IN THE APPEALS CHAMBER

Before:
Judge Antonio Cassese, Presiding
Judge Gabrielle Kirk McDonald
Judge Haopei Li
Judge Ninian Stephen
Judge Lal Chand Vohrah

Registrar:
Mrs. Dorothee de Sampayo Garrido-Nijgh

Judgement of : 7 October 1997

PROSECUTOR

v.

DRAZEN ERDEMOVIC

SEPARATE AND DISSENTING OPINION OF JUDGE LI

The Office of the Prosecutor:

Mr. Grant Niemann
Mr. Payam Akhavan

Counsel for the Appellant:

Mr. Jovan Babic

1. In this appeal of Drazen Erdemovic, (the "Appellant"), my view is different from that of some of my learned colleagues in two respects; first, whether duress, or obedience to superior order under threat of death, can be a complete defence to the massacre of innocent civilians, and second, whether this case should be remitted to the Trial Chamber. As these two questions are important from the standpoint of law, this Separate and Dissenting Opinion is written to give reasons for my view.

I. WHETHER DURESS CAN BE A COMPLETE DEFENCE TO THE MASSACRE OF INNOCENT CIVILIANS

2. With regard to this question, there is neither applicable conventional nor customary international law for its solution.

3. National laws and practices of various States on this question are also divergent, so that no general principle of law recognised by civilised nations can be deduced from them. This is shown by the fact that there are legal systems admitting duress as a general and complete defence, while other legal systems admit it as a mere mitigating circumstance. For instance, the laws and practices of France and Germany belong to the first category, and those of Poland and Norway belong to the second category.

A. France

Article 122-2 of the French Criminal Code of 1992 provides:

> No person is criminally responsible who acted under the influence of a force or compulsion which he could not resist.[1]

B.Germany

Section 35(1) of the German Penal Code of 1975 (amended as of 15 May 1987) provides:

If someone commits a wrongful act in order to avoid an imminent, otherwise unavoidable danger to life, limb, or liberty, whether to himself or to a dependant or someone closely connected with him, the actor commits the act without culpability. This is not the case if under the circumstances it can be fairly expected of the actor that he suffer the risk; this might be fairly expected of him if he caused the danger, or if he stands in a special legal relationship to the danger. In the latter case, his punishment may be mitigated in conformity with section 49(1).

C. Poland

Article 5 of the Polish Law Concerning the Punishment of War Criminals of 11 December 1946 prescribes:
The fact that an act or omission was caused by a threat, order or command does not exempt from criminal responsibility.
In such a case the court may mitigate the sentence taking into consideration the circumstances of the perpetrator and the deed.

D. Norway

Article 5 of the Norwegian Law on the Punishment of Foreign War Criminals of 15 December 1946 is couched in the following terms:
Necessity and superior order cannot be pleaded in exculpation of any crime referred in Article 1 of the present Law. The Court may, however, take the circumstances into account and may impose a sentence less than the minimum laid down for the crime in question or may impose a milder form of punishment. In particularly extenuating circumstances the punishment may be entirely remitted.

4. As no general principle of law can be found on the question, recourse is to be had to the decisions of Military Tribunals, both international and national, which apply international law. In this regard, the Judgement of the International Military Tribunal at Nürnberg of 1946 should be mentioned in

the first place. In discussing Article 8 of the Charter of the International Military Tribunal it says:

> The provision of this Article is in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognised as a defence to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether a moral choice was in fact possible.[2]

However, the moral choice test, although put forward by the International Military Tribunal, was never applied by it, and being a little vague, has been differently interpreted by various authors. Therefore, it cannot be entirely relied upon for the solution of the question. Both the decisions of the United States Military Tribunals at Nürnberg in the subsequent proceedings under Control Council Law No. 10 and those of Military Tribunals and/or Courts set up by various other allied countries for the same purpose, must also be consulted.

5. From a study of these decisions the following principles can be obtained: as a general rule, duress can be a complete defence if the following requirements are met, (a) the act was done to avoid an immediate danger both serious and irreparable, (b) there was no other adequate means to escape, and (c) the remedy was not disproportionate to evil. To this general rule there is an important exception: if the act was a heinous crime, for instance, the killing of innocent civilians or prisoners of war, duress cannot be a complete defence, but can only be a ground of mitigation of punishment if justice requires.

