, were deeply involved in the perpetration of these crimes. Plundered private property included all types of property such as agricultural property consisting of millions of acres of land, agricultural supplies, raw materials, manufactured articles, vehicles, money, gold, cultural property, furniture, textile and a most extensive range of personal effects down to 'the last suit of underwear'.¹⁴⁹ The general finding of the International Military Tribunal in Nuremberg that public and private property was pillaged 'in order to enlarge the resources of Germany at the expense of the rest of Europe'¹⁵⁰ was adopted in subsequent Nuremberg trials conducted before the US Military Tribunals. Nevertheless, these tribunals made more concrete findings in this respect. They found that property was sometimes plundered with an aim to supply the German army or civilian population with necessities, sometimes it was motivated simply by a desire for personal enrichment, whereas in some instances it was just

¹⁴⁹ *USA v Oswald Pohl et al* (Judgment) (n 134) 1145.

¹⁵⁰ International Military Tribunal in Nuremberg (Judgment) (n 116) 451.

used as a means to achieve the goal of doing away with the ‘unsuitable’ non-German population from desirable areas in foreign countries by depriving them of the necessary means of subsistence and even starving them to death. In relation to the latter, some judgments also pointed to the link between plunder and extermination of Jews by establishing that confiscation of Jewish property constituted an integral part of the extermination project. Trial findings concerning amounts of property seized in concentration camps clearly illustrated that the Holocaust was a very profitable undertaking and that it was not just ideological, but also an economic endeavour.

This section analysed 14 best-known post-WW II trials which exerted substantial influence on the subsequent development of international humanitarian and international criminal law. It is, however, essential to bear in mind that a large number of cases prosecuted before domestic courts around the world, which remain mostly under-researched, contributed not only to the quest for justice, but also to shaping of IHL in war¹⁵¹ and thus constitute a valuable source of information and important area for future research.

2.2 PROSECUTION OF CRIMES OF APPROPRIATION OF PROPERTY COMMITTED IN ARMED CONFLICTS AFTER WORLD WAR II

Crimes of appropriation of property were also prosecuted before international and internationalised tribunals established during the 1990s and 2000s. This section provides a brief reflection on prosecution of these crimes before the ICTR, ECCC, SCSL, East Timor SPSC, mixed panels in the courts of Kosovo and the ICC. The ICTY’s prosecution record will not be discussed in this section because it is the topic of the next chapter.

The ICTR and its successor IRMCT instituted criminal proceedings against 91 individuals in 69 cases. Out of 91 prosecuted persons, only four were indicted for crimes of appropriation of property. Three defendants were charged with the crime of pillage under article 4 of the Statute of the ICTR which prescribes criminal offence of violations of article 3

¹⁵¹ International Military Tribunal in Nuremberg (Judgment) (n 116) 451.

common to the Geneva Conventions and of Additional Protocol II,¹⁵² whereas in one case acts of unlawful appropriation of property were characterised as a crime of persecution and prosecuted under crimes against humanity charges.¹⁵³ Proceedings in three of these cases have been completed by final judgment. In two instances the accused were acquitted of charges concerning crimes of appropriation of property,¹⁵⁴ whereas in one case charges concerning these crimes were withdrawn.¹⁵⁵ In addition to these four cases, in at least ten other cases in which these crimes have not been expressly charged, factual allegations underlying charges of genocide and crimes against humanity include references to acts of unlawful appropriation of property committed in the context of these crimes.¹⁵⁶

Crimes of appropriation of property, as already explained in the previous chapter, were not encompassed by criminal offences prescribed in the law establishing the ECCC which defined the scope of subject-matter jurisdiction. Consequently, these crimes were not prosecuted in any of the six cases in which criminal proceedings have been instituted. Analysis of indictments in these cases has shown that factual allegations underlying charges also do not contain references to acts of unlawful appropriation of property, except for one case where such acts have been incidentally mentioned.¹⁵⁷ It follows from available data that none of the 391 individuals indicted before the East Timor SPSC¹⁵⁸ were accused of crimes of appropriation of property, at least not under provisions which expressly refer to these crimes.¹⁵⁹ As opposed to cases prosecuted before the ECCC and the SPSC, all cases prosecuted before

¹⁵² *Bisengimana* (Indictment) ICTR-00-60 (1 July 2000) 53-55; *Nahimana et al* (Indictment) ICTR-99-52 (13 April 2000) 29-30; *Setako* (Indictment) ICTR-04-81 23 June 2008 paras 65-68.

¹⁵³ *Ryandikayo* (Indictment) ICTR-95-1E (8 May 2012) paras 22, 28-29.

¹⁵⁴ *Prosecutor v Nahimana et al* Case No ICTR-99-52; *Prosecutor v Setako* Case No ICTR-04-81.

¹⁵⁵ *Prosecutor v Bisengimana* Case No ICTR-00-60.

¹⁵⁶ See for example *Bagaragaza* (Indictment) ICTR-05-86 (1 December 2006) para 19; *Bikindi* (Indictment) ICTR-01-72 (15 June 2005) para 22; *Nchamibigo* (Indictment) ICTR-01-63 (11 December 2006) paras 20, 30-31, 48, 59, 63, 67.

¹⁵⁷ *Muth* (Closing Order) Case 001 International Co-Investigating Judge (28 November 2018) paras 231, 243-244, 421.

¹⁵⁸ Caitlin Reiger and Marieke Wierda, 'The Serious Crimes Process in Timor-Leste: In Retrospect' (International Center for Transitional Justice 2006) 18.

¹⁵⁹ Office of the General Prosecutor of the Republic of Timor-Leste – Serious Crimes Unit, 'SCU – All Cases' <www.ocf.berkeley.edu/~changmin/Serious%20Crimes%20Unit%20Files/cases/AllCases.html> accessed 9 October 2019.

the SCSL include crimes of appropriation of property charges.¹⁶⁰ All 13 prosecuted individuals were indicted for the crime of pillage under article 3(f) of the SCSL Statute. Proceedings against nine out of 13 accused were completed by final verdict, and all of them have been found guilty on these charges.

Analysis of available information about criminal proceedings against individuals prosecuted before the mixed panels composed of local and international judges in the courts of Kosovo has shown that they encompassed crimes of appropriation of property. Out of 117 individuals indicted in the time period between 1999 and 2018, 34 were charged with these crimes.¹⁶¹ However, only ten cases have been completed by the final verdict, whereas in the remaining cases proceedings have been terminated, stayed or are still in progress. Out of 10 defendants against whom proceedings have been completed, three were found guilty on charges concerning crimes of appropriation of property and seven were acquitted.¹⁶² Finally, crimes of appropriation of property were also prosecuted before the ICC. Analysis of cases against 31 individuals prosecuted for crimes committed in the context of conflicts in Sudan, Mali, Libya, Uganda, Congo, Côte d'Ivoire, Central African Republic and Kenya revealed that 20 of them are suspected or accused of these crimes.¹⁶³ In 18 cases acts of unlawful appropriation of property were charged as the war crime of pillaging under article 8(2)(e)(v) which stipulates serious violations of the laws and customs applicable in armed conflicts not of an international character, whereas in two instances they were alleged in support of the charge of persecution as a crime against humanity. However, so far criminal proceedings against only three accused have been completed by the final verdict. In two cases the ICC rendered a verdict of acquittal and one defendant was convicted on

¹⁶⁰ *Prosecutor v Taylor* Case No SCSL-03-01; *Prosecutor v Sankof* Case No SCSL-03-02; *Prosecutor v Koroma* Case No SCSL-03-03; *Prosecutor v Bockarie* Case No SCSL-03-04; *Prosecutor v Norman et al* Case No SCSL-04-14; *Prosecutor v Sesay et al* Case No SCSL-04-15; *Prosecutor v Brima et al* Case No SCSL-04-16.

¹⁶¹ Anka Kurteshi Hajdari, 'An Overview of War Crimes Trials in Kosovo in the Period 1999 – 2018' (Humanitarian Law Center Kosovo 2018) 291-410.

¹⁶² *ibid.*

¹⁶³ These are the following individuals: Omar Hassan Ahmad Al Bashir, Ahmad Muhammad Harun, Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb), Abdel Raheem Muhammad Hussein, Joseph Kony, Vincent Otti, Sylvestre Mudacumura, Patrice-Edouard Ngaïssona, Abdallah Banda Abakaer Nourain, Dominic Ongwen, Bahar Idriss Abu Garda, Jean-Pierre Bemba Gombo, Callixte Mbarushimana, Mathieu Ngudjolo Chui, Bosco Ntaganda, William Samoei Ruto, Joshua Arap Sang, Raska Lukwiya, Okot Odhiambo and Germain Katanga.

these charges.¹⁶⁴ As for the remaining 17 individuals who were charged with these crimes, the court refused to confirm charges against two suspects,¹⁶⁵ proceedings against four defendants were terminated,¹⁶⁶ in one case appellate proceedings are in progress,¹⁶⁷ one case is at the trial stage,¹⁶⁸ whereas the remaining nine suspects/accused are not in the custody of the ICC and continuation of proceedings against them is subject to their arrest or voluntary appearance before the court.

Thus, it follows from this overview that crimes of appropriation of property have been prosecuted before the majority of international and internationalised judicial institutions, although the extent and outcomes of these prosecutions vary. Out of the total number of 813 persons prosecuted before all contemporary international(ised) tribunals and courts including the ICTY/IRMCT, 132 persons, ie 16% of the total number of defendants, were accused of crimes of appropriation of property. The largest number of individuals charged with these crimes, as will be demonstrated in the next chapter, were prosecuted before the ICTY.

¹⁶⁴ Jean-Pierre Bemba Gombo and Mathieu Ngudjolo Chui were acquitted of charges concerning crimes of appropriation of property, whereas Germain Katanga was found guilty.

¹⁶⁵ These are Bahar Idriss Abu Garda and Callixte Mbarushimana.

¹⁶⁶ These are Okot Odhiambo, Raska Lukwiya, William Samoei Ruto and Joshua Arap Sang.

¹⁶⁷ This is the case against Bosco Ntaganda.

¹⁶⁸ The trial against Dominic Ongwen is in progress.

3.

PROSECUTION OF CRIMES OF APPROPRIATION OF PRIVATE PROPERTY BEFORE THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

The process of dissolution of the SFRY was accompanied by break out of violent conflicts in Croatia and BiH. The United Nations Security Council, confronted with evidence of severity and scale of crimes committed during these conflicts and after unsuccessful appeals for respect of rules of IHL, on 25 May 1993 adopted Resolution 827 establishing the ICTY.¹⁶⁹ The ICTY was accorded jurisdiction ‘to prosecute persons responsible for serious violations of IHL committed in the territory of the former Yugoslavia since 1991’ in line with provisions of the tribunal’s statute.¹⁷⁰ As already elaborated in Chapter 1, unlawful appropriation of property is criminalised as one of the grave breaches of Geneva Conventions of 1949 and as a violation of laws and customs of war under articles 2 and 3 of the statute.

The ICTY was envisioned and established as a temporary institution and in 2003 began the long process of its closure which was completed 14 years later, on 31 December 2017. During the 24 years of its existence, the ICTY completed criminal proceedings in 73 out of a total number of 77 cases in which prosecutions had been instituted. Four cases in which proceedings were still in progress at the time of the Tribunal’s closure were taken over by the IRMCT. The IRMCT was established in 2010 with the purpose of completing unfinished activities, tasks and responsibilities of the ICTY and ICTR once they have been closed.¹⁷¹ Between 2010 and the completion of the mandate of the ICTR and ICTY

¹⁶⁹ United Nations International Tribunal for the Former Yugoslavia, ‘The Tribunal – Establishment’ <www.icty.org/en/about/tribunal/establishment> accessed 2 October 2019.

¹⁷⁰ Statute of the ICTY art 1.

¹⁷¹ United Nations International Residual Mechanism for Criminal Tribunals, ‘About’ <www.irmct.org/en/about> accessed 3 October 2019.

in 2015 and 2017 respectively, the IRMCT operated in parallel with the two Tribunals and after their closure, it continued to operate as a stand-alone institution.¹⁷² As of 30 June 2019, the IRMCT completed criminal proceedings in two out of four cases taken over from the ICTY, whereas criminal proceedings in the remaining two cases are still in progress.

This chapter analyses prosecution of crimes of appropriation of private property before the ICTY and the IRMCT. The chapter is divided into two sections. The first section provides an analysis of crimes of appropriation of property committed in the course of armed conflicts in the four countries of the former Yugoslavia. The second section examines how these crimes were tackled in criminal prosecutions before the Tribunal and the Mechanism.

3.1 UNLAWFUL APPROPRIATION OF PRIVATE PROPERTY COMMITTED DURING CONFLICTS IN THE FORMER YUGOSLAVIA

This section analyses crimes of appropriation of private property committed during conflicts in Croatia, BiH, the Former Yugoslav Republic of Macedonia (FYR Macedonia) and Kosovo. Analysis focuses on the exploration of main characteristics of these crimes such as prevalence, contexts in which they occur, forms and practices of unlawful appropriation of property, categories of perpetrators and types of targeted property. The section is composed of two subsections. The first subsection presents an overview of crimes committed in each of the conflicts under examination. The second subsection provides a comparative analysis of these crimes.

3.1.1 Overview of crimes of appropriation of property committed in the territories of former Yugoslav countries

Croatia

Analysis of indictments and judgments in cases related to the unlawful appropriation of property committed during armed conflict in Croatia indicates that these crimes were perpetrated on a large scale and by both warring parties. Military leaders of the Croatian Army were indicted for crimes which took place in the context of the military operations

¹⁷² United Nations International Residual Mechanism for Criminal Tribunals (n 171).

‘Medak Pocket’ and ‘Storm’ which were carried out in September 1993 and in August 1995 respectively. Indictments in two cases related to the ‘Medak Pocket’ operation alleged that during and after this operation private property belonging to Serb civilians from the Medak Pocket region was systematically plundered by members of Croatian forces and Croat civilians.¹⁷³ These two cases, however, never proceeded to trial.

Massive plunder of private property belonging to Serb civilians was carried out also during and after the ‘Storm’ military operation. The indictment against Croatian military and police officials alleged that this type of crime took place throughout 12 municipalities,¹⁷⁴ but the Trial Chamber found that the prosecution managed to prove only some of the charged crimes that occurred in seven municipalities.¹⁷⁵ Evidence presented during the trial revealed that plunder of private property was committed by members of the Croatian military and police forces, civilian protection and by private citizens. Property that was stolen during both operations ‘Storm’ and ‘Medak Pocket’ encompassed all types of goods ranging from personal vehicles, tractors, livestock, furniture, home appliances such as TVs, radios, refrigerators and washing machines to foodstuff, alcohol and fuel.¹⁷⁶ The prosecution argued that the plunder of private property committed during operation ‘Storm’ constituted part of the strategy of ethnic cleansing of the Krajina region.¹⁷⁷ In this respect, the indictment further alleged that the process of achieving the goal of permanent removal of the Serb population from this area continued to be pursued after completion of the operation ‘Storm’ through enactment of legislation which was aimed at preventing Serbs from returning to their homes and allocating their property to the Croat population.¹⁷⁸ The Trial Chamber found that these legal instruments were discriminatory.¹⁷⁹ Following completion of appellate proceedings in this case, the defendants were acquitted of all charges because their individual responsibility had not been established. Nevertheless, factual findings regarding perpetrated crimes of unlawful appropriation of property during and after operation ‘Storm’ remained uncontested and thus continue to be valid despite the outcome of the trial in relation to findings of guilt.

¹⁷³ *Bobetko* (Indictment) IT-02-62 (23 August 2002) paras 31, 34; *Ademi and Norac* (Indictment) IT-04-78 (27 May 2004) para 29.

¹⁷⁴ *Gotovina et al* (Indictment) IT-06-90 (12 March 2008) para 50.

¹⁷⁵ *Gotovina et al* (Judgment) IT-06-90 (15 April 2011) para 1785.

¹⁷⁶ *Bobetko* (Indictment) (n 173) paras 31, 34; *Ademi and Norac* (Indictment) (n 173) para 29; *Gotovina et al* (Judgment) *ibid* para 651.

¹⁷⁷ *Gotovina et al* (Judgment) (n 175) para 31.

¹⁷⁸ *ibid* para 48.

¹⁷⁹ *ibid* para 2098.

Officials of the Republic of Serbian Krajina (RSK), officers of the Yugoslav People's Army and highest officials of the Republic of Serbia were prosecuted for crimes against property committed mostly during take-overs, attacks and military occupation of parts of the Croatian territory in the period between 1991 and 1995. Indictments in cases which tackled crimes perpetrated in the territory that was under control of Serb forces alleged that plunder of private property took place in 18 municipalities¹⁸⁰ located in the territory of RSK and the Dubrovnik region.¹⁸¹ It follows from the indictments and judgments that crimes of plunder were committed by a variety of perpetrators including members of police, the Yugoslav People's Army, the Territorial Defence, paramilitary groups, volunteer units and local citizens.¹⁸² Acts of looting were mostly perpetrated during take-overs and military attacks on towns and villages. Stealing of private property usually took place in abandoned houses, but sometimes also in other settings such as detention facilities.¹⁸³ Stolen articles included the broadest array of goods ranging from money, jewellery and vehicles to livestock, furniture and all kinds of household items.¹⁸⁴

*Kosovo*¹⁸⁵

The ICTY prosecuted five cases related to crimes committed during armed conflict in Kosovo in 1998 and 1999. Indictments against military leaders and members of the Kosovo Liberation Army (KLA) did not include any allegations of unlawful appropriation of property perpetrated by the KLA and no evidence in this regard was presented during the trials. As opposed to that, in cases against Serbian political

¹⁸⁰ Given that indictments in these cases listed only concrete locations (towns/villages/hamlets) where the crimes were committed without specifying municipalities to which they belonged, for the purpose of this research municipalities were identified based on the current administrative-territorial division of Croatia.

¹⁸¹ See, for example, *Milošević* (Indictment) IT-02-54 (23 October 2002) paras 71, 81; *Martić* (Indictment) IT-95-11 (14 July 2003) para 47; *Hadžić* (Indictment) IT-04-75 (22 March 2012) para 47.

¹⁸² See, for example, *Martić* (Judgment) IT-95-11 (12 June 2007) paras 170, 180, 202, 264; *Mrkšić et al* (Judgment) IT-95-13/1 (27 September 2007) para 646.

¹⁸³ *Martić* (Judgment) *ibid* para 288.

¹⁸⁴ *Martić* (Judgment) *ibid* paras 227, 382, 357; *Mrkšić et al* (Judgment) (n 182) para 234.

¹⁸⁵ During the armed conflict under examination, Kosovo was not an independent state, but part of the Republic of Serbia which, together with the Republic of Montenegro, at that time formed the Federal Republic of Yugoslavia. For the purpose of this thesis, reference to Kosovo should be understood as to designate the geographic region which at the time of commission of crimes was a territorial and administrative entity with the status of an autonomous province within the Republic of Serbia.

and military leaders these crimes were extensively discussed. The Tribunal established that acts of unlawful appropriation of property were carried out on a large scale during the operation of the expulsion of Kosovo Albanians which took place between March and June 1999.¹⁸⁶ It follows from analysis of indictments and judgments that various acts of unlawful appropriation of property had (allegedly) taken place across 12 municipalities.¹⁸⁷ Looting of private property has been recognised as a component of the established pattern of violence:

The Chamber has found ... that beginning essentially on 24 March 1999 a consistent pattern of events occurred in a number of towns and villages throughout Kosovo. These events could be summarized as follows: In the early morning hours, VJ and MUP forces would approach a village or a town with tanks and armoured vehicles. The VJ would shell the area of the village or fire at houses in the village causing the population to flee to a nearby locations such as forest or a valley. In most cases, Serbian forces, in most cases MUP forces, would then enter the village on foot, typically setting houses on fire and looting valuables ...¹⁸⁸

In some instances, this pattern was varied by the perpetration of other crimes such as murders and harassment of civilians,¹⁸⁹ which were also accompanied by theft of their valuables.¹⁹⁰ Crimes of appropriation of property were also widespread during deportation and forcible transfer of civilians. They encompassed acts of theft,¹⁹¹ but also various forms of extortion. During the trials, the Tribunal heard evidence that civilians who were forced to flee were often also forced to pay money in order to be allowed to leave the country.¹⁹² The money was further extorted from people in exchange for protection of their property,¹⁹³ and in some cases, they had to pay just to stay alive¹⁹⁴ or to avoid being subjected to sexual violence.¹⁹⁵ Finally, trial records reveal that even the deceased were subjected to spoliation.¹⁹⁶

¹⁸⁶ *Šainović et al* (Judgment) IT-05-87 (26 February 2009); *Đorđević* (Judgment) IT-05-87/1 (23 February 2011).

¹⁸⁷ These are the following municipalities: Orahovac, Srbica, Suva Reka, Kosovska Mitrovica, Priština, Kačanik, Dečani, Vučitrn, Peć, Prizren, Uroševac and Gnjilane.

¹⁸⁸ *Đorđević* (Judgment) (n 186) para 2027.

¹⁸⁹ *ibid* para 2028.

¹⁹⁰ *ibid* para 958.

¹⁹¹ *ibid* paras 575, 721, 827.

¹⁹² *ibid* paras 793-794.

¹⁹³ *ibid* paras 614-615.

¹⁹⁴ *ibid* para 660.

¹⁹⁵ *ibid* para 1183.

¹⁹⁶ *ibid* para 1277.

Looted property included money, gold, jewellery, cars and various household appliances. Crimes of appropriation of property were perpetrated by members of the Army of Yugoslavia, the Serbian police, paramilitary forces and civilians.¹⁹⁷ Evidence presented during the trial demonstrated that the Serbian military leadership was aware of the committed crimes.¹⁹⁸ Moreover, a former Serbian military prosecutor whose witness statement was presented to the Tribunal testified that they not only had the knowledge of what was going on in the field, but some of the high-ranking military officials were personally involved in extortion schemes and looting networks.¹⁹⁹ He claimed that military security organs were aware of these criminal practices within military ranks but tolerated them and kept protecting those involved from criminal prosecution.²⁰⁰ The Trial Chamber could not make any concrete findings in regard to the existence of such criminal schemes due to the lack of corroborating evidence, but it did conclude that the military justice system had not functioned properly, among other reasons because of internal obstructions of investigations and prevention of prosecution of those who had committed crimes.²⁰¹

Former Yugoslav Republic of Macedonia

In a single case prosecuted before the ICTY which concerned crimes committed during the internal armed conflict between police and military forces of the FYR Macedonia and the Albanian National Liberation Army which took place in the territory of the FYR Macedonia in 2001, the indictment contained neither charges nor allegations related to crimes of appropriation of property. Nevertheless, evidence presented during the trial indicates that these crimes were committed in the course of criminal events underlying charges against the accused and other events which took place during the conflict, although there is no indication that they were as widespread and systematic as during the wars and conflicts in Croatia, Kosovo and BiH. The Trial Judgment discussed two incidents of looting of private property belonging to civilians of Albanian ethnicity which occurred during the attack on the

¹⁹⁷ *Šainović et al* (Judgment Vol 2) (n 186) paras 931, 1160-1161.

¹⁹⁸ *Šainović et al* (Judgment Vol 1) (n 186) para 545.

¹⁹⁹ *ibid* paras 559, 567-568.

²⁰⁰ *ibid* para 555.

²⁰¹ *ibid* para 569.

village of Ljuboten in August 2001.²⁰² These crimes were perpetrated by members of the police forces of FYR Macedonia who were under the *de facto* command of one of the accused. Apart from these incidents, the judgment mentions the looting of businesses and homes belonging to ethnic Albanians in Bitola in April and May 2001.²⁰³ Property that was stolen from civilians of Albanian ethnicity included money, jewellery and other valuables. Finally, presented evidence indicated that acts of unlawful appropriation of property were also perpetrated by members of the National Liberation Army against ethnic Macedonians, but these crimes were not discussed in detail.²⁰⁴

Bosnia and Herzegovina

Analysis of 61 cases prosecuted before the ICTY and the IRMCT which tackled criminal events that took place in the territory of BiH between 1992 and 1995 has shown that crimes of appropriation of property were perpetrated on a massive scale and that they constitute one of the main features of identified patterns of violence. The fact that analysed indictments encompass allegations of crimes committed in 58 municipalities throughout BiH²⁰⁵ and that the Tribunal²⁰⁶ found that these allegations have been proven for 56 municipalities best illustrates the proportions of this type of crime. It follows from evidence presented during trials and from the Tribunal's findings that all warring parties committed crimes of appropriation of property. Property plundered during the war in BiH, like in other conflicts, comprised a broad array of goods ranging from money and other valuables such as gold and jewellery to vehicles, farming equipment, cattle, furniture, household appliances, fuel, food and clothes.

²⁰² *Boškoski and Tarčulovski* (Judgment) IT-04-82 (10 July 2008) paras 52-53.

²⁰³ *ibid* para 215.

²⁰⁴ *ibid* para 220 footnote 953.

²⁰⁵ These are: Banja Luka, Bihać, Bijeljina, Bileća, Bosanska Gradiška, Bosanska Krupa, Bosanski Novi, Bosanski Petrovac, Bosanski Šamac, Bratunac, Brčko, Busovača, Čajniče, Čapljina, Čelinac, Doboj, Donji Vakuf, Foča, Gacko, Gornji Vakuf, Hadžići, Ilidža, Ilijaš, Kalinovik, Kiseljak, Ključ, Konjic, Kotor Varoš, Jablanica, Ljubuški, Mostar, Nevesinje, Novi Grad, Novo Sarajevo, Novi Travnik, Odžak, Pale, Prijedor, Prnjavor, Prozor, Rogatica, Rudo, Sanski Most, Sokolac, Srebrenica, Stolac, Šipovo, Teslić, Travnik, Trebinje, Trnovo, Vareš, Višegrad, Vitez, Vlasenica, Vogošća, Zenica and Zvornik.

²⁰⁶ In order to avoid overburdening the text with repetition of the words 'Tribunal' and 'Mechanism', in this chapter the word 'Tribunal' is used to designate both the ICTY and the IRMCT.

Acts of unlawful appropriation of property most often took place during and after military attacks preceding takeovers of towns and villages. These attacks entailed a similar sequence of events, as identified by the Trial Chamber in the *Brđanin* case:

The attacks followed a similar pattern. Heavy shelling from outside the targeted neighbourhoods or villages caused severe damage and people were killed. The shelling forced the inhabitants of these villages to flee. After the troops had entered the villages, a number of people who had not fled were killed. Houses were looted and people fleeing were deprived of the valuables that they were carrying with them.²⁰⁷

Attacks committed by other parties to the conflict in other parts of BiH were carried out in a similar manner, as described in the cited paragraph.²⁰⁸

Private property was unlawfully appropriated not only by looting of abandoned dwellings during and in the aftermath of takeovers but was also seized directly from victims in the context of other (criminal) events. For instance, property was often taken away from civilians during arrests and interrogations.²⁰⁹ In this respect, it has been alleged that in many cases arrests were in fact just a pretext for obtaining information on the location of hidden valuables.²¹⁰ The Tribunal further established that the plunder of property frequently occurred also during deportation and the forcible transfer of the population from parts of the territory that was under control of the Bosnian Serbs and Bosnian Croats:

En route, money, jewellery, and other valuables were taken from the detainees by policemen. ST065 was told by a 'guard' on his bus to collect banknotes and valuables from his fellow detainees. ST065 collected several banknotes and handed them over to the 'guard'. The money and valuables collected from the detainees in the various buses and lorries of the convoy, weighing at least 40 kg, were given to the commander and police chiefs of the SJBs.²¹¹

²⁰⁷ *Brđanin* (Judgment) IT-99-36 (1 September 2004) para 102.

²⁰⁸ See for example *Hadžibasanović and Kubura* (Judgment) IT-01-47 (15 March 2006) paras 1839, 1912; *Prlić et al* (Judgment Vol 3) IT-04-74 (6 June 2014) paras 413-414, 465, 1619.

²⁰⁹ See for example *Simić et al* (Judgment) IT-95-9 (17 October 2003) para 849; *Prlić et al* (Judgment Vol 3) (n 208) para 345.

²¹⁰ *Stanišić and Župljanin* (Judgment Vol 1) IT-08-91 (23 March 2013) paras 166, 1237, 1346; *Karadžić* (Judgment) IT-95-5/18 (24 March 2016) paras 1121 (footnote 3846), 1193, 1802.

²¹¹ *Stanišić and Župljanin* (Judgment Vol 1) *ibid* para 639. See also *Stakić* (Judgment) IT-97-24 (31 July 2003) para 700 (citations omitted).

Mass expulsions of population from these territories were regularly followed by looting of their property.²¹²

Looting of private belongings of prisoners in camps and detention facilities was also a common occurrence. Prisoners were usually stripped of all the money and valuables upon arrival²¹³ and whatever they had left on them was taken away during their captivity,²¹⁴ often through various forms of extortion. They were asked to pay money to be released²¹⁵ or to be placed in the 'safer' part of the camp.²¹⁶ Prisoners were further forced to buy basic foodstuff in order to survive food shortages,²¹⁷ to bribe guards to be allowed to open windows in an overcrowded and stifling room²¹⁸ or to be spared from beating²¹⁹ and liquidation.²²⁰ One such example of extortion under threat of liquidation was described in the Trial Judgment in the *Lukić and Lukić* case:

On another evening, Milan Lukić came to the school with Ljubiša Cvijović and Boban Šimšić and took all the small children outside. They told the people detained in the school that the children would be returned only after all the gold and money they possessed had been collected. If they failed to collect it all, the children would be thrown off the bridge into the Drina river. This incident was one of several in which children were taken away until valuables were collected.²²¹

Extortion was often accompanied not just by threats, but also by severe physical violence.²²² Prisoners in detention facilities were not the only victims of extortion. It follows from the evidence presented to the Tribunal that citizens who wished to stay in their places of residence after the takeover of towns were sometimes asked to pay money not

²¹² *Plavšić* (Sentencing Judgment) IT-00-39 & 40/1 (27 February 2003) para 43; *Krajišnik* (Judgment) IT-00-39 (27 September 2006) para 309; *Prlić et al* (Judgment Vol 2) (n 208) paras 827, 931, 985.

²¹³ *Mucić et al* (Judgment) IT-96-21 (16 November 1998) para 148; *Kordić and Čerkez* (Judgment) IT-95-14/2 (26 February 2001) paras 659, 790; *Sikirica et al* (Sentencing Judgment) IT-95-8 (13 November 2001) para 56; *Karadžić* (Judgment) (n 210) paras 899, 1174, 1306, 1538.

²¹⁴ *Mucić et al* (Judgment) (n 213) paras 1149-1150; *Karadžić* (Judgment) (n 210) para 1395.

²¹⁵ *Karadžić* (Judgment) (n 210) paras 1725, 5425.

²¹⁶ *Tadić* (Judgment) IT-94-1 (7 May 1997) para 250.

²¹⁷ *Karadžić* (Judgment) (n 210) paras 651, 1823.

²¹⁸ *ibid* para 1756.

²¹⁹ *Kvočka et al* (Judgment) IT-98-30/1 (2 November 2001) paras 531, 534.

²²⁰ *Simić et al* (Judgment) (n 209) para 848; *Karadžić* (Judgment) (n 210) para 1764.

²²¹ *Lukić and Lukić* (Judgment) IT-98-32/1 (20 July 2009) para 864 (citations omitted).

²²² *Kvočka et al* (Judgment) (n 219) paras 656-660.

to be expelled.²²³ Finally, there were even instances where money was extorted from persons belonging to the same ethnic group as the perpetrators.²²⁴

Wartime authorities in Republika Srpska extorted money through more subtle and institutionalised practices which, among others, included imposition of various fees on citizens who wanted to leave their places of residence. Those who after takeovers of towns wished to depart in order to escape violence were, namely, required to pay for transit passes²²⁵ and transport fares.²²⁶ Furthermore, in the territory of the Autonomous Region of Krajina (ARK) and some other municipalities that were under control of the Bosnian Serbs²²⁷ non-Serbs were required to relinquish their movable and immovable property or to exchange it for property in other parts of BiH or in neighbouring countries (although such exchanges were rare) in order to obtain permission to leave the municipality. In June 1992 authorities even established the Agency for Population Movement and Exchange of Material Wealth to manage relinquished property:

... In order to obtain permits to leave the territory of the ARK, non-Serbs usually had to 'de-register' from their places of residence and either relinquish their property to the SerBiH or the ARK without compensation or, in other cases, exchange their property for property located outside of the ARK. The ARK Agency organised convoys, on a bi-weekly basis or more often, to transport non-Serbs to the Muslim or Croat controlled lines near Travnik and Zagreb; passengers were required to buy tickets from the ARK Agency in order to leave on the convoys. On 19 June 1992, the ARK Crisis Staff issued a decision declaring that all abandoned property will be declared state property and placed at the disposal of the municipal authorities.²²⁸

In addition to having to sign over their property, citizens leaving their place of residence were not permitted to take with them more than 300 German Marks or their personal belongings.²²⁹ The indictment against

²²³ *Brđanin* (Judgment) (n 207) para 307.

²²⁴ *Halilović* (Judgment) IT-01-48 (16 November 2005) para 130.

²²⁵ *Krajišnik* (Judgment) (n 212) paras 504, 581; *Karadžić* (Judgment) (n 210) paras 673, 1118.

²²⁶ *Brđanin* (Judgment) (n 207) paras 562-563.

²²⁷ See for example *Kunarac et al* (Judgment) IT-96-23 & 23/1 (22 February 2001) para 45; *Krajišnik* (Judgment) (n 212) para 350.

²²⁸ *Karadžić* (Judgment) (n 210) para 2057 (citations omitted).

²²⁹ *Brđanin* (Judgment) (n 207) para 607.

the leadership of the Croat Republic of Herzeg Bosnia alleged that the practice of forcing civilians to renounce their property prior to being expelled or allowed to leave also existed in the territory that was under control of Bosnian Croats.²³⁰ However, these allegations have not been proven during the trial.²³¹

Physical and psychological violence often accompanied acts of unlawful appropriation of property. Psychological harassment was quite common and encompassed threats²³² and insults.²³³ Physical violence often included beatings which regularly co-occurred with looting in detention facilities,²³⁴ but also during and after military attacks and takeovers of towns and villages,²³⁵ during interrogations,²³⁶ deportation/forcible transfer²³⁷ and expulsion of population.²³⁸ Trial records further reveal that there were also cases where looting was an integral part of the sequence of violence surrounding crimes of rape committed during takeovers and expulsion of the population by Bosnian Croat forces.²³⁹ It is, however, interesting to note that criminal events where the sequence of violence encompassed both acts of theft and rape were described only in the cases against defendants prosecuted for crimes committed by Bosnian Croats. However, further scholarly research is necessary in order to establish whether this means that there existed a specific feature in the pattern of violence in crimes committed by this party to the conflict, or it can be attributed to prosecutorial discretion in selecting crimes to be prosecuted and evidence to be presented to the Tribunal or even to the Tribunal's approach to how criminal events and presented evidence are discussed in the judgments.

²³⁰ *Prlić et al* (Indictment) IT-04-74 (11 June 2008) paras 39, 100.

²³¹ *Prlić et al* (Judgment Vol 2) (n 208) paras 806, 810, 938.

²³² *Jelišić* (Judgment) IT-95-10 (14 December 1999) para 49; *Lukić and Lukić* (Judgment) (n 221) para 106; *Kupreškić et al* (Judgment) IT-95-16 (14 January 2000) para 211; *Popović et al* (Judgment) IT-05-88 (10 June 2010) para 334; *Prlić et al* (Judgment Vol 2) (n 208) para 343; *Karadžić* (Judgment) (n 210) paras 762, 1652.

²³³ *Krajišnik* (Judgment) (n 212) para 459; *Lukić and Lukić* (Judgment) (n 221) para 106; *Karadžić* (Judgment) (n 210) paras 1652, 1672, 1757.

²³⁴ *Tadić* (Judgment) (n 216) para 158; *Prlić et al* (Judgment Vol 2) (n 208) para 343; *Karadžić* (Judgment) (n 210) paras 647, 1481, 1757, 2021.

²³⁵ *Prlić et al* (Judgment Vol 2) (n 208) paras 233, 965; *Karadžić* (Judgment) (n 210) para 1264.

²³⁶ *Stanišić and Župljanin* (Judgment Vol 1) (n 210) para 166.

²³⁷ *Karadžić* (Judgment) (n 210) para 1462.

²³⁸ *Prlić et al* (Judgment Vol 2) (n 208) para 827.

²³⁹ *Kordić and Čerkez* (Judgment) (n 213) para 644 (footnote 1251); *Prlić et al* (Judgment Vol 2) (n 208) paras 982, 985-986; *Prlić et al* (Judgment Vol 3) (n 208) paras 401, 426.

Victims of unlawful appropriation of property were not just the living but also the dead.²⁴⁰ While in some cases acts of spoliation of property took place post mortem, in other cases looting preceded the murder of its owners. In addition to incidents of killings of individuals and smaller groups committed after they had been robbed of their property,²⁴¹ the Tribunal has heard evidence on mass executions that were preceded by the appropriation of property belonging to victims,²⁴² including evidence on looting of property that took place in the context of the Srebrenica genocide. As for the latter, it follows from the Tribunal's trial records that plunder began in Potočari around 12 July 1995 upon arrival of Serb forces who engaged in looting of property belonging to Bosnian Muslim refugees²⁴³ and continued over the next few days during transport of prisoners and at various capture sites where detained Bosnian Muslim men had to turn over their valuables before they were taken to places of execution.²⁴⁴

It should be noted, however, that in the indictments in cases concerning genocide in Srebrenica unlawful appropriation of property was mentioned only in the context of charges of destruction of property.²⁴⁵ These indictments alleged, namely, that before taking the victims to execution sites the perpetrators confiscated their personal effects to destroy them. Thus, appropriation of property was mentioned only as a stage in the sequence of events preceding its destruction and was not charged as a separate crime. At the same time, however, when referring to appropriation of property, judgments kept emphasising the distinction between valuables and other personal belongings as two

²⁴⁰ *Blaškić* (Judgment) IT-95-14 (3 March 2000) para 424; *Karadžić* (Judgment) (n 210) para 1152.

²⁴¹ *Kordić and Čerkez* (Judgment) (n 213) para 632; *Karadžić* (Judgment) (n 210) para 1481.

²⁴² *Mrđa* (Sentencing Judgment) IT-02-59 (31 March 2004) para 26; *Krajišnik* (Judgment) (n 212) paras 355, 519; *Karadžić* (Judgment) (n 210) paras 1087, 1833-1839.

²⁴³ *Krstić* (Judgment) IT-98-33 (2 August 2001) para 105; *Blagojević and Jokić* (Judgment) IT-02-60 (17 January 2005) paras 131, 134.

²⁴⁴ *Popović et al* (Judgment) (n 232) paras 385, 392, 427; *Tolimir* (Judgment) IT-05-88/2 (12 December 2012) para 354; *Blagojević and Jokić* (Judgment) (n 243) paras 187, 239, 296, 348-349 (footnote 1303).

²⁴⁵ *Krstić* (Indictment) IT-98-33 (27 October 1999) para 31; *Nikolić* (Indictment) IT-02-60/1 (27 May 2002) para 39; *Blagojević and Jokić* (Indictment) IT-02-60 (26 May 2003) para 42; *Obrenović* (Indictment) IT-02-60/2 (27 May 2005) para 42; *Popović et al* (Indictment) IT-05-88 (4 August 2006) paras 48, 64; *Trbić* (Indictment) IT-05-88/1 (18 August 2006) paras 33, 49; *Tolimir* (Indictment) IT-05-88/2 (4 November 2009) paras 34, 50.

separate categories of appropriated property.²⁴⁶ It appears as though by distinguishing between appropriation of valuables and other personal effects (which were eventually piled up and burnt) the Tribunal intended to indicate that they have been taken for different purposes, ie that not all property was appropriated to be destroyed. Nevertheless, even though evidence of looting was presented during the trial, the Tribunal did not discuss or made any specific observations in this regard because these crimes were beyond the scope of charges, and thus the official narrative of criminal events in Srebrenica as charged in indictments and adjudicated in judgments encompasses only crimes of destruction of property.