6. The general rule is deduced from the *Flick*[3], *I. G. Farben*[4], and *Krupp*[5] cases. In these cases, the accused were German industrialists charged, *inter alia*, with employing forced labour. They pleaded duress, alleging that they were obliged to meet the industrial production quotas laid down by the German Government and that in order to do so it was necessary to use forced labour supplied by that Government because no other labour was available, and that had they refused to do so they would have suffered dire, harmful and irresistible consequences. The Judgements of the United States Military Tribunals admitted the plea as a complete defence, because the crime of employing forced labour was not a heinous one.

7. On the other hand, the exception is illustrated by the *Hölzer*[6], *Feurstein*[7], and *Jepsen*[8] cases.

In the trial of Robert Hölzer before a Canadian Military Court at Aurich, Germany, 1946, the accused claimed that he had acted under superior order which amounted to coercion or duress. The Judge-Advocate gave the court the following advice:

> The Court may find that Hölzer fired the shot at the flyer under severe duress from Schaefer, actually at pistol point . . . . The threats contemplated as offering a defence are that of immediate death or grievous bodily harm from a person actually present, but such defence will not avail in crimes of a heinous character . . . . As to the law applicable upon the question of compulsion by threats, I should advise the Court that there can be no doubt that a man is entitled to preserve his own life and limb, and on this ground he may justify much which would otherwise be punishable. . . . There is no doubt on the authorities that compulsion is a defence when the crime is not of a heinous character. But the killing of an innocent person can never be justified.
>
> Lord Hale lays down the stern rule:

> "If a man be desperately assaulted and in peril of death and cannot otherwise escape, unless to satisfy his assailant's fury, he will kill an innocent person then present, the fear and actual force will not acquit him of the crime and punishment of murder, if he committed the fact; for he ought rather to die himself than kill an innocent man".
> Accordingly, if the court do find that Hölzer fired after having been subjected to dire threats on his own life, even then, he is not excused upon the above-mentioned fundamental principles, but it more properly goes in mitigation of his punishment.[9]
>
> So the accused was sentenced to death.

The same principle was applied in the Judgements in the *Jepsen* case by a British Military Court at Luneberg, 1946, and the *Feurstein* case by a British Military Court at Hamburg, 1948.

8. In my view, both the rule and the exception are reasonable and sound, and should be applied by this International Tribunal. However, as this appeal case is concerned with the applicability of the exception, a few more words should be said about it.

In the first place, the main aim of international humanitarian law is the protection of innocent civilians, prisoners of war and other persons *hors de combat*. As the life of an innocent human being is the *sine qua non* of his existence, so international humanitarian law must strive to ensure its protection and to deter its destruction. Admission of duress as a complete defence or justification in the massacre of innocent persons is tantamount to both encouraging the subordinate under duress to kill such persons with impunity instead of deterring him from committing such a horrendous crime, and also helping the superior in his attempt to kill them. Such an anti-human policy of law the international community can never tolerate, and this International Tribunal can never adopt.

Second, the present municipal laws of various countries regarding the propriety or necessity of recognising the exception to the rule, as shown above, are divergent. On the one hand, the legal systems of the British Commonwealth and some civil-law systems admit the exception. On the other hand, some other civil-law systems do not provide for it. In such circumstances, this International Tribunal cannot but opt for the solution best suited for the protection of innocent persons.

9. In support of the argument that duress can be a complete defence to the massacre of innocent civilians the *Einsatzgruppen*[10] case is referred to. The facts of this case are that the accused Ohlendorf and 23 other persons were commanders or subordinate officers of special SS units called *Einsatzgruppen*, who accompanied the German Army in its invasion of Soviet Russia during the Second World War and exterminated Jews, gypsies, insane people, communist functionaries and so-called "Asiatic inferiors and asocials", who were civilians or prisoners of war. These SS Units caused the death of approximately one million of such persons in the German-occupied territories of Russia. The principal charge of this case was murder to which the plea of duress was raised by the accused.