The question remains why crimes of appropriation of property were not included in charges if there was evidence that they were also perpetrated during the genocide. Was it because of the lack of evidence? Or because the destruction of property was committed on a more massive scale and was thus predominant in comparison with crimes of appropriation of property? Or because it was viewed as a corollary of the crime of genocide in the sense that both crimes revolve around the destruction as an ultimate goal? In this sense, was the destruction of property considered an adequate supplement to genocide charges in terms of contributing to an illustration of the extent of devastation and proving of the intent to destroy? These questions, as well as examination of crimes of unlawful appropriation of property committed in the context of Srebrenica genocide in general, are essential for understanding the complex web of other forms of criminality surrounding the crime of genocide and criminal justice responses to it, and thus deserve further scholarly attention.

It follows from analysis of judgments that crimes of appropriation of property were perpetrated by members of military forces, paramilitary groups and volunteer units, members of both civilian and military police and by private citizens. These categories of perpetrators have been found responsible for large-scale looting of private property committed on all sides. Nevertheless, paramilitaries were singled out as particularly prone to commission of this type of crimes. The evidence presented to

²⁴⁶ *Krstić* (Judgment) (n 243) para 171; *Nikolić* (Sentencing Judgment) IT-02-60/1 (2 December 2003) para 39, *Blagojević and Jokić* (Judgment) (n 243) paras 240, 248, 253; *Popović et al* (Judgment) (n 232) paras 385, 567, 1056 (footnote 3462); *Tolimir* (Judgment) (n 244) paras 312, 329, 354.

the Tribunal demonstrates that the prospect of looting was significant, if not the primary motive for their engagement in fighting.²⁴⁷ In fact, the only recorded instances of fighters looting indiscriminately, ie taking property regardless of whether it belongs to the enemy population or members of the ethnic group on the side of which they were fighting, can be ascribed to paramilitaries.²⁴⁸ Finally, a specific category of ‘perpetrators’ were camp detainees and civilians who were forced to participate in looting in the context of forced labour programmes.²⁴⁹ Judgments of the Tribunal recorded examples of such practices in the territory under control of Bosnian Serbs and Bosnian Croats.²⁵⁰ Forced labour was not just the context within which detainees and civilians were coerced into carrying out acts of unlawful appropriation of property – sometimes they were themselves victims of such crimes in the sites of forced labour.²⁵¹

3.1.2 Analysis of crimes of appropriation of property committed in the former Yugoslavia

Analysis of indictments and judgments in 77 cases prosecuted before the ICTY and the IRMCT has shown that unlawful appropriation of private property was a regular feature of all armed conflicts that took place in the territory of the former Yugoslavia during the last decade of the 20th century. The analysis also revealed that crimes committed in different conflicts or by different parties to the same conflict share some common characteristics in relation to: 1) prevalence 2) context of criminal events within which they occurred, 3) forms of unlawful appropriation of property, 4) perpetrators and 5) categories of appropriated property.

²⁴⁷ *Krajišnik* (Judgment) (n 212) para 210; *Stanišić and Župljanin* (Judgment Vol 1) (n 210) para 1058; *Karadžić* (Judgment) (n 210) paras 754, 3220.

²⁴⁸ *Stanišić and Župljanin* (Judgment Vol 1) (n 210) para 1058; *Karadžić* (Judgment) (n 210) para 632.

²⁴⁹ *Naletilić and Martinović* (Judgment) IT-98-34 (31 March 2003) para 622; *Simić et al* (Judgment) (n 209) paras 791, 838, 850, 852, 855, 859; *Krajišnik* (Judgment) (n 212) para 354; *Stanišić and Župljanin* (Judgment Vol 1) (n 210) paras 1458, 1639; *Karadžić* (Judgment) (n 210) para 2109.

²⁵⁰ *ibid.*

²⁵¹ *Aleksovski* (Judgment) IT-95-14/1 (25 June 1999) paras 188, 215.

Prevalence of crimes

Prevalence of crimes of appropriation of property was generally high in the majority of conflicts under examination. Information compiled through examination of allegations contained in indictments, the Tribunal's discussions of voluminous evidence presented during the trials and its factual findings presented in the judgments provide accounts of numerous offences of unlawful appropriation of property committed throughout 103 municipalities in BiH, Croatia, Kosovo and FYR Macedonia. Nevertheless, even though examined indictments and judgments offer a large amount of information and comprehensive findings on these crimes, it needs to be borne in mind that the picture they provide is only partial. Although these findings undoubtedly constitute a valuable historical record of criminal events that took place during conflicts in the former Yugoslavia, it was not the Tribunal's task to create the exhaustive factual account of crimes.²⁵² Instead, criminal proceedings are focused on establishing the criminal responsibility of individuals, which determines (and limits) the scope of both prosecution and discussion of crimes. In this respect, it is important to note that judgments provide a more comprehensive record of crimes of appropriation of property committed in certain areas than in others.

This is partly because prosecutions did not cover all conflicts or geographical regions to the same extent. For example, the ICTY prosecuted only one case concerning crimes committed during armed conflict in FYR Macedonia in which crimes of appropriation of property were not charged at all. Similarly, five cases dealt with crimes committed in the territory under control of Bosnian Muslims, only two of which tackled these crimes. Consequently, factual findings regarding crimes of appropriation of property perpetrated by Bosnian Muslims are limited to a small number of geographical locations and a modest number of crimes which could be imputed to the accused in these cases. Incomplete record of crimes can also be a result of prosecutorial discretion in selecting what crimes should be included in the indictment. This might, for instance, explain why crimes of appropriation of property were not included in any of the three cases in which crimes committed by Kosovo Albanians were prosecuted (of course, it is also possible

²⁵² Saeeda Verrall, 'The Picture of Sexual Violence in the Former Yugoslavia Conflicts as Reflected in ICTY Judgments' in Serge Brammertz and Michelle J Jarvis (eds), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (OUP 2016) 301.

that non-inclusion of these crimes did not have anything to do with prosecutorial decision to omit them – it can also be that such crimes were not committed at all or that they could not be ascribed to accused in these cases and that therefore they were not charged).

Despite the apparent disproportion in the number of prosecuted cases relating to crimes of appropriation of property committed in different conflicts and consequently in quantity and quality of data, available information provides sufficient basis for basic comparative analysis of characteristics of these crimes. As for the prevalence of crimes, large-scale commission of crimes of appropriation of property was alleged and/or established in: 1) Croatia, both in the context of military operations carried out by Croatian Army and in the occupied territory under control of RSK, 2) Kosovo, in the context of operation of expulsion of Kosovo Albanians and 3) BiH, in the parts of territory controlled by Bosnian Serbs and Bosnian Croats. In cases concerning offences committed by Kosovo Albanians, crimes of appropriation of property have not been charged or alleged and it is therefore not possible to make any conclusions as to whether these crimes occurred at all and to what extent. When it comes to crimes committed during the conflict in FYR Macedonia and in the territory under control of Bosnian Muslims, assessment of the prevalence of crimes of appropriation of property cannot be made due to small number of prosecuted cases and consequential lack of information.

Context of criminal events within which crimes of appropriation of property occurred

In all conflicts under examination, and within them in different parts of the territory controlled by parties to the conflict, unlawful appropriation of property most frequently occurred during and after military operations and takeovers of towns and villages which appear to have been carried out in a similar manner, following a typical sequence of events: 1) military attack on the town/village which was usually followed by fleeing of local population, 2) looting of abandoned property and 3) burning of looted houses. These main stages of takeover operations were often varied by other crimes including expulsions of population, murders, sexual violence, various forms of physical and psychological maltreatment and unlawful imprisonment. Acts of unlawful appropriation of property accompanied these crimes as well. For instance, in BiH, Kosovo and Croatia looting of property took place

during operations of expulsion and deportations/forcible transfers of the population. Thus, expulsions/deportations/transfers of the population were at the same time the goal that was to be accomplished through different forms of violence including crimes of appropriation of property, but also a setting in which these crimes occurred. In BiH, looting also occurred in various prison-type settings and execution sites, as well as in connection with other crimes such as genocide and sexual violence. The Tribunal has found that crimes perpetrated in the context of takeovers in Croatia, Kosovo and parts of BiH, including crimes against property, were often committed as part of broader campaigns of persecution. In this context, they were practically utilised as a strategic tool in pursuance of policies of ethnic cleansing of conquered territories from members of targeted ethnic groups.

Forms of unlawful appropriation of property

In all conflicts that took place in the territory of the former Yugoslavia, unlawful appropriation of property was most commonly committed through ordinary acts of stealing. These acts did not take place only in abandoned dwellings. Property was also taken away directly from victims, including from the dead. Looting was often accompanied by the threat of violence or even by use of force. In BiH and Kosovo, private property was also appropriated through various forms of extortion which ranged from coercion of victims into handing over their property through intimidation or open use of violence to more subtle forms of legalised and institutionalised extortive practices. Requesting expelled persons during deportation and forcible transfer to pay to be allowed to cross the border or to pass through the checkpoint, or ‘offering’ prisoners in camps to pay for their release or other ‘favours’ such as sparing of their lives are some examples of the former. The latter form of extortion was documented in BiH, specifically in the territory of ARK and few other municipalities under control of Bosnian Serbs, where those who wished to leave their places of residence had to officially sign over their movable property to ARK or municipality in question, to pay transport fares and buy transit passes from authorities in order to obtain permission to leave.

Perpetrators

Analysis of perpetrators of crimes of appropriation of property revealed the following six categories of perpetrators that are common to conflicts in BiH, Croatia and Kosovo: members of military forces,²⁵³ military police, civilian police, volunteer units, paramilitaries and private citizens. Paramilitary groups, and 83 such groups have been identified in these conflicts,²⁵⁴ particularly stood out in perpetration of these crimes. In the cases dealing with crimes committed in Croatia, members of territorial defence and civilian protection were also mentioned as perpetrators of this type of crimes, whereas in BiH acts of appropriation of property were carried out by prisoners and camp detainees who were forced to loot, as well as by civilians in the context of an imposed compulsory 'work obligation', both of which are practically forms of forced labour. The only category of perpetrators of crimes of appropriation of property identified in the single case tackling crimes that took place in the FYR Macedonia were members of police forces. Indictments and judgments are silent about the motives of perpetrators of these crimes, but it is safe to assume that in most instances the primary motive was profit, although some other motivations like ethnic animus or revenge were probably also at play.

Categories of unlawfully appropriated property

During all the conflicts under examination, movable property was the primary target of unlawful appropriation. The list of unlawfully appropriated goods is long, and it is common to all conflicts except for the one in the FYR Macedonia where looted property comprised only money, jewellery and other valuables. In addition to money, jewellery and other similar articles of value which generally seem to have been the most wanted and most often targeted property, the list of unlawfully appropriated property during conflicts in BiH, Croatia and Kosovo encompassed other items such as vehicles (cars, trucks, motorbikes, tractors), livestock, furniture, household appliances (TV sets, radios, refrigerators, washing machines, stoves), fuel, foodstuff and clothes.

²⁵³ In analysed indictments and judgments members of the following military forces were designated as perpetrators of crimes of appropriation of property: Army of Republika Srpska, Army of Republic of Bosnia and Herzegovina, Croatian Defence Council, Croatian Defence Forces, Army of Yugoslavia, Yugoslav People's Army and Croatian Army.

²⁵⁴ Mary Kaldor, *New and Old Wars* (3rd edn, Polity Press 2012) 48.

Immovable property was the object of unlawful appropriation in BiH and in Croatia. In BiH, appropriations of such property were carried out through forced relinquishments of property rights followed by formal confiscation of relinquished property by official municipal authorities in the municipalities of the ARK and other municipalities applying the same methods. In Croatia, it was realised through the enactment of discriminatory legislation devised to practically preclude Serb civilians from claiming back the property they had been forced to abandon during the operation 'Storm' when they were expelled from Krajina.

Other aspects of crimes of appropriation of property

Analysed documents do not discuss at length to what extent unlawful appropriation of property was an organised activity. In a few cases, the Tribunal expressly stated that looting was committed by organised groups of perpetrators, but did not engage in further discussion about these groups.²⁵⁵ The Tribunal has also heard evidence of the existence of organised looting schemes involving high-ranking military officials.²⁵⁶ Finally, an organised character was inherent to some acts of unlawful appropriation of property. For example, using prisoners or civilians for looting in the context of forced labour programmes or seizing private property through the employment of a 'legal' and procedural framework under which citizens are forced to relinquish their property and sign it over to municipalities, are activities that imply organisation. In one case the Tribunal explicitly stated that it could not establish that looting was organised, even though it found that it was committed on a large scale.²⁵⁷ Thus, the fact that unlawful appropriation of property was perpetrated on a massive scale does not necessarily mean that it was organised. Another question that remains unanswered is for what purpose was unlawfully appropriated property utilised – for personal enrichment, financing of war or both? And who were the main beneficiaries – looters personally, (para)military units they belonged to, (para)military, political and other elites or wartime entities? When it comes to practical exploitation of unlawfully appropriated property, the question is how often property was taken for personal usage and how

²⁵⁵ *Brđanin* (Judgment) (n 207) paras 612, 621, 629; *Karadžić* (Judgment) (n 210) paras 1282, 1621.

²⁵⁶ *Šainović et al* (Judgment) (n 186) paras 556, 568.

²⁵⁷ *Gotovina et al* (Judgment) (n 175) para 904.

often with an aim to be traded for money or other goods? The latter opens the question of the existence and functioning of wartime (black) markets where stolen goods were sold. All these questions are important for a deeper understanding of both the aetiology of these crimes and the role of unlawful appropriation of property in war economies and thus warrant further research.

It follows from the Tribunal's judgments that official authorities of warring parties were usually aware of large-scale commission of crimes of appropriation of property in the territory under their control, but usually tolerated²⁵⁸ or even openly approved of it.²⁵⁹ On some occasions, officials publicly spoke out against these crimes, but the Tribunal held that such acts of condemnation were rather declaratory.²⁶⁰ Similarly, little importance was attached to evidence of more concrete actions like introducing various measures to combat looting,²⁶¹ including disarming of paramilitary groups²⁶² which had been undertaken in some instances with an aim to prevent unlawful appropriation of property, or even to the fact that some looters had been prosecuted for their crimes in criminal and disciplinary proceedings.²⁶³ Having considered these measures in the light of general lack of concrete results in addressing the problem of large-scale commission of crimes, especially the most severe ones, the Tribunal held that they could not be accepted as a convincing proof of serious determination of authorities to engage in the fight against conflict-related criminality.²⁶⁴

In this respect, it is interesting to note that wartime records of criminal prosecutions which were presented to the Tribunal during the trials demonstrated that some crimes committed in the course of the conflicts in BiH, Croatia and Kosovo, including crimes against property,

²⁵⁸ *Brđanin* (Judgment) (n 207) para 621; *Krajišnik* (Judgment) (n 212) para 252; *Stanišić and Župljanin* (Judgment Vol 1) (n 210) para 126; *Karadžić* (Judgment) (n 210) paras 2131, 2268, 3413.

²⁵⁹ *Kordić and Čerkez* (Judgment) (n 213) para 402; *Naletilić and Martinović* (Judgment) (n 249) para 210; *Karadžić* (Judgment) (n 210) para 1126.

²⁶⁰ *Brđanin* (Judgment) (n 207) paras 337, 1132; *Gotovina et al* (Judgment) (n 175) para 2056.

²⁶¹ *Kordić and Čerkez* (Judgment) (n 213) para 699 (footnote 1415); *Karadžić* (Judgment) (n 210) paras 274, 752, 979.

²⁶² *Karadžić* (Judgment) (n 210) para 240.

²⁶³ *Strugar* (Judgment) IT-01-42 (31 January 2005) para 410; *Hadžibasanović and Kubura* (Judgment) (n 208) para 2039; *Đorđević* (Judgment) (n 186) para 188.

²⁶⁴ *Brđanin* (Judgment) (n 207) para 1132; *Đorđević* (Judgment) (n 186) paras 143, 190, 2102, 2106; *Gotovina et al* (Judgment) (n 175) paras 2202-2203.

were indeed prosecuted. However, as presented prosecution records referred mostly to initiated rather than completed criminal proceedings and were not supplemented with information on completion status, verdicts and sentences, the outcome of these prosecutions remains unknown.²⁶⁵ Nevertheless, a closer look at presented data on instituted proceedings reveals that the most severe offences were rarely subject of the prosecutions.²⁶⁶ Analysis of prosecution records in every jurisdiction where there was some judicial response to wartime criminality (and often there was none) discloses, namely, an identical pattern of prosecution when it comes to selection of crimes.

Criminal proceedings, which were usually undertaken by military judiciary, centred around property crimes (theft, aggravated theft, robbery, larceny, arson) and crimes against state and armed forces (absconding and deserting from the armed forces, espionage, fomenting armed rebellion, serving in the enemy army, refusing to implement orders, unauthorised entry into military premises, attacking a military officer, etc),²⁶⁷ whereas criminal offences against persons and especially war crimes were prosecuted very rarely. This leads to the conclusion that prosecutions of crimes against property and other crimes which are traditionally considered to be of lesser gravity in comparison with other crimes committed during the conflict were used to provide cover for the neglect of other, more severe crimes.²⁶⁸ In other words, prosecutions of such crimes were instrumentalised for boosting of the prosecution records and for creating the perception that the authorities invested efforts to render an adequate criminal justice response to conflict-related criminality.

²⁶⁵ *Delić* (Judgment) IT-04-83 (15 September 2008) para 452; *Šainović et al* (Judgment Vol 1) (n 186) para 535; *Đorđević* (Judgment) (n 186) para 190; *Gotovina et al* (Judgment) (n 175) para 2203.

²⁶⁶ *Krajišnik* (Judgment) (n 212) para 217; *Šainović et al* (Judgment Vol 1) (n 186) paras 543-547; *Đorđević* (Judgment) (n 186) paras 188, 201, 2087, 2102, 2106; *Gotovina et al* (Judgment) (n 175) paras 2194-2198, 2203.

²⁶⁷ *Hadžihasanović and Kubura* (Judgment) (n 208) paras 948-949; *Šainović et al* (Judgment Vol 1) (n 186) paras 534, 546-546; *Đorđević* (Judgment) (n 186) paras 188, 201, 2087, 2102, 2106; *Gotovina et al* (Judgment) (n 175) para 2193, 2195-2196.

²⁶⁸ *Krajišnik* (Judgment) (n 212) para 217.

3.2 PROSECUTION OF CRIMES OF APPROPRIATION OF PRIVATE PROPERTY COMMITTED DURING CONFLICTS IN THE FORMER YUGOSLAVIA

This section examines prosecution of crimes of appropriation of property in criminal proceedings before the ICTY and IRMCT. The analysis comprises examination of charges, verdicts, and jurisprudence. The section is divided into two subsections. The first subsection presents an overview of prosecuted cases concerning crimes committed in each of the conflicts under examination. The second subsection provides analysis of these prosecutions.

3.2.1 *Overview of prosecuted cases*

Croatia

Crimes committed during the war in Croatia were prosecuted in 15 cases against 22 defendants.²⁶⁹ In eight out of these 15 cases, 11 defendants were charged with crimes of appropriation of property under article 2(d) and article 3(e) of the ICTY Statute.²⁷⁰ Specifically, nine accused were charged under article 3(e),²⁷¹ whereas two persons were charged under both provisions.²⁷² Final verdicts have been rendered in three cases against five defendants.²⁷³ Only one defendant was found partially guilty on plunder charges,²⁷⁴ whereas the remaining four were acquitted. As for the other five cases, proceedings were terminated in three of them,²⁷⁵ in one case the trial was discontinued,²⁷⁶ whereas one case against two accused was transferred to national judiciary.²⁷⁷ Nine

²⁶⁹ Trials against 12 defendants were completed by final judgment, in four cases proceedings were terminated due to death of the accused, cases against three accused were transferred to Croatian judiciary, in one instance the trial was discontinued, whereas criminal process against two defendants is still in progress.