10. In its Judgement the United States Military Tribunal at Nürnberg stated the following:

> But it is stated that in military law even if the subordinate realises that the act he is called upon to perform is a crime, he may not refuse its execution without incurring serious consequences, and that this, therefore, constitutes duress. Let it be said at once that there is no law which requires that an innocent man must forfeit his life or suffer serious harm in order to avoid committing a crime which he condemns. The threat, however, must be imminent, real, and inevitable. No court will punish a man

> who, with a loaded pistol at his head, is compelled to pull a lethal lever. Nor need the peril be that imminent in order to escape punishment.[11]

However, the above statement is merely a dictum. Further, the plea of duress was rejected on the grounds that "if the mental and moral capacities of the superior and subordinate are pooled in the planning and execution of an illegal act, the subordinate may not subsequently protest that he was forced into the performance of an illegal undertaking"[12]. As a result all the accused were convicted. Ohlendorf and many others were sentenced to death by hanging, while others were sentenced to life or 10 to 20 years' imprisonment. So this case does not settle the law concerning duress in cases of heinous crimes.

11. Furthermore, it is argued that in the present case even if the Appellant had refused to execute the order under the threat of death, all the innocent Muslims would also have been exterminated by all the other members of his Unit, so that his act should be justified on this ground. The absurdity of this argument is apparent, because it would justify every one of the criminal group who participated in the joint massacre of innocent persons. Moreover, there is absolutely no authority for such a proposition.

12. From the above considerations my conclusion on this question is that duress can only be a mitigating circumstance and is not a defence to the massacre of innocent persons. This view agrees with and is in support of the Joint Separate Opinion of Judges McDonald and Vohrah.

II.WHETHER THIS CASE SHOULD BE REMITTED TO A TRIAL CHAMBER

13. I am of the opinion that the remittal of this case to the Trial Chamber is erroneous in law, because it is clear that the Appellant in pleading duress only asserts it as a ground of mitigation of punishment and not as a ground of complete defence or justification, so that the plea of guilty is unambiguous. This is sufficiently proved by the following facts.

14. During an interview with a journalist, Mr. Janukovic, shortly after his transfer to The Hague, the Appellant was asked whether he was aware that he might be held responsible for the killing of certain Muslim civilians if he were to confess this crime before the International Tribunal. He replied in the affirmative and said that he accepted full responsibility for what he had done[13]. From this statement it is clear that the Appellant had no intention of claiming duress as a ground for the justification of his crime.

15. After the Appellant pleaded guilty, the Presiding Judge of the Trial Chamber explained to him very clearly the legal consequences of his guilty plea as follows:

> If you plead not guilty, you will be entitled to a trial during which, of course, with your lawyer, you will contest the charges and allegations presented against you by the Prosecutor; but, since the accused pleaded guilty, from this point on you have given up the right to a trial to determine whether or not you are guilty.[14]

On hearing this explanation, the Appellant adhered to his plea of guilty, demonstrating once again that he intended to plead duress as a ground for mitigation of punishment.

16.In this appeal, counsel for the Appellant applied to this Chamber for the following remedies:

> (a) to pronounce the accused guilty of the crime, but remit his sentence on the grounds of extreme necessity; or
> (b) to impose a more lenient penalty than the one imposed by the Trial Chamber.

It is clear that the remedies sought show that the Appellant's plea of duress is intended as a ground of mitigation of punishment, and therefore does not render the guilty plea ambiguous.

17.Finally, in the hearing of this Appeals Chamber on 26 May 1997, counsel for the Appellant made the following statements:

> My client has asked me . . . to request from this [Appeals] Chamber not to reverse and remand this case for retrial. He thought that this Chamber should once again consider all these facts that I presented and to re-evaluate all the mitigating circumstances and our opinion is that it is possible to take this appeal into account and to reduce his sentence[15].
> If I am to accept the position of my client, which I have to, I would ask this Chamber to accept this as a mitigating circumstance and to reduce the sentence[16].
> I refer now to a minimum sentence which is imposable according to the Yugoslav Criminal Code, and that is the sentence of five years' imprisonment[17].

Nothing can be clearer than these statements. They show the Appellant's true intention which was to plead duress only as a means to the mitigation of punishment, and not as a complete defence. Had counsel adopted the strategy of treating this plea also as a ground of complete defence, then the Appeals Chamber would have been, in law, duty-bound to disregard it, as counsel himself has admitted that he had to accept the position of his client. Then, there is absolutely no reason to hold the guilty plea ambiguous and invalid, and remit the case to the Trial Chamber.

18. But it is said that an act classified as a crime against humanity will be punished more severely than when it is classified as a war crime, because a crime against humanity is said to be a crime not only against the persons who are killed, but also "against humanity as a whole". It is argued that from an interpretation of Article 5 of the Statute of this International Tribunal, the same conclusion can be drawn. As the Appellant pleaded guilty to the more serious crime, it is probable that he had not been informed of the difference between these two crimes and had thus been placed in a disadvantageous position. So it is necessary to send the case back to the Trial Chamber.

19. With respect to these arguments, I submit, in the first place, that the gravity of a criminal act, and consequently the seriousness of its punishment, are determined by the intrinsic nature of the act itself and not by its classification under one category or another. Take the present case: the Appellant killed seventy to one hundred innocent Muslim civilians. Whether his criminal act is classified under crimes against humanity or war crimes, the harm done to individuals and society is exactly the same, neither an iota more nor less. Then, why should he be punished more severely if his criminal act is subsumed under crimes against humanity and not war crimes?

20. Second, it is groundless to assert that a crime against humanity is necessarily more serious than a war crime. Let us compare the crime against humanity of the Appellant with a war crime of another person who is charged under Article 3(c) of the Statute of this International Tribunal for bombardment of an undefended town, causing the death of one million civilians. Can we say that the

crime against humanity committed by the Appellant is more serious than this war crime?

This is because all the war crimes listed in Article 3 of the Statute of this International Tribunal are not lesser offences, but are particularly grave offences against the laws of war. Indeed, Dinstein has pointed out the popular fallacy misconceiving that every violation of the laws of war is necessarily a war crime[18]. And owing to their particularly grave nature, obviously they cannot be less serious offences than crimes against humanity. Of course, crimes against humanity have the characteristics of being committed systematically or on a large scale. However, war crimes can also be committed in such a manner. For instance, prisoners of war may be killed systematically or on a large scale, as they were habitually and atrociously executed by the Nazi regime in the Second World War.

21. Third, the crime against humanity has its origin in the Charter of the International Military Tribunal of Nürnberg annexed to the London Agreement of 8 August 1945, concluded by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Ireland, and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis. As is well known, Article 6(a), (b) and (c) provides for crimes against peace, war crimes and crimes against humanity for the jurisdiction of the International Military Tribunal.

Prior to the Second World War, there were in international law only war crimes and no crimes against humanity. War crimes must be committed during war and principally against the combatants and prisoners of war of the other belligerent nation and the civilians in occupied territory. But, before and during that war, the Nazi regime and its agents, besides committing massive and monstrous traditional war crimes, also committed many horrendous atrocities against its own nationals, particularly German Jews and anti-Nazi German politicians and intelligentsia. These atrocities, according to the international law before that war, were not war crimes and therefore could not be within the jurisdiction of the International Military Tribunal at Nürnberg. However, they were so shocking to the conscience of mankind that the Allied Governments were determined to punish the offenders. This is the sole reason why the Charter, in addition to war crimes, provides for a further category of crimes against humanity and confers on the International Military Tribunal the jurisdiction over these crimes. Hence Article 6(c) of the Charter expressly provides that "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not a violation of the domestic law of the country where perpetuated"[19], constitute crimes against humanity.

Nevertheless, it must be pointed out that the Charter, in providing for crimes against humanity, does not create a crime more serious than a war crime, for the same acts of "extermination, enslavement, deportation, and other inhumane acts against any civilian population", which constitute crimes against humanity according to Article 6(c) of the Charter, if committed during war by the belligerent forces of one state against the nationals of another state, constitute war crimes. Likewise, the same "persecutions on political, racial or religious grounds", which constitute crimes against humanity according to the same provision of the Charter as above-mentioned, if committed during war against the civilian population of enemy country, also constitute war crimes. These war crimes can be found in the 1863 Lieber Code, the 1899 and 1907 Hague Conventions and the 1864 and 1929 Geneva Conventions long before the adoption of the Charter[20]. It must be emphasised that as the criminal acts pertaining to these two crimes were exactly the same in the Charter, their seriousness cannot but be exactly the same.