²⁷⁰ In addition to these, in the *Jokić* case and the *Strugar* case the two accused were also charged with plunder of private property, but these charges were dropped in the course of proceedings.

²⁷¹ These are: Rahim Ademi, Mirko Norac, Janko Bobetko, Ante Gotovina, Ivan Čermak, Mladen Markač, Goran Hadžić, Milan Martić, Slobodan Milošević and Vojislav Šešelj.

²⁷² Slobodan Milošević and Milan Zec.

²⁷³ These are: *Prosecutor v Martić* Case No IT-95-11; *Prosecutor v Šešelj* Case No IT-03-67/MICT-16-99; and *Prosecutor v Gotovina et al* Case No IT-06-90.

²⁷⁴ Milan Martić.

²⁷⁵ These are: *Prosecutor v Milošević* Case No IT-02-54; *Prosecutor v Bobetko* Case No IT-02-62; and *Prosecutor v Hadžić* Case No IT-04-75.

²⁷⁶ *Prosecutor v Zec* Case No IT-01-42.

²⁷⁷ *Prosecutor v Ademi and Norac* Case No IT-04-78.

out of 11 accused who were charged under articles 2(d) and 3(e) have also been indicted under crimes against humanity charges.²⁷⁸ In all these cases, acts of unlawful appropriation of property appeared as underlying acts of the crime of persecution, and in one case they also underpinned the crime of deportation.²⁷⁹ In another case in which proceedings are still ongoing, these crimes are included in factual allegations underlying charges of deportation and other inhumane acts as crimes against humanity.²⁸⁰

All 11 defendants held leadership positions in military, police or government/political structures. It is therefore not surprising that they were indicted as indirect perpetrators of crimes of appropriation of property. Ten defendants were charged with crimes under both commission and omission liability in accordance with articles 7(1) and 7(3) of the ICTY Statute, whereas one accused was charged only under commission liability.²⁸¹ Within commission liability, six defendants were accused of participation in joint criminal enterprises.²⁸² In two additional cases in which the accused were not charged with crimes of appropriation of property either expressly under articles 2(d) and 3(e) of the statute or indirectly through their inclusion in factual allegations underlying other charges, these crimes were nevertheless discussed during the proceedings and constitute part of the trial record. In both these cases, allegations concerning crimes of appropriation of property were mentioned as part of the discussion of elements of criminal responsibility of accused.²⁸³ For example, in *Mrkšić et al* case, taking of personal property from prisoners of war before their execution was considered to be an indicator of perpetrators' knowledge of crimes that followed and thus evidence in this regard was presented to the Tribunal with an aim to prove that perpetrators, together with the accused,

²⁷⁸ These are: Rahim Ademi, Mirko Norac, Janko Bobetko, Ante Gotovina, Ivan Čermak, Mladen Markač, Goran Hadžić, Milan Martić and Vojislav Šešelj.

²⁷⁹ *Prosecutor v Gotovina et al* (n 273).

²⁸⁰ *Stanišić and Simatović* (Indictment) IT-03-69 (10 July 2008) para 65.

²⁸¹ Vojislav Šešelj.

²⁸² These are: Ante Gotovina, Ivan Čermak, Mladen Markač, Milan Martić, Slobodan Milošević and Vojislav Šešelj. Additionally, in the case *Prosecutor v Stanišić and Simatović* (Case No IT-03-69/MICT-15-96) in which crimes of appropriation of property make up part of factual allegations underlying crimes of deportation and other inhumane acts as crimes against humanity, both defendants are alleged to have participated in joint criminal enterprise as co-perpetrators.

²⁸³ *Strugar* (Judgment) (n 263) para 410; *Mrkšić et al* (Judgment) (n 182) paras 588-592, 597, 624; *Strugar* (Judgment) IT-01-42 (17 July 2008) para 257.

acted in execution of the common plan to commit crimes charged in the indictment.²⁸⁴ In the same case, crimes of appropriation of property were also mentioned as side events, in the context of the discussion of other criminal acts underlying charges against the defendants.²⁸⁵

Kosovo

The ICTY prosecuted 16 individuals accused of crimes committed during conflicts in Kosovo.²⁸⁶ They were prosecuted in five cases, two of which concerned crimes of the KLA perpetrated in 1998 and three cases which tackled crimes committed by the Serbian military and police forces in 1999. In none of these cases were defendants expressly charged with crimes of plunder and extensive appropriation of property not justified by military necessity in accordance with articles 2(d) and 3(e) of the ICTY Statute. Moreover, two indictments against military officials of the KLA, as already explained, contained no allegations whatsoever of these types of crimes. In contrast to this, in three cases against nine defendants who were prosecuted for crimes committed by Serbian forces, acts of unlawful appropriation of property were incorporated in factual allegations underlying charges of crimes against humanity, specifically crimes of murder, deportation and persecution.²⁸⁷

All nine defendants occupied leadership positions in the military, police and political structures at the time of the commission of crimes and thus none of them were accused of having perpetrated these crimes directly, but rather as indirect perpetrators. Eight defendants were charged under both commission and omission liability, and one was indicted only under commission liability.²⁸⁸ Within commission liability, all defendants were accused of participation in the joint criminal enterprise. Out of these nine accused seven stood trial, and six were found partially guilty on charges under which crimes of appropriation of property were incorporated,²⁸⁹ whereas one defendant was acquitted.²⁹⁰

²⁸⁴ *Mrkšić et al* (Judgment) *ibid* paras 588-592, 597, 624.

²⁸⁵ *ibid* para 234.

²⁸⁶ Four cases against 13 defendants were completed by final judgment. Criminal proceedings against two defendants were terminated due to their death, and in one instance proceedings were discontinued.

²⁸⁷ *Milošević* (Indictment) IT-02-54 (16 October 2001) paras 62-63, 66-67; *Šainović et al* (Indictment) IT-05-87 (21 June 2006) paras 72, 75-76; *Đorđević* (Indictment) IT-05-87/1 (2 June 2008) paras 72, 75-76.

²⁸⁸ Vlastimir Đorđević.

²⁸⁹ These are: Vlastimir Đorđević, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić.

²⁹⁰ Milan Milutinović.

FYR Macedonia

The ICTY tried one case against two individuals indicted for crimes committed during armed conflict in the FYR Macedonia. As mentioned earlier, they were not charged with crimes of appropriation of private property under relevant provisions of the ICTY Statute, nor were allegations of such crimes at all mentioned in the indictment. Nevertheless, evidence of looting of private property committed during criminal events underlying the charges was presented during the trial and accepted by the Tribunal. Moreover, perpetration of these crimes was one of the indicators which the Trial Chamber took into consideration in concluding that events in the village of Ljuboten constituted an indiscriminate attack on ethnic Albanians and their property, rather than regular law enforcement operation as claimed by the defence.²⁹¹ The accused Boškoski occupied a position in the Minister of Interior at the time of commission of crime, whereas the accused Tarčulovski was *de facto* commander of police forces that carried out the attack in the course of which the indicted crimes occurred, although he was formally just a police officer. Both defendants were accused as indirect perpetrators, Boškoski under superior responsibility and Tarčulovski based on commission liability which included participation in the joint criminal enterprise. The Tribunal rendered a guilty verdict against Tarčulovski for criminal events in the context of which looting of private property took place, whereas Boškoski was acquitted of all charges.

BiH

Almost 80% of all the cases prosecuted before the ICTY and the IRMCT dealt with crimes committed during the war in BiH. The ICTY and the IRMCT prosecuted 61 cases against 127 defendants accused of these crimes.²⁹² Out of these 127 defendants, 25 defendants in 15 cases were prosecuted for crimes of appropriation of property under

²⁹¹ *Boškoski and Tarčulovski* (Judgment) (n 202) paras 571-572.

²⁹² As of 30 June 2019, 48 cases against 83 defendants have been completed by final judgment. Criminal proceedings against 13 defendants were terminated, proceedings against 18 accused individuals were discontinued, whereas five cases against ten defendants were transferred to the judiciary of BiH. Finally, proceedings in two cases against three defendants are still ongoing. Out of 61 cases which tackled crimes committed during the war in BiH, 45 cases against 90 defendants concerned crimes committed by the Bosnian-Serb-side of the conflict, 11 cases against 27 defendants dealt with crimes committed by Bosnian Croats and in the remaining five cases ten defendants were prosecuted for crimes perpetrated by Bosnian Muslims.

articles 2(d) and 3(e) of the ICTY Statute.²⁹³ Seven cases against seven defendants concerned crimes of appropriation of property committed by perpetrators on the Bosnian-Serb-side of the conflict,²⁹⁴ in six cases accusations against 13 defendants were related to crimes committed by Bosnian Croats,²⁹⁵ in one case two defendants were accused of crimes perpetrated jointly by Bosnian Croats and Bosnian Muslims against Bosnian Serbs,²⁹⁶ whereas three accused in the one remaining case were prosecuted for crimes perpetrated by Bosnian Muslims.²⁹⁷

Proceedings against 20 out of 25 defendants indicted for these crimes have been completed by final verdicts. One of these defendants was accused solely under article 2(d), 12 were prosecuted under article 3(e), whereas seven defendants have been charged under both provisions. Out of eight defendants who were charged under article 2(d), five were found guilty,²⁹⁸ one partially guilty,²⁹⁹ whereas two defendants were acquitted.³⁰⁰ As for 19 defendants who were prosecuted for the crime of plunder under article 3(e), the Tribunal entered guilty verdicts against eight of them,³⁰¹ three were found partially guilty,³⁰² five were acquitted,³⁰³ whereas charges against three defendants were dismissed.³⁰⁴ Cases against the remaining five defendants who were also charged under these two provisions of the statute never proceeded to

²⁹³ Specifically, three defendants were charged under art 2(d) (Radoslav Brđanin, Milan Kovačević and Momir Talić), 14 defendants under art 3(e) (Tihomir Blaškić, Enver Hadžihasanović, Amir Kubura, Mehmed Alagić, Goran Jelišić, Dario Kordić, Mario Čerkez, Dragoljub Kunarac, Paško Ljubičić, Zdravko Mucić, Hazim Delić, Mladen Naletilić, Vinko Martinović and Vojislav Šešelj) and eight defendants under both legal provisions (Slobodan Milošević, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, Berislav Pušić, Ivica Rajić).

²⁹⁴ *Prosecutor v Jelišić* Case No IT-95-10; *Prosecutor v Kunarac et al* Case No IT-96-23 & 23/1; *Prosecutor v Kovačević* Case No IT-97-24; *Prosecutor v Brđanin* Case No IT-99-36; *Prosecutor v Talić* Case No IT-99-36/1; *Prosecutor v Milošević* (n 275); *Prosecutor v Šešelj* (n 273).

²⁹⁵ *Prosecutor v Rajić* Case No IT-95-12; *Prosecutor v Blaškić* Case No IT-95-14; *Prosecutor v Kordić and Čerkez* Case No IT-95-14/2; *Prosecutor v Naletilić and Martinović* Case No IT-98-34; *Prosecutor v Ljubičić* Case No IT-00-41; *Prosecutor v Prlić et al* Case No IT-04-74.

²⁹⁶ *Prosecutor v Mucić et al* Case No IT-96-21.

²⁹⁷ *Prosecutor v Hadžihasanović and Kubura* Case No IT-01-47.

²⁹⁸ Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Valentin Čorić and Ivica Rajić.

²⁹⁹ Milivoj Petković.

³⁰⁰ Radoslav Brđanin and Berislav Pušić.

³⁰¹ Goran Jelišić, Mladen Naletilić, Vinko Martinović, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković and Valentin Čorić.

³⁰² Amir Kubura, Dario Kordić and Mario Čerkez.

³⁰³ Tihomir Blaškić, Dragoljub Kunarac, Enver Hadžihasanović, Berislav Pušić and Vojislav Šešelj.

³⁰⁴ Zdravko Mucić, Hazim Delić and Ivica Rajić.

trial – four proceedings were terminated due to death of the accused individuals,³⁰⁵ whereas the case against one defendant was transferred to the judiciary of BiH.³⁰⁶

In the cases of 16 out of 25 defendants who were indicted under articles 2(d) and 3(e), crimes of appropriation of property were also charged as crimes against humanity, specifically as the crime of persecution.³⁰⁷ In one case factual allegations of unlawful appropriation of property were invoked in support of the charge of complicity in genocide under article 4(3)(e) of the ICTY Statute.³⁰⁸ Crimes of appropriation of property were included in factual allegations underlying crimes against humanity and genocide charges also in 14 other cases against 19 defendants who have not been indicted under articles 2(d) and 3(e). Fourteen defendants were accused of crimes of appropriation of private property under charges of persecution as crimes against humanity,³⁰⁹ one defendant under charges of persecution, deportation and other inhumane acts³¹⁰ and two under charges of deportation and other inhumane acts.³¹¹ In the case of one defendant, crimes of appropriation of property appeared in the factual basis underlying charges of genocide and complicity in genocide³¹² and in the case of another one they supported only charges of complicity in genocide.³¹³ When defendants who have been accused of unlawful appropriation of property under charges other than those prescribed in articles 2(d) and 3(e) are counted in, the total number of individuals prosecuted for these crimes increases to 44.

Indicted defendants were mostly military, police or government/political leaders who operated on different levels of authority ranging

³⁰⁵ Mehmed Alagić, Milan Kovačević, Slobodan Milošević and Momir Talić.

³⁰⁶ *Prosecutor v Ljubičić* (n 295).

³⁰⁷ Tihomir Blaškić, Radoslav Brđanin, Dario Kordić, Mario Čerkez, Paško Ljubičić, Slobodan Milošević, Mladen Naletilić, Vinko Martinović, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Corić, Berislav Pušić, Vojislav Šešelj and Momir Talić.

³⁰⁸ Proceedings in this case (*Prosecutor v Kovačević* (n 294)) were terminated before completion of the trial.

³⁰⁹ Radovan Karadžić, Momčilo Krajišnik, Milan Lukić, Sredoje Lukić, Biljana Plavšić, Blagoje Simić, Miroslav Tadić, Simo Zarić, Milan Simić, Mićo Stanišić, Stojan Župljanin, Duško Tadić, Stevan Todorović and Mitar Vasiljević.

³¹⁰ Milomir Stakić.

³¹¹ Jovica Stanišić and Franko Simatović.

³¹² This defendant was Duško Sikirica. However, these charges were dropped during the proceedings.

³¹³ Proceedings against this defendant (Simo Drljača) were terminated before completion of trial.

from local, regional to state-level. The Tribunal also prosecuted a few defendants who belonged to paramilitary structures, as well as several low-ranking perpetrators who held no position of authority during the war. Although most of the defendants were accused as indirect perpetrators of crimes of appropriation of property, prosecution records also includes few direct perpetrators. Out of 44 accused individuals, 27 were accused under both individual and superior liability in accordance with articles 7(1) and 7(3) of the ICTY Statute,³¹⁴ 14 defendants were charged only under individual criminal liability³¹⁵ and three under superior liability.³¹⁶ Individual criminal liability charges against 20 defendants included participation in the joint criminal enterprise.³¹⁷

Finally, crimes of appropriation of property have been discussed during proceedings in 11 additional cases in which they have not been formally encompassed by any of the charges. In three of these cases allegations concerning crimes of appropriation of property were mentioned in indictments, however not in the operative part containing the charges but in introductory sections that provide background information or state general allegations.³¹⁸ In one case the indictment referred to looted property in factual allegations underlying the charge of enslavement, but as no link between the defendant and perpetration of the act of looting of that property has been alleged it is evident that he was not accused of this crime.³¹⁹ In the remaining seven cases, allegations of these crimes appeared as part of a broader discussion of criminal events underlying charges against defendants.³²⁰

³¹⁴ Tihomir Blaškić, Radoslav Brđanin, Radovan Karadžić, Mario Čerkez, Milan Kovačević, Simo Drljača, Momčilo Krajišnik, Paško Ljubičić, Zdravko Mucić, Hazim Delić, Slobodan Milošević, Mladen Naletilić, Vinko Martinović, Biljana Plavšić, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, Berislav Pušić, Ivica Rajić, Duško Sikirica, Milomir Stakić, Mićo Stanišić, Stojan Župljanin, Momir Talić and Stevan Todorović.

³¹⁵ Goran Jelišić, Dario Kordić, Dragoljub Kunarac, Milan Lukić, Sredoje Lukić, Vojislav Šešelj, Milan Simić, Blagoje Simić, Miroslav Tadić, Simo Zarić, Jovica Stanišić, Franko Simatović, Duško Tadić and Mitar Vasiljević.

³¹⁶ Enver Hadžihasanović, Amir Kubura and Mehmed Alagić.

³¹⁷ Radoslav Brđanin, Radovan Karadžić, Momčilo Krajišnik, Slobodan Milošević, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić, Berislav Pušić, Vojislav Šešelj, Blagoje Simić, Miroslav Tadić, Simo Zarić, Milomir Stakić, Jovica Stanišić, Franko Simatović, Mićo Stanišić, Stojan Župljanin and Momir Talić.

³¹⁸ *Prosecutor v Nikolić* Case No IT-94-2; *Prosecutor v Simić et al* Case No IT-95-9; *Prosecutor v Ražnatović* Case No IT-97-27.

³¹⁹ This was the case *Prosecutor v Krnojelac* Case No IT-97-25.

³²⁰ *Prosecutor v Kupreškić et al* Case No IT-95-16; *Prosecutor v Zelenović* Case No IT-96-23/2; *Prosecutor v Kvočka et al* Case No IT-98-30/1; *Prosecutor v Krstić* Case No IT-98-33; *Prosecutor v Halilović* Case No IT-01-48; *Prosecutor v Deronjić* Case No IT-02-61; *Prosecutor v Popović et al* Case No IT-05-88.

3.2.2 Analysis of prosecutions of crimes of appropriation of property

Charges and verdicts

The ICTY and the IRMCT prosecuted 77 cases against 161 individuals indicted for crimes committed during conflicts that occurred between 1991 and 1999 in four countries of the former Yugoslavia. Proceedings against 108 accused individuals in 59 cases have been completed by the final verdict. In 57 out of these 59 cases criminal proceedings were finalised before the ICTY, whereas two cases have been taken over and completed by the IRMCT after closure of the ICTY. Proceedings against 17 accused individuals were terminated after their death, the Tribunal discontinued proceedings against 20 defendants, whereas seven cases against 13 accused were transferred to the national judiciaries of BiH and Croatia. Finally, proceedings against three accused are still in progress before the IRMCT. Out of 161 indicted individuals, 122 were prosecuted exclusively for crimes that took place during the war in BiH, 17 for crimes committed in Croatia, 15 for crimes perpetrated during armed conflict in Kosovo and two for crimes which occurred in the FYR Macedonia. Four defendants were accused of crimes committed both in BiH and Croatia, whereas indictment against one defendant encompassed crimes perpetrated in BiH, Croatia and Kosovo.

Analysis of charges has shown that only 21% of defendants have been accused of crimes of appropriation of property under articles 2(d) and 3(e) which expressly incorporate acts of unlawful appropriation of property under the offences of grave breaches of the Geneva Conventions of 1949 and violations of laws and customs of war. Analysis has further shown that only crimes committed in BiH and Croatia were prosecuted under these charges. Out of 34 indicted individuals, 22 were charged under article 3(e), three under article 2(d), whereas indictments against nine defendants included cumulative charges under both these provisions. Criminal proceedings against 24 out of these 34 defendants have been completed by final verdicts. Examination of verdicts demonstrates a rather low conviction rate of 56% for plunder charges prosecuted under article 3(e).³²¹ The conviction rate for article 2(d) charges is slightly better – out of eight prosecuted defendants, two were

³²¹ Out of 23 defendants against whom final verdict have been entered for art 3(e) charges, nine were found guilty, three partially guilty, seven were acquitted, whereas charges against four were dismissed.

acquitted. In total, 13 defendants have been found guilty or partially guilty under these provisions (either under one of them or under both), eight were acquitted, whereas proceedings against three were dismissed.

Unlawful appropriation of property has also been prosecuted under other provisions of the Statute of the ICTY. In fact, 25 out of 34 defendants who were charged with crimes of appropriation of property under articles 2(d) and/or 3(e) were simultaneously prosecuted for these crimes under charges of crimes against humanity or genocide. In addition to this, 27 accused individuals have been prosecuted for crimes of appropriation of property only under genocide or crimes against humanity charges. Thus, the number of defendants who were indicted for crimes of appropriation of property under legal provisions other than articles 2(d) and 3(e) is very close to the number of those who were charged under these provisions. And when these two numbers are put together, the total number of defendants indicted for the crimes of appropriation of property adds up to 61. This increases the percentage of accused of these crimes from 21% to 38%.

Analysis of prosecution of crimes of appropriation of property under crimes against humanity charges indicates that allegations of unlawful appropriation of property were predominantly incorporated in factual basis underlying the charge of persecution. Concretely, persecution charges against 47 defendants accused of crimes committed in BiH, Croatia and Kosovo contained such allegations. Crimes of appropriation of property were alleged in support of other crimes against humanity charges to a much lesser extent – they appeared in factual allegations underlying charges of deportation against 16 defendants indicted for crimes that took place in BiH, Croatia and Kosovo, murder charges against nine defendants accused of crimes perpetrated in Kosovo and charges of other inhumane acts against four defendants prosecuted for crimes committed in BiH. Finally, crimes of appropriation of property were included in factual allegations underlying genocide charges that have been brought against three defendants indicted for crimes perpetrated during the war in BiH.³²² However, the Tribunal has not rendered a verdict on these charges.

³²² However, crimes underlying genocide charges in these cases did not occur in the context of the Srebrenica genocide, but rather in other municipalities.

Thus, the ICTY/IRMCT prosecuted crimes of appropriation of property both as ‘stand-alone crimes’, ie under available criminal offences that expressly reference unlawful appropriation of property (articles 2(d) and 3(e)) and under the umbrella of other general crime categories which can encompass many different types of underlying harms such as persecution, deportation/forcible transfer and other inhumane acts. Use of diverse legal characterisations in prosecution of acts of unlawful appropriation of property enabled proper capturing of the nature of particular criminal conduct and proper contextualisation of crimes and thus constitutes good practice. Through ‘stand-alone’ charges crimes of appropriation of property were given proper emphasis and visibility and through crimes against humanity charges, especially persecution, they were adequately situated within broader patterns of violence. Proper contextualisation of crimes of appropriation of property is important for establishing a connection between these crimes and the broader context within which they occur and for capturing the nature and multitude of dimensions of these crimes. Contextualisation of crimes is crucial also for establishing the responsibility of defendants in leadership cases.³²³ As senior military and political leaders ordinarily are not direct perpetrators of crimes of appropriation of property, success of leadership cases depends on the adequate positioning of these crimes within the broader campaign of violence which can be linked to the accused.

Examination of indictments and judgments demonstrated that crimes of appropriation of property constituted part of the trial record even in cases in which they have not been charged under any of the provisions of the statute. In total, 14 such cases have been identified.³²⁴ In most cases, crimes of appropriation of property were mentioned in judgments in the context of the discussion of circumstances surrounding criminal events within which indicted crimes were committed. In three cases these crimes were mentioned in indictments, but in sections

³²³ Laurel Baig and others, ‘Contextualizing Sexual Violence. Selection of Crimes’ in Serge Brammertz and Michelle J Jarvis (eds), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (OUP 2016) 174.

³²⁴ *Prosecutor v Nikolić* (n 318); *Prosecutor v Simić et al* (n 318); *Prosecutor v Mrkšić et al* Case No IT-95-13/1; *Prosecutor v Kupreškić et al* (n 320); *Prosecutor v Zelenović* (n 320); *Prosecutor v Krnojelac* (n 319); *Prosecutor v Ražnatović* (n 318); *Prosecutor v Kvočka et al* (n 320); *Prosecutor v Krstić* (n 320); *Prosecutor v Milan Zec (Strugar)* (n 276); *Prosecutor v Halilović* (n 320); *Prosecutor v Deronjić* (n 320); *Prosecutor v Boškoski and Tarčulovski* Case No IT-01-42; *Prosecutor v Popović et al* (n 320).

that do not constitute operative part of the indictment. Finally, in one indictment reference to looted property was made in factual allegations underlying one of the charges, but the defendant was not accused of being responsible for the crime of looting. When these cases are added to 37 cases which contain charges of appropriation of property,³²⁵ it follows that in 51 cases, which is 66% of all the cases prosecuted before the ICTY/IRMCT, allegations related to crimes of appropriation have been discussed either in the context of deliberation of charges or consideration of the broader framework of criminal events underlying charges.

In line with the mandate of the Tribunal, most individuals prosecuted for crimes of appropriation of property were high-ranking officials who at the relevant time occupied leadership positions in military, police, government/political structures at local, regional and state levels. Analysis of defendants' roles demonstrated that over 40% of them came from military ranks. Accused members of military structures held command posts in military units of different levels, with more than half of them being commanders at the level of brigade and higher. Approximately 20% of defendants belonged to police structures or civilian authorities with governing competencies over police forces and police-related matters. They were mostly leading officials in ministries of interior that existed in the wartime entities (in BiH and Croatia) or at the level of the state (in Croatia, FYR Macedonia and Serbia), heads of police authorities at municipal or regional level and members of police forces who exercised superior authority in camps. Around 20% of the accused performed duties within institutions of civilian government such as heads of state, presidents, members of collective presidencies

³²⁵ *Prosecutor v Tadić* Case No IT-94-1; *Prosecutor v Karadžić* Case No IT-95-5/18/MICT-13-55; *Prosecutor v Sikirica et al* Case No IT-95-8; *Prosecutor v Simić et al* (n 318); *Prosecutor v Todorović* Case No IT-95-9/1; *Prosecutor v Simić* Case No IT-95-9/2; *Prosecutor v Jelišić* (n 294); *Prosecutor v Martić* (n 273); *Prosecutor v Rajić* (n 295); *Prosecutor v Blaškić* (n 295); *Prosecutor v Kordić and Cerkez* (n 295); *Prosecutor v Mucić et al* (n 296); *Prosecutor v Kunarac et al* (n 294); *Prosecutor v Drljača* Case No IT-97-24; *Prosecutor v Kovačević* (n 294); *Prosecutor v Stakić* Case No IT-97-24; *Prosecutor v Vasiljević* Case No IT-98-32; *Prosecutor v Lukić and Lukić* Case No IT-98-32/1; *Prosecutor v Naletilić and Martinović* (n 295); *Prosecutor v Brđanin* (n 294); *Prosecutor v Talić* (n 294); *Prosecutor v Krajišnik* Case No IT-00-39; *Prosecutor v Plavšić* Case No IT-00-39 & 40/1; *Prosecutor v Ljubičić* (n 295); *Prosecutor v Štrugar* Case No IT-01-42; *Prosecutor v Hadžibasanović and Kubura* (n 297); *Prosecutor v Milošević* (n 275); *Prosecutor v Bobetko* (n 275); *Prosecutor v Šešeljić* (n 273); *Prosecutor v Stanišić and Simatović* (n 282); *Prosecutor v Prlić et al* (n 295); *Prosecutor v Hadžić* (n 275); *Prosecutor v Ademi and Norac* (n 277); *Prosecutor v Šainović et al* Case No IT-05-87; *Prosecutor v Đorđević* Case No IT-05-87/1; *Prosecutor v Gotovina et al* (n 273); *Prosecutor v Stanišić and Župljanin* Case No IT-08-91.

and heads of government of wartime entities, presidents and members of municipal and regional crisis staffs and presidents of municipal assemblies. In many cases, the accused simultaneously held multiple posts within different authorities. Finally, the Tribunal also prosecuted several low-ranking perpetrators – policemen, camp guards, soldiers and members of paramilitary groups. They make up approximately 20% of all defendants prosecuted for crimes of appropriation of private property.

The ICTY/IRMCT focused on prosecution of indirect rather than direct perpetrators. This is not surprising given that those most responsible for serious violations of IHL who fall under the Tribunal's jurisdiction are usually high-ranking officials who ordinarily do not perpetrate crimes directly. Besides this, as will be discussed later, in order for an act of unlawful appropriation of property to constitute a criminal offence under the statute, it is necessary to establish either that crimes were committed on a large-scale or that they have resulted in infliction of grave consequences on victims. As large-scale commission of crimes and appropriation of property that is of sufficient monetary value to meet the threshold of gravity of consequences usually require the involvement of a multitude of perpetrators, isolated prosecutions of direct perpetrators of these crimes is very difficult in practice. Nevertheless, the Tribunal did prosecute 12 individuals who were alleged to have physically perpetrated acts of unlawful appropriation of property, but in most of these cases prosecution was not successful precisely because the requirement of gravity of consequences inflicted on victims by unlawful appropriation of property was not satisfied.

Crimes of appropriation of property were prosecuted under both commission and omission liability. Commission liability encompasses a variety of modes of perpetration ranging from commission, planning and instigating to ordering, aiding and abetting and joint criminal enterprise, whereas omission liability entails superior responsibility. Out of 61 defendants accused of crimes of appropriation of property, 43 were indicted under both commission and omission liability in line with articles 7(1) and 7(3) of the ICTY Statute respectively, 15 defendants were prosecuted only under commission liability and three under superior responsibility. In total, 32 out of 58 defendants who were charged under commission liability were accused of participation in the joint criminal enterprise.

Jurisprudence

The first case in which the Tribunal deliberated on article 2(d) charges was the *Brđanin* case. In this case, the Trial Chamber defined elements of the crime and established a legal interpretation of this provision that was followed in future cases. In doing this, the Trial Chamber in *Brđanin* drew on the conclusions of the Trial Chamber in *Kordić and Čerkez* defining categories of protected property under article 2(d).³²⁶ According to the jurisprudence of the ICTY/IRMCT, two types of property enjoy protection under article 2(d): 1) public and private real and personal property situated in occupied territory and 2) property enjoying general protection under the Geneva Conventions of 1949³²⁷ regardless of its location.³²⁸ In order to constitute the crime under article 2(d), appropriation of these categories of property has to be 1) committed during international armed conflict or state of occupation if the conflict is not of an international character, 2) there has to be a *nexus* between armed conflict and appropriation of property, 3) appropriation of property has to be extensive, not justified by military necessity and carried out unlawfully and wantonly.³²⁹ The *mens rea* element requires that the perpetrator acted 'knowingly, with intent to appropriate the property in question unlawfully'.³³⁰

In two out of three completed cases that included these charges, the Tribunal found that unlawful and extensive appropriation of private property had indeed taken place, but that the appropriated property did not fall into the category of property generally protected under Geneva Convention IV. In one of these cases, the Tribunal established that the territory in question had been occupied and thus that there was a violation of article 2(d).³³¹ In another case, the Trial Chamber accepted the defendant's guilty plea and convicted him without a detailed examination

³²⁶ *Kordić and Čerkez* (Judgment) (n 213) para 808.

³²⁷ The Tribunal held that types of property which are accorded general protection under the Geneva Conventions of 1949 are, for example, civilian hospitals (art 18 of the Geneva Convention IV), land, sea and air medical transports (arts 21 and 22 of the Geneva Convention IV), ships and aircraft employed for medical transport (arts 38-39 of Geneva Convention II), medical units and establishments (arts 19-23 of the Geneva Convention I), buildings and materials of medical units or of aid societies (arts 33-34 of the Geneva Convention I), medical transports (arts 35-37 of the Geneva Convention I). See *Brđanin* (Judgment) (n 207) para 586 (footnote 1490).

³²⁸ *Brđanin* (Judgment) (n 207) para 586; *Prlić et al* (Judgment Vol 1) (n 208) para 106.

³²⁹ *Prlić et al* (Judgment Vol 1) (n 208) paras 83, 128.

³³⁰ *ibid* para 131. See also *Brđanin* (Judgment) (n 207) para 590.

³³¹ *Prlić et al* (Judgment Vol 3) (n 208) para 589.

of the fulfilment of this requirement.³³² Finally, in the third case, the Tribunal held that the condition concerning the existence of the state of occupation had not been fulfilled and rendered the verdict of acquittal.³³³ Thus, one of the two acquittals for the article 2(d) charges was due to the prosecution's failure to prove the existence of the state of occupation in the relevant area, whereas in the other case the defendant was acquitted because his personal responsibility for crimes he was accused of could not be established.³³⁴

The ICTY's/IRMCT's jurisprudence with respect to the crime of plunder prescribed in article 3(e) of the ICTY Statute has been developed through deliberation of charges in 12 cases in which criminal proceedings have been completed. The term 'plunder' has been interpreted as to encompass all forms of unlawful appropriation of public and private property committed during armed conflict and punishable under international law.³³⁵ In this respect, the Tribunal held that this crime encompasses acts described as 'looting', 'spoliation' as well as 'pillage' which was expressly prohibited under the Hague Regulations, Geneva Convention IV and Additional Protocol II and that these terms were generally considered to have been used synonymously.³³⁶ The Trial Chamber in *Hadžibasanović and Kubura* summarised elements constituting the crime of plunder which have been defined in the Tribunal's case law over the years.³³⁷

The first element is the commission of an act of unlawful appropriation of public or private property. Appropriation of property is considered unlawful if it cannot be justified under IHL.³³⁸ In this respect, it has been noted in the judgments of the Tribunal that rules of IHL allow for appropriation of private property under certain circumstances. For example, one exception to the prohibition of appropriation of private property is the requisition of such property for military use in the state of necessity. However, categories of property that can be justifiably taken

³³² *Rajić* (Sentencing Judgment) IT-95-12 (8 May 2006).

³³³ *Brđanin* (Judgment) (n 207) para 638.

³³⁴ *Prlić et al* (Judgment Vol 4) (n 208) 431.

³³⁵ *Mucić et al* (Judgment) (n 213) paras 315, 591; *Blaškić* (Judgment) (n 240) para 184; *Blaškić* (Judgment) IT-95-14 (29 July 2004) para 147.

³³⁶ *Mucić et al* (Judgment) (n 213) para 591; *Kunarac et al* (Judgment) (n 227) para 613; *Simić et al* (Judgment) (n 209) para 98.

³³⁷ *Hadžibasanović and Kubura* (Judgment) (n 208) paras 38, 49-50, 55.

³³⁸ *Hadžibasanović and Kubura* (Judgment) (n 208) para 53.; *Martić* (Judgment) (n 182) para 102; *Gotovina et al* (Judgment) (n 175) para 1779.

in such situations are limited mostly to foodstuff and livestock.³³⁹ Under provisions of IHL, it is also lawful to appropriate certain categories of private property as war booty. These are, however, restricted to enemy property or military equipment captured on the battlefield and exceptionally to personal effects belonging to prisoners of war.³⁴⁰ Nevertheless, it follows from the examined judgments that even military authorities, from whom it would be expected to be familiar with and act in accordance with rules of IHL, in some cases openly appropriated as war booty also other categories of property which clearly went beyond the scope of legitimate war booty, such as vehicles, home appliances, furniture and clothes.³⁴¹ As for this first element of the crime of plunder, it has been accepted in the jurisprudence of the Tribunal that it can be committed through isolated acts of unlawful appropriation of property motivated by personal gain, as well as in the context of 'organized seizure of property within the framework of a systematic economic exploitation'.³⁴²

The second requirement that needs to be fulfilled is that unlawful appropriation of property has taken place during armed conflict either of international or non-international character. As for the latter, the existence of the state of occupation is not required. In relation to this element, the Tribunal held that plunder needs to be closely linked to hostilities, but does not necessarily have to be carried out in the context of military action.³⁴³ The third element requires that plundered property is of sufficient monetary value that its appropriation entails grave consequences for victims. This requirement of gravity of consequences emerged from limitations of the Tribunal's mandate, which is restricted to the prosecution of those responsible for serious violations of IHL.³⁴⁴ According to the jurisprudence of the ICTY/IRMCT, violation of IHL is considered serious within the meaning of the statute if the offence constitutes a breach of a rule protecting important values and if it involves grave consequences for the victim.³⁴⁵ With respect to the first

³³⁹ Hadžihasanović and Kubura (Judgment) (n 208) para 53

³⁴⁰ *ibid* para 51.

³⁴¹ Hadžihasanović and Kubura (Judgment) (n 208) paras 350-351, 1875, 1914; Šainović *et al* (Judgment Vol 1) (n 186) para 564; Gotovina *et al* (Judgment) (n 175) paras 533, 2354; Prlić *et al* (Judgment Vol 3) (n 208) para 1629.

³⁴² Jelisić (Judgment) (n 232) para 48; Blaškić (Judgment) (n 240) para 184; Naletilić and Martinović (Judgment) (n 249) para 612.

³⁴³ Hadžihasanović and Kubura (Judgment) (n 208) para 54.

³⁴⁴ Statute of the ICTY art 1.

³⁴⁵ Mucić *et al* (Judgment) (n 213) para 1154.

condition, the Tribunal affirmed that ‘the prohibition against unjustified appropriation of private or public property constitutes a rule protecting important values’.³⁴⁶ As for the second condition, the Tribunal held that an assessment of whether unlawfully appropriated property is of sufficient value to constitute the crime of plunder should be conducted on a case-by-case basis.³⁴⁷ In this respect, it further held that the requirement of gravity of consequences can be considered fulfilled not only when it has been established that appropriation of property entailed grave consequences for individual victims, but also when ‘appropriations take place vis-à-vis a large number of people, even though there are no grave consequences for each individual’.³⁴⁸ Finally, the fourth element requires that the perpetrator acted with the knowledge and direct or indirect intent to acquire property unlawfully.³⁴⁹

As already mentioned, the ICTY’s/IRMCT’s conviction rate for article 3(e) charges was rather low as 10 out of 23 accused individuals have been fully or partially acquitted of these charges. Analysis of these acquittals reveals that in the majority of cases it has been found that the crimes of appropriation of property had taken place as alleged in the indictments, but the Tribunal could not establish personal responsibility of defendants for committed crimes for which they were charged under commission liability as members of the joint criminal enterprise or under superior responsibility. Three defendants were acquitted because of the insufficient evidence of commission of alleged crimes, whereas in three instances the Tribunal found that the plundered property was not of sufficient monetary value for its appropriation to satisfy the requirement of gravity of consequences.

It follows from this analysis that the crime of appropriation of property prescribed in article 2(d) of the ICTY Statute and the crime of plunder set forth in article 3(e) differ in several important ways. Firstly, article 2(d) requires that the crime was committed during international armed conflict or during armed conflict of non-international character providing that in the territory in question existed a state of occupation. The crime

³⁴⁶ *ibid*; *Mucić et al* (Judgment) (n 213) para 352; *Kordić and Čerkez* (Judgment) IT-95-14/2 (17 December 2004) para 81; *Prlić et al* (Judgment Vol 1) (n 208) para 181.

³⁴⁷ *Naletilić and Martinović* (Judgment) (n 249) para 614; *Kordić and Čerkez* (Judgment) (n 346) para 82; *Hadžibasanović and Kubura* (Judgment) (n 208) para 55.

³⁴⁸ *Naletilić and Martinović* (Judgment) (n 249) paras 612-614; *Simić et al* (Judgment) (n 209) para 101; *Kordić and Čerkez* (Judgment) (n 346) para 83.