Therefore, the Judgement of the International Military Tribunal at Nürnberg on the one hand declared emphatically that "to initiate a war of aggression . . . is not only an international crime, it is the supreme international crime, differing only from other war crimes in that it contains within itself

the accumulated evil of the whole", while on the other hand uttered not a single word asserting that crimes against humanity were more serious in nature than war crimes, although many accused were convicted of both crimes. This shows that the International Military Tribunal at Nürnberg treated both crimes on the same level.

22. Fourth, soon after the London Charter, Article II(c) of Control Council Law No. 10, of 20 December 1945, provides that war crimes, crimes against peace and crimes against humanity can be punished by death. Once again it shows that war crimes are not less serious than crimes against humanity. Furthermore, in the practical application of this provision by the United States Military Tribunal at Nürnberg, the 24 accused condemned to death were all found guilty of war crimes as well as, in certain cases, crimes against peace, and crimes against humanity. But no accused was condemned to death for committing crimes against humanity without being found guilty of war crimes. In the *Justice Trial*[21] decided by the United States Military Tribunal, the accused Oswald Rothaug was found guilty of crimes against humanity, and despite the fact that the Military Tribunal found no mitigating circumstances, was sentenced to life imprisonment rather than death. This constitutes irrefutable proof that the Military Tribunal considered that the crimes against humanity committed by the accused were even less serious than war crimes.

23. Fifth, recently, the United States War Crimes Act of 1996[22], which provides that the offender of a grave breach of the Geneva Conventions of 1949[23] causing the death of the victim shall be subject to the penalty of death, also shows that a war crime is not less serious than a crime against humanity.

24. Sixth, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity[24], adopted by the General Assembly of the United Nations on 26 November 1968 and entering into force on 11 November 1970, does not consider crimes against humanity more serious than war crimes.

The Preamble to this Convention emphasises, *inter alia*, that "war crimes and crimes against humanity are among the gravest crimes in international law", and that "the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among people and the promotion of international peace and security."[25]

> Article 1 of this Convention provides:
>
> No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:
>
> (a) war crimes as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3(1) of 13 February 1946 and 95(1) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims.
> (b) Crimes against Humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 and confirmed by resolutions 3(1) of 13 February 1946 and 95(1) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhumane acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if

> such acts do not constitute a violation of the domestic law of the country in which they were committed.[26]

25. Seventh, that the seriousness of crimes against humanity is equal to that of war crimes is further shown by the Yugoslav Criminal Law[27]. According to the provisions of Articles 141 - 143 of the said law concerning the crime of genocide, and war crimes against the civilian population and the wounded and the sick, the penalties for these crimes are the same: from five to twenty years of imprisonment.

26. Eighth, it is not true to say that a crime against humanity is one against the whole of mankind. This has been explained very convincingly by Schwelb in the following terms:

> The word "humanity" (*l'humanité*) has at least two different meanings, the one connoting the human race or mankind as a whole, and the other, humaneness, i.e., a certain quality of behaviour. It is submitted that in the Charter, and in the other basic documents which will be discussed in this article, the word "humanity" is used in the latter sense. It is, therefore, not necessary, for a certain act, in order to come within the notion of crimes against humanity, to affect mankind as a whole. A crime against humanity is an offence against certain general principles of law which, in certain circumstances, become the concern of the international community, namely, if it has repercussions reaching across international frontiers, or if it passes in magnitude or savagery any limits of what is tolerable by modern civilisations[28].

27. From what is said above my final conclusion on this question is: the Appellant's plea of guilty is unambiguous and valid, because his plea of duress from the inception up to the present has been consistently intended to ask for mere mitigation of punishment. As the mitigating circumstances have been ascertained by the Trial Chamber in the Sentencing Judgement[29], the Appeals Chamber should grant the request of the Appellant and re-evaluate his case in order to reach a decision as to whether the sentencing of the Appellant by the Trial Chamber was fair and just. Consequently, the decision to remit the case to the Trial Chamber is erroneous in that it serves no useful purpose and only prolongs the proceedings. It must be pointed out that the retardation of the procedure is contrary to the requirement of trial without undue delay prescribed in Article 21, paragraph 4(c), of the Statute of this International Tribunal for the protection of the rights of the accused.