³⁴⁹ *Martić* (Judgment) (n 182) para 104.

of plunder can also be committed during both international and non-international armed conflict, but article 3(e) poses no requirement related to the existence of the state of occupation if armed conflict is not of an international character. The necessity of proving the existence of the state of occupation, which poses an additional burden on the prosecution, might offer a potential explanation as to why article 2(d) charges have been brought only in seven cases prosecuted before the ICTY/IRMCT.

Secondly, article 2(d) on the one hand requires that appropriation of property is committed on a large scale, which is not a requirement of plunder. The crime of plunder, on the other hand, prescribes that gravity of consequences for the victim is to be measured by the monetary value of plundered property, which is not an explicit requirement under article 2(d) (although it will most likely be fulfilled due to the extensiveness of appropriation of property). Finally, this requirement of 'extensiveness' of appropriation of property in article 2(d) implies perpetration of multiple acts and a multitude of victims, whereas article 3(e) provides for the possibility that the crime of plunder be committed against smaller number or even against a single victim, under the condition that the appropriated property is of sufficient value to satisfy the gravity of consequences requirement. However, according to the jurisprudence of the Tribunal, an assessment of the gravity of consequences does not have to be conducted at the level of an individual victim, which opens for the possibility that this condition be fulfilled through appropriation of property of lesser value from a larger number of people. In this case, the requirement of extensiveness of appropriation, which is not formally an element of the crime of plunder, would practically apply.

Following the practice of the International Military Tribunals in Nuremberg and Tokyo and the US Military Tribunals in subsequent Nuremberg Trials, the Tribunal prosecuted crimes of appropriation of property also under crimes against humanity charges. In 28 cases, 21 of which have been completed by final judgment, allegations of various acts of unlawful appropriation of property were included in a factual basis underlying these charges. In all these cases, unlawful appropriation of property appeared in allegations underlying the crime of persecution and in few of them these crimes were also invoked within the factual basis underlying other charges such as murder, deportation/forcible transfer and other inhumane acts as crimes against humanity. According to the jurisprudence of the Tribunal, acts of unlawful appropriation of property understood in the meaning of the crime of plunder as defined

in the jurisprudence of the ICTY can rise to the level of gravity required for crimes against humanity, providing that they are committed on discriminatory grounds.³⁵⁰ The Tribunal held that ‘an act of appropriation or plunder that has a severe impact on the victim, carried out on discriminatory grounds, and for which the general elements of crimes against humanity are fulfilled, constitutes the crime of persecution’.³⁵¹ In order to assess whether acts of plunder amount to persecution, they have to be considered in conjunction with other crimes committed in the context of widespread and systematic attack.³⁵²

These two requirements – that the appropriation be extensive (article 2(d)) or that the monetary value of plundered property be of such level that its appropriation causes grave consequences for victim(s) (article 3(e) which also applies in prosecution of crimes of appropriation of property under crimes against humanity charges) –, make prosecution of sporadic acts of looting or acts of looting isolated from the context of large-scale crimes almost impossible or at least very challenging in practice. This is not so problematic in the context of the work of the ICTY and IRMCT because their mandate has been explicitly restricted to the most serious violations of the IHL, which implies that a certain threshold when it comes to the gravity of crimes had to be established and applied. However, if the Tribunal’s jurisprudence related to the crime of plunder was to be applied in domestic war crimes trials, it would be necessary to bear in mind that the requirement of gravity of consequences originated directly from the limitations of the Tribunal’s subject matter jurisdiction and that this condition traditionally was not considered an element of the crime of plunder, due to which even isolated acts of unlawful appropriation of property committed during the armed conflict have been considered punishable as violations of the IHL and were successfully prosecuted as war crimes.³⁵³

³⁵⁰ *Naletilić and Martinović* (Judgment) (n 249) para 698; *Stakić* (Judgment) (n 211) paras 763-764; *Simić et al* (Judgment) (n 209) paras 102-103; *Brdanin* (Judgment) (n 207) paras 1023-1024; *Kordić and Čerkez* (Judgment) (n 346) para 108; *Gotovina et al* (Judgment) (n 175) paras 1806-1807.

³⁵¹ *Krajišnik* (Judgment) (n 212) para 771; *Stanišić and Župljanin* (Judgment Vol 1) (n 210) para 84.

³⁵² *Krajišnik* (Judgment) (n 212) paras 827-828.

³⁵³ *Mucić et al* (Judgment) (n 213) para 590; *Naletilić and Martinović* (Judgment) (n 249) para 612.

CONCLUSION

Property enjoys protection both during peacetime and in time of armed conflict. Protection of property rights from unlawful infringement is guaranteed not only in legal provisions of national constitutions and laws, but also under international human rights law and IHL. Although the view that during armed conflict human rights law continues to apply concurrently with provisions of IHL is nowadays widely recognised, rules of IHL remain the primary source of law when it comes to limitation of effects of warfare and protection of protected categories of persons and property. An array of rules of IHL, some of which have long been known to international law and are proscribed as a matter of both customary and treaty law, regulate protection of property during armed conflict. These rules, among other things, specify conditions under which (specific categories of) private property can be legally appropriated and prohibit pillage and other forms of unlawful deprivation of property. Despite the existence of a legal framework(s) that regulate the protection of property rights, these rights continue to be violated in armed conflicts around the world. Violent conflicts which took place in the former Yugoslavia during the 1990s were no exception.

Violations of IHL entail individual criminal responsibility. History of holding individuals criminally accountable for breaches of rules concerning protection of property began with post-WW I prosecutions. The accountability path for these crimes continued with post-WW II war crimes trials at both international and national level, and several decades later with war crimes prosecutions before international and internationalised criminal tribunals and the ICC. This study examined crimes of appropriation of property committed during conflicts in the former Yugoslav countries and the criminal justice response of the ICTY and IRMCT to these crimes. Research was based on analysis

of indictments and judgments of these two judicial institutions which provide a comprehensive record of perpetrated crimes of appropriation of property and valuable insight into prosecution practices applied in these cases.

Analysis of the ICTY's/IRMCT's cases has shown that common perceptions of crimes of appropriation of property as opportunistic, isolated and incidental by-products of conflict detached from the rest of violence are misconceptions. These crimes were deeply interwoven in the fabric of armed conflicts which took place in four former Yugoslav countries during the 1990s. They were committed by almost all parties to these conflicts and in different conflict-related settings ranging from forcible takeovers as the most common context within which these crimes occurred, military operations, expulsions/deportations/forcible transfers of population to prison-type settings and execution sites. Crimes of appropriation of property often featured alongside other forms of violence and in many instances were employed as a strategic tool in pursuance of persecutory campaigns aimed at ethnic cleansing of a particular geographic region. They were committed by an array of perpetrators including members of armed forces, paramilitaries, police and private citizens. Acts of unlawful appropriation of property can be classified into two main categories: 1) theft (as a general term covering various forms of stealing) and 2) extortion which appeared in many different forms ranging from ordinary to more 'subtle' and institutionalised extortive practices disguised under the veneer of legality. The primary target of unlawful appropriation was movable property which encompassed the broadest range of items including money, gold and other valuables, vehicles, livestock, home appliances, furniture, clothes and foodstuff.

The ICTY/IRMCT prosecuted 61 individuals for crimes of appropriation of property, which is the largest number of individuals prosecuted for these crimes before any international(ised) judicial institution. In fact, the ICTY and IRMCT prosecuted almost as many defendants for these crimes as all other international and internationalised tribunals and courts established since the 1990s together. Crimes of appropriation of property were prosecuted both as 'stand-alone' crimes under article 2(d) and article 3(e) of the statute which expressly reference crimes of appropriation of property and under crimes against humanity charges. Prosecution of acts of unlawful appropriation of property under different charges enabled capturing of multitude of dimensions

of criminal conduct and proper contextualisation of these crimes within a broader system of violence. Owing to the inclusion of crimes against property under crimes against humanity charges these crimes were recognised as a tool in expulsion and persecution campaigns. In line with their mandate, the Tribunal and the Mechanism prosecuted mostly high-ranking military, police and political officials as persons who were deemed most responsible for serious violations of IHL. They were prosecuted as indirect perpetrators under both commission and omission liability. The ICTY/IRMCT undertook prosecution of a few low-ranking perpetrators accused of physical perpetration of crimes of appropriation of property, but these prosecutions were mostly unsuccessful due to the fact that criminal offences prescribed in the statute and interpreted in conjunction with the Tribunal's mandate are not conducive to the prosecution of isolated acts or sporadic crimes as they ordinarily cannot meet requirements of extensiveness and gravity of consequences which are recognised as elements of crimes.

The significance of prosecutions of crimes of appropriation of property at the ICTY/IRMCT is manifold. First, crimes of appropriation of property have been once more recognised as a form of conflict-related violence. In this context, factual establishments concerning these crimes contribute to a deeper understanding of the complex web of conflict-related criminality and many forms of harms it generated. Secondly, through prosecution of crimes of appropriation of property victims also got a form of acknowledgement of their suffering, which may be the only satisfaction they will ever get when it comes to these crimes, given that loss of movable property is ordinarily not encompassed by post-war property restitution or reparation programmes. Thirdly, the ICTY/IRMCT cases produced a comprehensive record of crimes of appropriation of property committed during conflicts in the former Yugoslavia. Although judicial findings of facts are made in the context and for the purpose of adjudication of charges against accused individuals, they also constitute probably the most objective account of criminal events and the least biased narrative of conflict-related violence which, as such, has the potential to be utilised in the process of coming to terms with the past once our societies are ready to go down that road. Finally, the ICTY's/IRMCT's experiences with prosecution of crimes of appropriation of property can be used to identify 'lessons learned' and to formulate good practices that can be practically utilised in prosecution of these crimes in other jurisdictions.

In the context of the latter, a few important practical insights which constitute good prosecution practices can be taken from the ICTY's approach to prosecution of crimes of appropriation of property. Applicability of these practices extends to prosecution of other types of war crimes. First, the strategy of prosecution needs to be devised in such a way to capture all constituent components of the systematic violence, including crimes against property. Secondly, prosecutions should capture different manifestations and dimensions of conflict-related crimes. This requires that prosecutions, especially in leadership cases, are designed to depict both prevalence and other characteristics of crimes such as a variety of acts and practices of unlawful appropriation of property and contexts within which they occur. It is also necessary to properly contextualise crimes through appropriate utilisation of the available legal framework, ie to subsume criminal conduct under the offence which adequately reflects the nature of that conduct and links it to broader violence.

Thirdly, it is important to ensure that crimes of appropriation of property are prosecuted under both 'stand-alone' charges and under the umbrella of other criminal offences. While prosecution of acts of unlawful appropriation of property under general crimes such as persecution which can encompass different forms of underlying harms is important for situating them within the broader context of criminal events and for understanding how they are instrumentalised in campaigns of violence, prosecution under 'stand-alone' charges gives them proper emphasis and visibility. Finally, in order to adequately capture a range of actors involved in the commission of crimes of appropriation of property and a variety of modes of perpetration of these crimes, it is important to ensure that all categories of perpetrators ranging from low-ranking physical perpetrators to highest officials in military, police and political structures are encompassed by prosecutions and held accountable.

This thesis has demonstrated the importance of understanding of crimes against property as a form of conflict-related criminality. Existing literature has not yet provided rigorous and in-depth research necessary to better understand this category of crimes and further academic examination of this topic is therefore necessary. Given that the topic has been mostly under-researched, the main goal of this thesis was to provide basic exploratory insights as a foundation for further scholarly examination. Each segment of the topic tackled in this analysis warrants further exploration. Also, there are many other important aspects which

have not been discussed at all as they were beyond the scope of this study but constitute potential avenues for future research. It is my hope that this analysis will draw scholarly attention not only to crimes against property but more broadly to economic aspects of and motivations behind conflict-related criminality, and that it will stimulate further research of these topics which are essential for understanding full scope and dynamics of conflict-related violence.

BIBLIOGRAPHY

BOOKS

- Aalders G, *Nazi Looting: The Plunder of Dutch Jewry During the Second World War* (Pomerans A and Pomerans E tr, Berg, 2004)
- Alford KD, *Nazi Plunder: Great Treasure Stories of World War II* (Da Capo Pr 2003)
- *Allied Looting in World War II: Thefts of Art, Manuscripts, Stamps and Jewellery in Europe* (McFarland & Company 2011)
- Baig L and others, 'Contextualizing Sexual Violence. Selection of Crimes' in Brammertz S and Jarvis MJ (eds), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (OUP 2016)
- Beker A, *The Plunder of Jewish Property during the Holocaust* (New York UP 2001)
- Fogg SL, *Stealing Home: Looting, Restitution, and Reconstructing Jewish Lives in France, 1942-1947* (OUP 2017)
- Fullbrook M, *Reckonings: Legacies of Nazi Persecution and the Quest for Justice* (OUP 2018)
- Götz A, *Hitler's Beneficiaries - Plunder, Racial War, and the Nazi Welfare State* (Metropolitan Books/Henry Holt 2007)
- Inal T, *Looting and Rape in Wartime: Law and Change in International Relations* (University of Pennsylvania Press 2013)
- Kaldor M, *New and Old Wars* (3rd edn, Polity Press 2012)
- Keen D, *Complex Emergencies* (Polity Press 2008)
- Rydell A, *Book Thieves, The Nazi Looting of Europe's Libraries and the Race to Return a Literary Inheritance* (Koch H tr, Viking 2015)
- Schabas WA, 'The Omission of the Right to Property in the International Covenants' in Kiss A-Ch and Lammers JG (eds), *Hague Yearbook of International Law / Annuaire de La Haye de droit international*, Vol 4 (Brill | Nijhoff 1992)
- Van Banning TRG, *The Human Right to Property* (Intersentia 2002)
- Verrall S, 'The Picture of Sexual Violence in the Former Yugoslavia Conflicts as Reflected in ICTY Judgments' in Brammertz S and Jarvis MJ (eds), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (OUP 2016)

ARTICLES

- Brammertz S and others, 'Attacks against Cultural Heritage as a Weapon of War. Prosecutions at the ICTY' (2016) 14 Journal of International Criminal Justice 1143
- Herik L Van den and Dam-De Jong D, 'Revitalizing the Antique War Crime of Pillage: The Potential and Pitfalls of Using International Criminal Law to Address Illegal Resource Exploitation during Armed Conflict' (2011) 22(3) Criminal Law Forum 237
- Henckaerts J-M, 'Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict' (March 2005) 87(857) International Review of the Red Cross 175
- Kramer A, 'The First Wave of International War Crimes Trials: Istanbul and Leipzig' (2006) 14(4) European Review 441
- Lippman M, 'Prosecution of Nazi War Criminals Before Post-World War II Domestic Tribunals' (2000) 8 Miami International & Comparative Law Review 1
- Neuner M, 'When Justice is Left to the Losers: The Leipzig War Crimes Trials' in Bergsmo M, Cheah WL and Yi P (ed), *Historical Origins of International Criminal Law: Volume 1* (Torkel Opsahl Academic EPublisher 2014)
- Zgonjanin S, 'The Prosecution of War Crimes for the Destruction of Libraries and Archives during Times of Armed Conflict' (2005) 40(2) Libraries & the Cultural Record 128

REPORTS

- Commission on the Responsibility of the Authors of War and on the Enforcement of Penalties, 'Report Presented to the Preliminary Peace Conference' (29 March 1919) reprinted in (1920) 14(1-2) American Journal of International Law 95-154 <www.jstor.org/stable/pdf/2187841.pdf?refreqid=excelsior%3A40b45929de6df83072069027a380a066> accessed 12 July 2019
- Organization for Security and Cooperation in Europe, Mission in Kosovo, 'Kosovo's War Crimes Trials: An Assessment Ten Years On 1999 – 2009' (May 2010)

OTHER PUBLICATIONS

- Kurteshi Hajdari A, 'An Overview of War Crimes Trials in Kosovo in the Period 1999 – 2018' (Humanitarian Law Center Kosovo 2018)
- Reiger C and Wierda M, 'The Serious Crimes Process in Timor-Leste: In Retrospect' (International Center for Transitional Justice 2006)
- United Nations Office of the High Commissioner, 'International Legal Protection of Human Rights in Armed Conflict' (United Nations Office of the High Commissioner 2011)

INTERNATIONAL HUMANITARIAN LAW INSTRUMENTS

- Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (Geneva, 22 August 1864) entered into force 22 June 1865 <<https://ihl-databases.icrc.org/ihl/INTRO/120?OpenDocument>> accessed 10 July 2019
- Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Geneva, 6 July 1906) entered into force 9 August 1907 <<https://ihl-databases.icrc.org/ihl/INTRO/180?OpenDocument>> accessed 10 July 2019
- Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Geneva, 27 July 1929) <<https://ihl-databases.icrc.org/ihl/INTRO/300?OpenDocument>> accessed 10 July 2019
- Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (the Hague, 29 July 1899) entered into force 4 September 1900 <<https://ihl-databases.icrc.org/ihl/INTRO/150?OpenDocument>> accessed 10 July 2019
- Convention (III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864 (the Hague, 29 July 1899) entered into force 4 September 1900 <<https://ihl-databases.icrc.org/ihl/INTRO/155?OpenDocument>> accessed 10 July 2019
- Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land (the Hague, 18 October 1907) entered into force 26 January 1910 <<https://ihl-databases.icrc.org/ihl/INTRO/195>> accessed 10 July 2019
- Convention (IX) Concerning Bombardment by Naval Forces in Time of War (the Hague, 18 October 1907) entered into force 26 January 1910 <<https://ihl-databases.icrc.org/ihl/INTRO/220?OpenDocument>> accessed 10 July 2019
- Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (the Hague, 18 October 1907) entered into force 26 January 1910 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=E5397A0FB560D0A9C12563CD002D6832>> accessed 10 July 2019
- Convention Relative to the Treatment of Prisoners of War (Geneva, 27 July 1929) <<https://ihl-databases.icrc.org/ihl/INTRO/305>> accessed 10 July 2019
- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva, 12 August 1949) entered into force 21 October 1950 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>> accessed 11 July 2019
- Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva, 12 August 1949) entered into force 21 October 1950 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/370?OpenDocument>> accessed 11 July 2019

- Geneva Convention (III) Relative to the Treatment of Prisoners of War (Geneva, 12 August 1949) entered into force 21 October 1950 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/375?OpenDocument>> accessed 11 July 2019
- Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949) entered into force 21 October 1950 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380?OpenDocument>> accessed 11 July 2019
- Institute of International Law. The Laws of War on Land (Oxford Manual) (Oxford, 9 September 1880) <<https://ihl-databases.icrc.org/ihl/INTRO/140?OpenDocument>> accessed 11 July 2019
- Project of an International Declaration concerning the Laws and Customs of War (Brussels Declaration) (Brussels, 27 August 1874) <<https://ihl-databases.icrc.org/ihl/INTRO/135>> accessed 11 July 2019
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva, 8 June 1977) entered into force 7 December 1978 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470?OpenDocument>> accessed 11 July 2019
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (Geneva, 8 June 1977) entered into force 7 December 1978 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/475?OpenDocument>> accessed 11 July 2019

INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

- African Charter on Human and Peoples' Rights (Nairobi, 27 June 1981) entered into force 21 October 1986 <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 25 September 2019
- American Convention on Human Rights (San Jose, Costa Rica, 22 November 1969) entered into force 18 July 1978 <www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> accessed 25 September 2019
- Arab Charter on Human Rights (Tunis, 22 May 2004) entered into force 15 March 2008 <www.lasportal.org/ar/sectors/dep/HumanRightsDep/Documents/%D8%A7%D9%86%D8%AC%D9%84%D9%8A%D8%B2%D9%8A.pdf> accessed 25 September 2019
- Charter of Fundamental Rights of the European Union (Nice, 7 December 2000) entered into force 1 December 2009 <www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed 26 September 2019
- Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 December 1979) entered into force 3 September 1981 <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#1> accessed 2 October 2019

- Convention on the Rights of Persons with Disabilities (New York, 13 December 2006) entered into force 3 May 2008 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en> accessed 2 October 2019
- European Convention on Human Rights and Fundamental Freedoms (Rome, 4 November 1950) entered into force 3 September 1953 <www.echr.coe.int/Documents/Convention_ENG.pdf> accessed 25 September 2019
- International Convention on the Elimination of All Forms of Discrimination (New York, 7 March 1966) entered into force 4 January 1969 <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=en> accessed 2 October 2019
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (New York, 18 December 1990) entered into force 1 July 2003 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en> accessed 2 October 2019
- International Covenant on Civil and Political Rights (New York, 16 December 1966) entered into force 23 March 1976 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en> accessed 25 September 2019
- International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966) entered into force 3 January 1976 <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en> accessed 25 September 2019
- Universal Declaration of Human Rights (Paris, 10 December 1948) <www.un.org/en/universal-declaration-human-rights/> accessed 25 September 2019
- Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 20 March 1952) entered into force 18 May 1954 <www.coe.int/en/web/conventions/search-on-treaties/-/conventions/rms/090000168006377c> accessed 25 September 2019

STATUTES AND CHARTERS OF INTERNATIONAL(ISED) CRIMINAL TRIBUNALS AND COURTS

- Charter of the International Military Tribunal (London, 8 August 1945)
- Charter of the International Military Tribunal for the Far East (Tokyo, 19 January 1946)
- UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (25 May 1993, as last amended on 7 July 2009) <www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf> accessed 12 July 2019
- UN Security Council. Statute of the International Criminal Tribunal for Rwanda (8 November 1994, as last amended on 16 December 2009) <http://unictr.irmct.org/sites/unictr.org/files/legal-library/100131_Statute_en_fr_0.pdf> accessed 12 July 2019

UN Security Council, Statute of the Special Court for Sierra Leone (16 January 2002) <www.rscsl.org/Documents/scsl-statute.pdf> accessed 12 July 2019

UN General Assembly, Rome Statute of the International Criminal Court (17 July 1998) <www.icc-cpi.int/nr/rdonlyres/add16852-ace9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf> accessed 12 July 2019

United Nations Transitional Administration in East Timor, Regulation No 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences (6 June 2000) UNTAET/REG/2000/15 <www.legal-tools.org/en/doc/c082f8/> accessed 12 July 2019

LAWS

Assembly of the SFRY, Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY No 44/76

Assembly of Republic of Kosovo, Law on Specialist Chambers and Specialist Prosecutor's Office, Law No 05/L-053 (3 August 2015) <www.scp-ks.org/en/documents/law-specialist-chambers-and-specialist-prosecutors-office> accessed 12 July 2019

Control Council, Law No 10 (Berlin, 20 December 1945) <www.legal-tools.org/doc/ffda62/pdf/> accessed 28 August 2019

United Nations Interim Administration Mission in Kosovo, Provisional Criminal Code of Kosovo (6 July 2003) UNMIK/REG/2003/25

INDICTMENTS AND JUDGMENTS OF INTERNATIONAL (ISED) TRIBUNALS AND COURTS

ECCC

Muth (Closing Order) Case 001 (28 November 2018)

ICTR

Bagaragaza (Indictment) ICTR-05-86 (1 December 2006)

Bikindi (Indictment) ICTR-01-72 (15 June 2005)

Bisengimana (Indictment) ICTR-00-60 (1 July 2000)

Nahimana et al (Indictment) ICTR-99-52 (13 April 2000)

Nchamihigo (Indictment) ICTR-01-63 (11 December 2006)

Ryandikayo (Indictment) ICTR-95-1E (8 May 2012)

Setako (Indictment) ICTR-04-81 (23 June 2008)

ICTY

Ademi and Norac (Indictment) IT-04-78 (27 May 2004)

Blagojević and Jokić (Indictment) IT-02-60 (26 May 2003)

Bobetko (Indictment) IT-02-62 (23 August 2002)

Dorđević (Indictment) IT-05-87/1 (2 June 2008)

Gotovina et al (Indictment) IT-06-90 (12 March 2008)

Hadžić (Indictment) IT-04-75 (22 March 2012)
Krstić (Indictment) IT-98-33 (27 October 1999)
Martić (Indictment) IT-95-11 (14 July 2003)
Milošević (Indictment) IT-02-54 (16 October 2001)
Milošević (Indictment) IT-02-54 (23 October 2002)
Nikolić (Indictment) IT-02-60/1 (27 May 2002)
Obrenović (Indictment) IT-02-60/2 (27 May 2005)
Popović et al (Indictment) IT-05-88 (4 August 2006)
Prlić et al (Indictment) IT-04-74 (11 June 2008)
Stanišić and Simatović (Indictment) IT-03-69 (10 July 2008)
Šainović et al (Indictment) IT-05-87 (21 June 2006)
Tolimir (Indictment) IT-05-88/2 (4 November 2009)
Trbić (Indictment) IT-05-88/1 (18 August 2006)
Aleksovski (Judgment) IT-95-14/1 (25 June 1999)
Blaškić (Judgment) IT-95-14 (3 March 2000)
Blaškić (Judgment) IT-95-14 (29 July 2004)
Blagojević and Jokić (Judgment) IT-02-60 (17 January 2005)
Boškoski and Tarčulovski (Judgment) IT-04-82 (10 July 2008)
Brđanin (Judgment) IT-99-36 (1 September 2004)
Delić (Judgment) IT-04-83 (15 September 2008)
Dorđević (Judgment) IT-05-87/1 (23 February 2011)
Gotovina et al (Judgment) IT-06-90 (15 April 2011)
Hadžihasanović and Kubura (Judgment) IT-01-47 (15 March 2006)
Halilović (Judgment) IT-01-48 (16 November 2005)
Jelišić (Judgment) IT-95-10 (14 December 1999)
Karadžić (Judgment) IT-95-5/18 (24 March 2016)
Kordić and Čerkez (Judgment) IT-95-14/2 (26 February 2001)
Kordić and Čerkez (Judgment) IT-95-14/2 (17 December 2004)
Krajišnik (Judgment) IT-00-39 (27 September 2006)
Krstić (Judgment) IT-98-33 (2 August 2001)
Kunarac et al (Judgment) IT-96-23 & 23/1 (22 February 2001)
Kupreškić et al (Judgment) IT-95-16 (14 January 2000)
Kvočka et al (Judgment) IT-98-30/1 (2 November 2001)
Lukić and Lukić (Judgment) IT-98-32/1 (20 July 2009)
Martić (Judgment) IT-95-11 (12 June 2007)
Mrkšić et al (Judgment) IT-95-13/1 (27 September 2007)
Mucić et al (Judgment) IT-96-21 (16 November 1998)
Naletilić and Martinović (Judgment) IT-98-34 (31 March 2003)
Popović et al (Judgment) IT-05-88 (10 June 2010)
Prlić et al (Judgment Vol 1-4) IT-04-74 (6 June 2014)
Simić et al (Judgment) IT-95-9 (17 October 2003)
Stanišić and Župljanin (Judgment Vol 1) IT-08-91 (23 March 2013)
Stakić (Judgment) IT-97-24 (31 July 2003)
Strugar (Judgment) IT-01-42 (31 January 2005)
Strugar (Judgment) IT-01-42 (17 July 2008)
Šainović et al (Judgment Vol 1 & 2) IT-05-87 (26 February 2009)
Tadić (Judgment) IT-94-1 (7 May 1997)

Tolimir (Judgment) IT-05-88/2 (12 December 2012)
Mrđa (Sentencing Judgment) IT-02-59 (31 March 2004)
Nikolić (Sentencing Judgment) IT-02-60/1 (2 December 2003)
Plavšić (Sentencing Judgment) IT-00-39 & 40/1 (27 February 2003)
Rajić (Sentencing Judgment) IT-95-12 (8 May 2006)
Sikirica et al (Sentencing Judgment) IT-95-8 (13 November 2001)

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Indictment (1946) <<http://imtfe.law.virginia.edu/collections/carrington-williams/1/3/full-indictment>> accessed on 27 August 2019
Judgment (12 November 1948) <<http://werle.rewi.hu-berlin.de/tokio.pdf>> accessed on 27 August 2019

INTERNATIONAL MILITARY TRIBUNAL IN NUREMBERG

Indictment (18 October 1945) <www.cvce.eu/en/obj/indictment_presented_to_the_international_military_tribunal_nuremberg_18_october_1945-en-6b56300d-27a5-4550-8b07-f71e303ba2b1.html> accessed 27 August 2019
Judgment (1 October 1946) <https://crimeofaggression.info/documents/6/1946_Nuremberg_Judgement.pdf> accessed 27 August 2019

US MILITARY TRIBUNALS IN NUREMBERG

USA v Alfried Krupp et al (Indictment) (17 August 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IX Washington 1950)
USA v Carl Krauch et al (Indictment) (3 May 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume VII Washington 1950)
USA v Ernst von Weizsäcker et al (Indictment) (1 November 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume XII Washington)
USA v Friedrich Flick et al (Indictment) (18 March 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume VI Washington 1952)
USA v Josef Alstoetter et al (Indictment) (4 January 1946) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume III Washington 1951)
USA v Otto Ohlendorf et al (Indictment) (30 July 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IV Washington 1950)
USA v Ulrich Greifelt et al (Indictment) (1 July 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IV Washington 1950)
USA v Wilhelm von Leeb et al (Indictment) (28 November 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume X Washington 1951)
USA v Ernst von Weizsäcker et al (Judgment) (13 April 1949) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume XIV Washington)

- USA v Josef Alstoetter et al* (Judgment) (4 December 1946) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume III Washington 1951)
- USA v Oswald Pohl et al* (Judgment) (3 November 1947) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume V Washington 1950)
- USA v Otto Ohlendorf et al* (Judgment) (8 April 1948) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume IV Washington 1950)
- USA v Ulrich Greifelt et al* (Judgment) (10 March 1948) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume V Washington 1950)
- USA v Wilhelm von Leeb et al* (Judgment) (28 October 1948) in United States Government Printing Office, *Trials of War Criminals Before the Nuremberg Military Tribunals* (Volume XI Washington 1950)

CASES OF INTERNATIONAL TRIBUNALS AND COURTS

ICTR

- Prosecutor v Bisengimana* Case No ICTR-00-60
- Prosecutor v Nabimana et al* Case No ICTR-99-52
- Prosecutor v Setako* Case No ICTR-04-81

ICTY

- Prosecutor v Ademi and Norac* Case No IT-04-78
- Prosecutor v Blaškić* Case No IT-95-14
- Prosecutor v Bobetko* Case No IT-02-62
- Prosecutor v Boškoski and Tarčulovski* Case No IT-01-42
- Prosecutor v Brđanin* Case No IT-99-36
- Prosecutor v Deronjić* Case No IT-02-61
- Prosecutor v Đorđević* Case No IT-05-87/1
- Prosecutor v Drljača* Case No IT-97-24
- Prosecutor v Gotovina et al* Case No IT-06-90
- Prosecutor v Hadžić* Case No IT-04-75
- Prosecutor v Hadžibasanović and Kubura* Case No IT-01-47
- Prosecutor v Halilović* Case No IT-01-48
- Prosecutor v Jelisić* Case No IT-95-10
- Prosecutor v Karadžić* Case No IT-95-5/18/MICT-13-55
- Prosecutor v Kordić and Čerkez* Case No IT-95-14/2
- Prosecutor v Kovačević* Case No IT-97-24
- Prosecutor v Krajišnik* Case No IT-00-39
- Prosecutor v Krnojelac* Case No IT-97-25
- Prosecutor v Krstić* Case No IT-98-33
- Prosecutor v Kunarac et al* Case No IT-96-23 & 23/1
- Prosecutor v Kupreškić et al* Case No IT-95-16
- Prosecutor v Kvočka et al* Case No IT-98-30/1

Prosecutor v Lukić and Lukić Case No IT-98-32/1
Prosecutor v Ljubičić Case No IT-00-41
Prosecutor v Martić Case No IT-95-11
Prosecutor v Milošević Case No IT-02-54
Prosecutor v Mrkšić et al Case No IT-95-13/1
Prosecutor v Mucić et al Case No IT-96-21
Prosecutor v Naletilić and Martinović Case No IT-98-34
Prosecutor v Nikolić Case No IT-94-2
Prosecutor v Plavšić Case No IT-00-39 & 40/1
Prosecutor v Popović et al Case No IT-05-88
Prosecutor v Prlić et al Case No IT-04-74
Prosecutor v Rajić Case No IT-95-12
Prosecutor v Ražnatović Case No IT-97-27
Prosecutor v Sikirica et al Case No IT-95-8
Prosecutor v Simić Case No IT-95-9/2
Prosecutor v. Simić et al Case No IT-95-9
Prosecutor v Stakić Case No IT-97-24
Prosecutor v Stanišić and Simatović Case No IT-03-69/MICT-15-96
Prosecutor v Stanišić and Zupljanin Case No IT-08-91
Prosecutor v Strugar Case No IT-01-42
Prosecutor v Šainović et al Case No IT-05-87
Prosecutor v Šešelj Case No IT-03-67/MICT-16-99
Prosecutor v Tadić Case No IT-94-1
Prosecutor v Talić Case No IT-99-36/1
Prosecutor v Todorović Case No IT-95-9/1
Prosecutor v Vasiljević Case No IT-98-32
Prosecutor v Zec Case No IT-01-42
Prosecutor v Zelenović Case No IT-96-23/2

SCSL

Prosecutor v Bockarie Case No SCSL-03-04
Prosecutor v Brima et al Case No SCSL-04-16
Prosecutor v Norman et al Case No SCSL-04-14
Prosecutor v Koroma Case No SCSL-03-03
Prosecutor v Sankof Case No SCSL-03-02
Prosecutor v Sesay et al Case No SCSL-04-15
Prosecutor v Taylor Case No SCSL-03-01

US MILITARY TRIBUNALS IN NUREMBERG

USA v Alfred Krupp et al
USA v Carl Krauch et al
USA v Ernst von Weizsäcker et al
USA v Friedrich Flick et al
USA v Josef Alstoetter et al
USA v Oswald Pohl et al
USA v Otto Ohlendorf et al

USA v Ulrich Greifelt et al
USA v Wilhelm von Leeb et al

CASES OF THE ECtHR

Chiragov and others v Armenia App no 13216/05 (16 June 2015)
Cyprus v Turkey App no 25781/94 (10 May 2001)
Esmukhambetov and others v Russia App no 23445/03 (29 March 2011)
Orban v Turkey App no 25656/94 (18 June 2002)
Sargsyan v Azerbaijan App no 40167/06 (16 June 2015)

WEBSITES

International Committee of the Red Cross, 'The Geneva Conventions of 1949 and their Additional Protocols' (International Committee of the Red Cross) <www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> accessed 11 July 2019

International Committee of the Red Cross, 'Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/ihl/INTRO/305>> accessed 10 October 2019

International Committee of the Red Cross, 'Treaties, States Parties and Commentaries. Project of an International Declaration concerning the Laws and Customs of War. Brussels, 27 August 1874' (International Committee of the Red Cross) <<https://ihl-databases.icrc.org/ihl/INTRO/135>> accessed 11 July 2019

Jewish Virtual Library, 'The Prosecution of War Criminals' (*Jewish Virtual Library*) <www.jewishvirtuallibrary.org/the-prosecution-of-war-criminals> accessed 27 August 2019

Office of the General Prosecutor of the Republic of Timor-Leste – Serious Crimes Unit, 'SCU – All Cases' <www.ocf.berkeley.edu/~changmin/Serious%20Crimes%20Unit%20Files/cases/AllCases.htm> accessed 9 October 2019

United Nations International Residual Mechanism for Criminal Tribunals, 'About' <www.irmct.org/en/about> accessed 3 October 2019

United Nations International Tribunal for the Former Yugoslavia, 'The Tribunal – Establishment' <www.icty.org/en/about/tribunal/establishment> accessed 2 October 2019

ANNEX A

LIST OF ANALYSED CASES AND DOCUMENTS OF THE ICTY AND IRMCT

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
1	Ademi and Norac ('Medak Pocket')	IT-04-78	Rahim Ademi	Transferred	27/05/2004	/	/	/
	Ademi and Norac ('Medak Pocket')	IT-04-78	Mirko Norac	Transferred	27/05/2004	/	/	/
2	Aleksovski ('Lašva Valley')	IT-95-14/1	Zlatko Aleksovski	Completed	01/11/1995	25/06/1999	/	24/03/2000
3	Babić ('RSK')	IT-03-72	Milan Babić	Completed	06/11/2003	/	29/06/2004	18/07/2005
4	Banović ('Omarska and Keraterm Camps')	IT-02-65/1	Predrag Banović	Completed	05/07/2002	/	28/10/2003	/
5	Blagojević and Jokić	IT-02-60	Vidoje Blagojević	Completed	26/05/2003	17/01/2005	/	09/05/2007
	Blagojević and Jokić	IT-02-60	Dragan Jokić	Completed	26/05/2003	17/01/2005	/	/
6	Blaškić ('Lašva Valley')	IT-95-14	Tihomir Blaškić	Completed	25/04/1997	03/03/2000	/	29/07/2004
7	Bobetko ('Medak Pocket')	IT-02-62	Janko Bobetko	Terminated	23/08/2002	/	/	/
8	Boškoski and Tarčulovski	IT-04-82	Ljube Boškoski	Completed	02/11/2005	10/07/2008	/	19/05/2010
	Boškoski and Tarčulovski	IT-04-82	Johan Tarčulovski	Completed	02/11/2005	10/07/2008	/	19/05/2010
9	Bralo ('Lašva Valley')	IT-95-17	Miroslav Bralo	Completed	18/07/2005	/	07/12/2005	02/04/2007
10	Brđanin ('Krajina')	IT-99-36	Radoslav Brđanin	Completed	09/12/2003	01/09/2004	/	03/04/2007
11	Češić ('Brčko')	IT-95-10/1	Ranko Češić	Completed	26/11/2002	/	11/03/2004	/
12	Delić	IT-04-83	Rasim Delić	Completed	14/07/2006	15/09/2008	/	/
13	Deronjić ('Glogova')	IT-02-61	Miroslav Deronjić	Completed	29/09/2003	/	30/03/2004	20/07/2005
14	Dokmanović ('Vukovar Hospital')	IT-95-13a	Slavko Dokmanović	Terminated	02/12/1997	/	/	/
15	Đorđević ('Kosovo')	IT-05-87/1	Vlastimir Đorđević	Completed	02/06/2008	23/02/2011	/	27/01/2014
16	Đukić	IT-96-20	Đorđe Đukić	Terminated	29/02/1996	/	/	/
17	Erdemović ('Pilica Farm')	IT-96-22	Dražen Erdemović	Completed	22/05/1996	/	29/11/1996	07/10/1997
							05/03/1998	
18	Furundžija ('Lašva Valley')	IT-95-17/1	Anto Furundžija	Completed	02/06/1998	10/12/1998	/	21/07/2000
19	Galić	IT-98-29	Stanislav Galić	Completed	26/03/1999	05/12/2003	/	30/11/2006