The futility of remittal to a Trial Chamber will be as plain as a pikestaff if we think of the result of the retrial even if the Appellant changes his plea of guilty into that of not guilty. As the Trial Chamber must follow the majority determination of the Appeals Chamber that duress can be merely a mitigating circumstance in the case of massacre of innocent civilians, what other result can be expected from the remittal and trial?

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Haopei Li
Judge

Dated this seventh day of October 1997
At The Hague
The Netherlands

[Seal of the Tribunal]

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1. *N'est pas pénalement responsable la personne qui a agi sous l'empire d'une force ou d'une contraint laquelle elle n'a pu résister.*
2. Trial of the German Major War Criminals (Proceedings of the International Military Tribunal, Sitting at Nuremberg, Germany 1947), (H.M. Stationery Office, London, 1950) Part 22, at p. 447.
3. *Trial of Friedrich Flick and Five Others*, Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10 (U.S. Govt Printing Office, Washington D.C., 1950) (*"Trials of War Criminals"*) vol. VI, pp. 1200 - 02.
4. *United States v. Carl Krauch, ibid.*, vol. VIII, pp. 1176 - 79.
5. *United States v. Alfried Krupp, ibid.*, vol. IX, pp. 1435 - 48.
6. *Record of Proceedings of the Trial by Canadian Military Court of Robert Hölzer and Walter Weigel and Wilhelm Ossenbach held at Aurich, Germany*, (25 Mar. - 6 Apr. 1946), vol. 1, p. 1.
7. *Trial of Valentin Feurstein and Others, Proceedings of a Military Court held at Hamburg* (4 - 24 Aug. 1948), Public Record Office, Kew, Richmond, file n. 235/525; Law Reports of Trials of War Criminals, U. N. War Crimes Commission, (H.M. Stationery Office, London, 1949), (*"Law Reports"*), vol. XV, p. 173.
8. *Trial of Gustav Alfred Jepsen and Others, Proceedings of a War Crimes Trial held at Luneburg* (13 - 23 Aug. 1946), judgement of 24 Aug. 1946, (Public Record Office, Kew, Richmond); *Law Reports*, vol. XV, p. 172.
9. *Hölzer, supra n. 6*, pp. 345 - 46.
10. *Trial of Otto Ohlendorf et al.*, ("*Einsatzgruppen* case"), *Trials of War Criminals*, vol. IV, p. 3.
11. *Ibid.*, p. 480.
12. *Ibid*.
13. Prosecutor's Brief on Aggravating and Mitigating Factors, *The Prosecutor v. Drazen Erdemovic*, Case No. IT-96-22-T, 11 Nov. 1996, p. 36, n. 24.
14. Transcript, *The Prosecutor v. Drazen Erdemovic*, Case No. IT-96-22-T, 31 May 1996, pp. 6 - 7.
15. *Ibid.*, 26 May 1997, p. 125.
16. *Ibid.*, p. 128.
17. *Ibid.*, p. 124.
18. Yoram Dinstein, *International Criminal Law*, 20 Israeli Law Review (1985) p. 206, n. 9.
19. Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis (London Agreement), London, 8 Aug. 1945, 85 U.N.T.S. 251.
20. *See* M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law* (Martinus Nijhoff, Dordrecht, 1992), p. 7 at 178.
21. *Trial of Joseph Alst"tter and Others, Trials of War Criminals*, vol. III, pp. 1143 - 56.
22. Codified as 18 U.S.C. para. 2401.
23. Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 Aug. 1949, 75 U.N.T.S. 970; Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 Aug. 1949, 75 U.N.T.S. 971; Convention relative to the Treatment of Prisoners of War, 12 Aug. 1949, 75 U.N.T.S. 972; Convention relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949, 75 U.N.T.S. 973.
24. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 26 Nov. 1968, 8 International Legal Materials (1969), p. 68.
25. *Ibid*.
26. *Ibid*.
27. Federal Republic of Yugoslavia (Serbia and Montenegro) 1993.
28. Egon Schwelb, *Crimes against Humanity*, 23 British Yearbook Of International Law (1946), p. 195.
29. Sentencing Judgement, *The Prosecutor v. Drazen Erdemovic*, Case No. IT-96-22-T, T.Ch. I, 29 Nov. 1996. Done in English and French, the English text being authoritative.