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
20	Gotovina et al ('Operation Storm')	IT-06-90	Ante Gotovina	Completed	12/03/2008	15/04/2011	/	16/11/2012
	Gotovina et al ('Operation Storm')	IT-06-90	Ivan Čermak	Completed	12/03/2008	15/04/2011	/	16/11/2012
	Gotovina et al ('Operation Storm')	IT-06-90	Mladen Markač	Completed	12/03/2008	15/04/2011	/	16/11/2012
21	Hadžić	IT-04-75	Goran Hadžić	Terminated	22/03/2012	/	/	/
22	Hadžihasanović and Kubura ('Central Bosnia')	IT-01-47	Enver Hadžihasanović	Completed	26/09/2003	15/03/2006	/	22/04/2008
	Hadžihasanović and Kubura ('Central Bosnia')	IT-01-47	Amir Kubura	Completed	26/09/2003	15/03/2006	/	22/04/2008
	Hadžihasanović and Kubura ('Central Bosnia')	IT-01-47	Mehmed Alagić	Terminated	12/01/2002	/	/	/
23	Halilović ('Grabovica-Uzdol')	IT-01-48	Sefer Halilović	Completed	10/09/2001	16/11/2005	/	16/10/2007
24	Haradinaj et al	IT-04-84	Ramush Haradinaj	Completed	21/01/2011	03/04/2008	/	19/07/2010
						29/11/2012		
	Haradinaj et al	IT-04-84	Idriz Balaj	Completed	21/01/2011	03/04/2008	/	19/07/2010
						29/11/2012		
	Haradinaj et al	IT-04-84	Lahi Brahimaaj	Completed	21/01/2011	03/04/2008	/	19/07/2010
						29/11/2012		
25	Jelisić ('Brčko')	IT-95-10	Goran Jelisić	Completed	19/10/1998	14/12/1999	/	05/07/2001
26	Jokić ('Dubrovnik')	IT-01-42/1	Miodrag Jokić	Completed	27/08/2003	/	18/03/2004	30/08/2005
27	Karadžić	IT-95-5/18	Radovan Karadžić	Completed	19/10/2009	24/03/2016	/	20/03/2019
		MICT-13-55						
28	Kordić and Čerkez ('Lašva Valley')	IT-95-14/2	Dario Kordić	Completed	30/09/1998	26/02/2001	/	17/12/2004
	Kordić and Čerkez ('Lašva Valley')	IT-95-14/2	Mario Čerkez	Completed	30/09/1998	26/02/2001	/	17/12/2004
	Kordić and Čerkez ('Lašva Valley')	IT-95-14/2	Ivan Šantić	Discontinued	10/11/1995	/	/	/
	Kordić and Čerkez ('Lašva Valley')	IT-95-14/2	Pero Skopljak	Discontinued	10/11/1995	/	/	/
29	Kovačević ('Dubrovnik')	IT-01-42/2	Vladimir Kovačević	Transferred	17/10/2003	/	/	/

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
30	Kovačević ('Prijedor')	IT-97-24	Milan Kovačević	Terminated	28/01/1998	/	/	/
					12/05/1998			
	Kovačević ('Prijedor')	IT-97-24	Simo Drljača	Terminated	13/03/1997	/	/	/
31	Krajišnik ('Bosnia and Herzegovina')	IT-00-39	Momčilo Krajišnik	Completed	07/03/2002	27/09/2006	/	17/03/2009
32	Krnojelac ('Foča')	IT-97-25	Milorad Krnojelac	Completed	25/06/2001	15/03/2002	/	17/09/2003
33	Krstić ('Srebrenica-Drina Corps')	IT-98-33	Radislav Krstić	Completed	27/10/1999	02/08/2001	/	19/04/2004
34	Kunarac et al ('Foča')	IT-96-23 & 23/1	Dragoljub Kunarac	Completed	08/11/1999	22/02/2001	/	12/06/2002
	Kunarac et al ('Foča')	IT-96-23 & 23/1	Radomir Kovač	Completed	08/11/1999	22/02/2001	/	12/06/2002
	Kunarac et al ('Foča')	IT-96-23 & 23/1	Zoran Vuković	Completed	05/10/1999	22/02/2001	/	12/06/2002
35	Kupreškić et al ('Lašva Valley')	IT-95-16	Zoran Kupreškić	Completed	09/02/1998	14/01/2000	/	23/10/2001
	Kupreškić et al ('Lašva Valley')	IT-95-16	Mirjan Kupreškić	Completed	09/02/1998	14/01/2000	/	23/10/2001
	Kupreškić et al ('Lašva Valley')	IT-95-16	Vlatko Kupreškić	Completed	09/02/1998	14/01/2000	/	23/10/2001
	Kupreškić et al ('Lašva Valley')	IT-95-16	Drago Josipović	Completed	09/02/1998	14/01/2000	/	23/10/2001
	Kupreškić et al ('Lašva Valley')	IT-95-16	Dragan Papić	Completed	09/02/1998	14/01/2000	/	23/10/2001
	Kupreškić et al ('Lašva Valley')	IT-95-16	Vladimir Šantić	Completed	09/02/1998	14/01/2000	/	23/10/2001
	Kupreškić et al ('Lašva Valley')	IT-95-16	Stipo Alilović	Terminated	10/11/1995	/	/	/
	Kupreškić et al ('Lašva Valley')	IT-95-16	Marinko Katava	Discontinued	10/11/1995	/	/	/
36	Kvočka et al ('Omarska, Keraterm and Trnopolje Camps')	IT-98-30/1	Miroslav Kvočka	Completed	21/08/2000	02/11/2001	/	28/02/2005
	Kvočka et al ('Omarska, Keraterm and Trnopolje Camps')	IT-98-30/1	Dragoljub Prcać	Completed	21/08/2000	02/11/2001	/	28/02/2005
	Kvočka et al ('Omarska, Keraterm and Trnopolje Camps')	IT-98-30/1	Milojica Kos	Completed	21/08/2000	02/11/2001	/	28/02/2005
	Kvočka et al ('Omarska, Keraterm and Trnopolje Camps')	IT-98-30/1	Mlađo Radić	Completed	21/08/2000	02/11/2001	/	28/02/2005

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
36	Kvočka et al ('Omarska, Keraterm and Trnopolje Camps')	IT-98-30/1	Zoran Žigić	Completed	21/08/2000	02/11/2001	/	28/02/2005
37	Limaj et al	IT-03-66	Fatmir Limaj	Completed	06/11/2003	30/11/2005	/	27/09/2007
	Limaj et al	IT-03-66	Haradin Bala	Completed	06/11/2003	30/11/2005	/	27/09/2007
	Limaj et al	IT-03-66	Isak Musliu	Completed	06/11/2003	30/11/2005	/	27/09/2007
	Limaj et al	IT-03-66	Agim Murtezi	Discontinued	24/01/2003	/	/	/
38	Lukić Milan and Lukić Sredoje ('Višegrad')	IT-98-32/1	Milan Lukić	Completed	27/02/2006	20/07/2009	/	04/12/2012
	Lukić Milan and Lukić Sredoje ('Višegrad')	IT-98-32/1	Sredoje Lukić	Completed	27/02/2006	20/07/2009	/	04/12/2012
39	Ljubičić ('Lašva Valley')	IT-00-41	Paško Ljubičić	Transferred	02/04/2002	/	/	/
40	Marinić ('Lašva Valley')	IT-95-15	Zoran Marinić	Discontinued	09/11/1995	/	/	/
41	Martić ('RSK')	IT-95-11	Milan Martić	Completed	14/07/2003	12/06/2007	/	08/10/2008
42	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Željko Mejakić	Transferred	05/07/2002	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Momčilo Gruban	Transferred	05/07/2002	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Dušan Fuštar	Transferred	05/07/2002	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Duško Knežević	Transferred	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Zdravko Govedarica	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Gruban	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Predrag Kostić	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Nedjeljko Paspalj	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Milan Pavlić	Discontinued	13/02/1995	/	/	/

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
42	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Milutin Popović	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Draženko Predojević	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Željko Savić	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Mirko Babić	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Nikica Janjić	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Dragomir Šaponja	Discontinued	13/02/1995	/	/	/
	Mejakić et al ('Omarska and Keraterm Camp')	IT-02-65	Nenad Banović	Discontinued	03/01/2001	/	/	/
43	Milošević ('Sarajevo')	IT-98-29/1	Dragomir Milošević	Completed	18/12/2006	12/12/2007	/	12/11/2009
44	Milošević ('Kosovo, Croatia and Bosnia')	IT-02-54	Slobodan Milošević	Terminated	16/10/2001	/	/	/
					22/11/2002			
					28/07/2004			
45	Mladić	IT-09-92	Ratko Mladić	Ongoing	16/12/2011	22/11/2017	/	/
		MICT-13-56						
46	Mrđa ('Vlašić Mountain')	IT-02-59	Darko Mrđa	Completed	04/08/2003	/	31/03/2004	/
47	Mrkšić et al ('Vukovar Hospital')	IT-95-13/1	Mile Mrkšić	Completed	15/11/2004	27/09/2007	/	05/05/2009
	Mrkšić et al ('Vukovar Hospital')	IT-95-13/1	Miroslav Radić	Completed	15/11/2004	27/09/2007	/	/
	Mrkšić et al ('Vukovar Hospital')	IT-95-13/1	Veselin Šljivančanin	Completed	15/11/2004	27/09/2007	/	05/05/2009
								08/12/2010

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
48	Mucić et al ('Čelebići Camp')	IT-96-21	Zejnil Delalić	Completed	19/03/1996	16/11/1998	09/10/2001	20/02/2001
								08/04/2003
	Mucić et al ('Čelebići Camp')	IT-96-21	Zdravko Mucić	Completed	19/03/1996	16/11/1998	/	20/02/2001
								08/04/2003
	Mucić et al ('Čelebići Camp')	IT-96-21	Hazim Delić	Completed	19/03/1996	16/11/1998	/	20/02/2001
								08/04/2003
	Mucić et al ('Čelebići Camp')	IT-96-21	Esad Landžo	Completed	19/03/1996	16/11/1998	/	20/02/2001
								08/04/2003
49	Naletilić and Martinović ('Tuta and Štela')	IT-98-34	Mladen Naletilić	Completed	28/09/2001	31/03/2003	/	03/05/2006
	Naletilić and Martinović ('Tuta and Štela')	IT-98-34	Vinko Martinović	Completed	28/09/2001	31/03/2003	/	03/05/2006
50	Nikolić ('Sušica Camp')	IT-94-2	Dragan Nikolić	Completed	31/10/2003	/	18/12/2003	04/02/2005
51	Nikolić ('Srebrenica')	IT-02-60/1	Momir Nikolić	Completed	27/05/2002	/	02/12/2003	08/03/2006
52	Obrenović ('Srebrenica')	IT-02-60/2	Dragan Obrenović	Completed	27/05/2002	/	10/12/2003	/
53	Orić	IT-03-68	Naser Orić	Completed	30/06/2005	30/06/2006	/	03/07/2008
54	Perišić	IT-04-81	Momčilo Perišić	Completed	05/02/2008	06/09/2011	/	28/02/2013
55	Plavšić ('Bosnia and Herzegovina')	IT-00-39 & 40/1	Biljana Plavšić	Completed	07/03/2002	/	27/02/2003	/
56	Popović et al ('Srebrenica')	IT-05-88	Vujadin Popović	Completed	04/08/2006	10/06/2010	/	30/01/2015
	Popović et al' ('Srebrenica')	IT-05-88	Ljubiša Beara	Completed	04/08/2006	10/06/2010	/	30/01/2015
	Popović et al ('Srebrenica')	IT-05-88	Drago Nikolić	Completed	04/08/2006	10/06/2010	/	30/01/2015
	Popović et al ('Srebrenica')	IT-05-88	Ljubomir Borovčanin	Completed	04/08/2006	10/06/2010	/	30/01/2015
	Popović et al ('Srebrenica')	IT-05-88	Radivoje Miletić	Completed	04/08/2006	10/06/2010	/	30/01/2015
	Popović et al ('Srebrenica')	IT-05-88	Milan Gvero	Completed	04/08/2006	10/06/2010	/	30/01/2015
	Popović et al ('Srebrenica')	IT-05-88	Vinko Pandurević	Completed	04/08/2006	10/06/2010	/	30/01/2015

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
57	Prlić et al	IT-04-74	Jadranko Prlić	Completed	11/06/2008	06/06/2014	/	29/11/2017
	Prlić et al	IT-04-74	Bruno Stojić	Completed	11/06/2008	06/06/2014	/	29/11/2017
	Prlić et al	IT-04-74	Slobodan Praljak	Completed	11/06/2008	06/06/2014	/	29/11/2017
	Prlić et al	IT-04-74	Milivoj Petković	Completed	11/06/2008	06/06/2014	/	29/11/2017
	Prlić et al	IT-04-74	Valentin Ćorić	Completed	11/06/2008	06/06/2014	/	29/11/2017
	Prlić et al	IT-04-74	Berislav Pušić	Completed	11/06/2008	06/06/2014	/	29/11/2017
58	Rajić ('Stupni Do')	IT-95-12	Ivica Rajić	Completed	13/01/2004		08/05/2006	/
59	Ražnatović ('Arkan')	IT-97-27	Željko Ražnatović	Terminated	23/09/1997	/	/	/
60	Sikirica et al ('Keraterm Camp')	IT-95-8	Duško Sikirica	Completed	03/01/2001	/	13/11/2001	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Damir Došen	Completed	03/01/2001	/	13/11/2001	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Dragan Kolundžija	Completed	03/01/2001	/	13/11/2001	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Nedjeljko Timarac	Discontinued	21/07/1995	/	/	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Goran Lajić	Discontinued	21/07/1995	/	/	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Dragan Kondić	Discontinued	21/07/1995	/	/	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Dragomir Šaponja	Discontinued	21/07/1995	/	/	/
	Sikirica et al ('Keraterm Camp')	IT-95-8	Nikica Janjić	Terminated	21/07/1995	/	/	/
61	Simić et al ('Bosanski Šamac')	IT-95-9	Blagoje Simić	Completed	30/05/2002	17/10/2003	/	28/11/2006
	Simić et al ('Bosanski Šamac')	IT-95-9	Miroslav Tadić	Completed	30/05/2002	17/10/2003	/	28/11/2006
	Simić et al ('Bosanski Šamac')	IT-95-9	Simo Zarić	Completed	30/05/2002	17/10/2003	/	28/11/2006
	Simić et al ('Bosanski Šamac')	IT-95-9	Slobodan Miljković	Terminated	21/07/1995	/	/	/
62	Simić ('Bosanski Šamac')	IT-95-9/2	Milan Simić	Completed	09/01/2002	/	17/10/2002	/
63	Stakić ('Prijeđor')	IT-97-24	Milomir Stakić	Completed	10/04/2002	31/07/2003	/	22/03/2006
64	Stanišić and Simatović	IT-03-69	Jovica Stanišić	Ongoing	09/07/2008	30/05/2013	/	09/12/2015
		MICT-15-96						

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
64	Stanišić and Simatović	IT-03-69	Franko Simatović	Ongoing	09/07/2008	30/05/2013	/	09/12/2015
		MICT-15-96						
65	Stanišić and Župljanin ('Bosnia and Herzegovina')	IT-08-91	Mičo Stanišić	Completed	23/11/2009	23/03/2013	/	30/06/2016
	Stanišić and Župljanin ('Bosnia and Herzegovina')	IT-08-91	Stojan Župljanin	Completed	23/11/2009	23/03/2013	/	30/06/2016
66	Stanković and Janković ('Foča')	IT-96-23/2	Radovan Stanković	Transferred	08/12/2003	/	/	/
	Stanković and Janković ('Foča')	IT-96-23/2	Gojko Janković	Transferred	05/10/1999	/	/	/
67	Strugar ('Dubrovnik')	IT-01-42	Pavle Strugar	Completed	10/12/2003	31/01/2005	/	17/07/2008
	Strugar ('Dubrovnik')	IT-01-42	Milan Zec	Discontinued	22/02/2001		/	/
68	Šainović et al	IT-05-87	Nikola Šainović	Completed	21/06/2006	26/02/2009	/	23/01/2014
	Šainović et al	IT-05-87	Dragoljub Ojdanić	Completed	21/06/2006	26/02/2009	/	23/01/2014
	Šainović et al	IT-05-87	Nebojša Pavković	Completed	21/06/2006	26/02/2009	/	23/01/2014
	Šainović et al	IT-05-87	Vladimir Lazarević	Completed	21/06/2006	26/02/2009	/	23/01/2014
	Šainović et al	IT-05-87	Sreten Lukić	Completed	21/06/2006	26/02/2009	/	23/01/2014
	Šainović et al	IT-05-87	Milan Milutinović	Completed	21/06/2006	26/02/2009	/	23/01/2014
	Šainović et al	IT-05-87	Vlajko Stojiljković	Terminated	19/07/2002	/	/	/
69	Šešelj	IT-03-67	Vojislav Šešelj	Completed	07/12/2007	14/06/2016	/	11/04/2018
		MICT-16-99						
70	Tadić ('Prijedor')	IT-94-1	Duško Tadić	Completed	14/12/1995	07/05/1997	14/07/1997	15/07/1999
							11/11/1999	26/01/2000
	Tadić ('Prijedor')	IT-94-1	Goran Borovnica	Terminated	14/12/1995	/	/	/
71	Talić ('Krajina')	IT-99-36/1	Momir Talić	Terminated	10/12/2001	/	/	/
72	Todorović ('Bosanski Šamac')	IT-95-9/1	Stevan Todorović	Completed	19/11/1998	/	31/07/2001	/

No	Case	Case no	Accused	Status of proceedings	Final indictment	Trial judgment	Sentencing judgment	Appeals judgment
73	Todović and Rašević ('Foča')	IT-97-25/1	Savo Todović	Transferred	24/03/2006	/	/	/
	Todović and Rašević ('Foča')	IT-97-25/1	Mitar Rašević	Transferred	24/03/2006	/	/	/
74	Tolimir ('Srebrenica')	IT-05-88/2	Zdravko Tolimir	Completed	04/11/2009	12/12/2012	/	08/04/2015
75	Trbić ('Srebrenica')	IT-05-88/1	Milorad Trbić	Transferred	18/08/2006	/	/	/
76	Vasiljević ('Višegrad')	IT-98-32	Mitar Vasiljević	Completed	12/07/2001	29/11/2002	/	25/02/2004
77	Zelenović ('Foča')	IT-96-23/2	Dragan Zelenović	Completed	20/04/2001	/	04/04/2007	31/10/2007
	Zelenović ('Foča')	IT-96-23/2	Janko Janjić	Terminated	07/10/1999	/	/	/
	Zelenović ('Foča')	IT-96-23/2	Dragan Gagović	Terminated	18/06/1996	/	/	/

ANNEX B

LIST OF KEYWORDS USED FOR TEXT SEARCHES IN THE
PROCESS OF IDENTIFICATION OF RELEVANT SECTIONS OF
ANALYSED INDICTMENTS AND JUDGMENTS OF THE ICTY
AND THE IRMCT

Word	Variation(s)
appliances	
appropriation	appropriate, appropriated
belongings	
booty	
bribe	bribes, bribing, bribed
burglar	burglary, burglaries
cattle	
confiscate	confiscating, confiscated
expropriation	expropriate, expropriated, expropriating
extortion	extort, extorting, extorted
fare	
furniture	
gold	
jewellery	jewelry
loot	looting, lootings, looted, looters
money	
mugging	mugged
ownership	
pillage	pillaging, pillaged
plunder	plundering, plundered
possession	possessions
profiteer	profiteering

Word	Variation(s)
property	properties
relinquish	relinquishing, relinquished
robbery	robbed, robbing
seize	seizing, seized, seise, seizure
spoliation	spoliate
steal	stealing, stole, stolen
theft	thievery
valuable	valuables
wealth	
German marks	German Marks

Monastery of San Nicolò
Riviera San Nicolò, 26
I-30126 Venice Lido (Italy)

www.gchumanrights.org

Global Campus of Human Rights

The Global Campus of Human Rights is a unique network of more than one hundred participating universities around the world, seeking to advance human rights and democracy through regional and global cooperation for education and research. This global network is promoted through seven Regional Programmes which are based in Venice for Europe, in Sarajevo/Bologna for South East Europe, in Yerevan for the Caucasus, in Pretoria for Africa, in Bangkok for Asia-Pacific, in Buenos Aires for Latin America and the Caribbean, and in Beirut for the Arab World.

The Global Campus Awarded Theses

Every year each regional master's programmes select the best master thesis of the previous academic year that is published online as part of the GC publications. The selected seven GC master theses cover a range of different international human rights topics and challenges.

The present thesis - Prosecution of Crimes of Appropriation of Private Property before the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals written by Jasenka Ferizović and supervised by Hans-Joachim Heintze, Ruhr University Bochum - was submitted in partial fulfillment of the requirements for the European Regional Master's Programme in Democracy and Human Rights in South East Europe (ERMA), coordinated by University of Sarajevo and University of Bologna.

