

## Handout 6: cases for trial

### Prosecutor vs. Dražen Erdemović

#### *Background of the conflict*

Bosnia and Herzegovina declared its independence from the Federal Republic of Yugoslavia in 1992. This was opposed by the country's Serbs whose share in the population was around 40% and who had an autonomous Serb republic (*Republika Srpska*) within the newly independent state. Seeking to achieve an all-Serb population on its territory, the Serb army (VRS) began expelling and killing the non-Serb population. In three years, several hundred Bosniak villages were destroyed, more than 10,000 killed and almost 100,000 displaced. Bosniaks, most of whom were Muslim, sought refuge from the Serb army in the city of Srebrenica.

Although the UN had declared a safe area in Srebrenica and sent 400 peacekeepers to protect the civilian population there, VRS invaded the city in July 1995. In a thoroughly planned operation, Bosniak men were separated from the women and children and taken to various nearby villages where mass executions were carried out in the following days.

#### *Dražen Erdemović*

Dražen Erdemović was a Bosnian Croat. He attempted to leave Bosnia and Herzegovina in 1993 to escape the war, but could not get across the border. Having heard of the dangers of not being in the army and desperately short of money, **Erdemović** decided to join the VRS in order to protect himself and his pregnant wife. He selected the 10th Sabotage Detachment as its duty was reconnaissance, not combat operations.

In reality, however, the unit did more than reconnaissance. One day in 1994, **Erdemović was ordered to attack civilians working in a field.** After he had refused, he was degraded to the rank of private.

On 16. July 1995, his unit was taken to a farm near Srebrenica. He saw Bosniak men being unloaded from around 20 buses, each carrying about 60 persons. The men were lined up and Erdemović, together with seven more soldiers, was told to shoot at them. Erdemović told his commander that he did not wish to participate in such an act. The reply was: "If you do not wish to, you can just go and stand in the line together with them. You can give us your rifle." Hence, he fulfilled the initial order and killed around 70 Bosniak men.

Later the same day, his regiment was taken a school in Pilica, where they were ordered to shoot 500 more muslim men. Erdemovic refused to shoot them. He nevertheless heard the shootings from a nearby café. After this incident, Erdemovic went home and started drinking and was shot in bar by a former member of his military detachment. He underwent surgery and survived.

### *Indictment*

Dražen Erdemović shot and killed unarmed Bosnian civilians on 16. July 1995. The accused is charged with having committed **murder as a crime against humanity** pursuant to article 7(1)(a) of the Rome Statute.

### Rome Statute

Stage one: **Did the accused commit a crime against humanity** (*Have the objective criteria been met?*)

*Article 25 of the Rome Statute. Individual criminal responsibility*

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

Stage two: **did he do it intentionally and knowingly?**

(*Have the subjective criteria been met? Has there been duress which would exclude responsibility?*)

*Article 30 of the Rome Statute. Mental element*

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
  - (a) In relation to conduct, that person means to engage in the conduct;
  - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

### *Task for case Erdemovic*

You have to apply the provisions of Rome Statute (see below) to the acts of accused Dražen Erdemović. Try to follow the previously acquired model: 1) interpret the provisions ("what do the words mean") 2) find the relevant circumstances from the case 3) explain how the circumstances of the case match the provisions.

#### **The role of prosecutors**

Your role is to explain why Erdemović should be convicted. To do that, you should prove the following three points:

1. Erdemović committed a crime against humanity;
2. Erdemović did that intentionally and knowingly;
3. the provisions of Article 31 do not apply (i.e. he cannot be released from responsibility).

#### **The role of defence counsels**

Your role is to explain why Erdemović should be acquitted.

To do that, you should prove **at least one**<sup>4</sup> of the following three points:

1. He did not commit a crime against humanity.
2. He did not do it intentionally and knowingly.
3. Even if he did commit a crime against humanity and did it intentionally and knowingly, he should nevertheless be acquitted in accordance with Article 31(1)(d).

## **The Prosecutor vs. Georges Ruggiu**

### *Background of the conflict*

The small Republic of Rwanda (about twice smaller than Estonia by territory) is located in Central Africa. The country was ruled by a monarchy during the 15th-20th century. The ruling elite were called Tutsis and the poorer, mostly farmer population were known as Hutus. It has also been claimed that Tutsis and Hutus are of different geographical origin and somewhat different physical traits.

Oppressed Hutus began an uprising against the Tutsi monarchy in 1959. Hutus took power in the country and opposition parties were gradually removed from political competition. Many Tutsis fled the country during the revolution and the following years.

In 1990, the Rwanda Patriotic Front (RPF) of Tutsi exiles attacked Rwanda. A three-year civil war ended by an accord between RPF and MRND (Rwanda's military government) which created a multi-party system open for both Hutus and Tutsis.

MRND members were not satisfied with the outcome and started planning the extermination of Tutsi population. Weapons were distributed to Tutsi civilians and „enemy“ lists were prepared of persons to be executed, including Tutsis, Hutus who were opposed the military regime and the foreign spouses of Tutsi women. An anti-Tutsi media campaign was designed by MRND to fuel hostility against Tutsis. Its main instrument was the RTLM radio channel which urged people to exterminate „the enemy“ and broadcast the locations of Tutsi sanctuaries.

Around 800,000 to 1,000,000 Tutsis and liberal Hutus were murdered during the period of April-July 1994.

### *Georges Ruggiu*

A Belgian citizen of Italian origin, Georges Ruggiu decided to move to Rwanda in 1994, after having visited the country several times in the early 1990s and having made social contacts there – also among the Hutu leaders of Rwanda at that time. He worked as a journalist and broadcaster at RTLM radio station during January-July 1994. In his broadcasts during this period, Ruggiu made several references to the necessity to finish off the 1959 Revolution and in June 1994 directed militias to Gitwe Hill in Mutara Commune, where the Tutsi were apparently not yet eliminated. Two days after the broadcast, the interahamwe killed members of some 70 families in that location. Georges Ruggiu's broadcasts were made in French, but he also used some terms in Kinyarwanda, which had a specific meaning in the Rwandan context at that time. Among others, Ruggiu used the word Inyenzi („cockroaches“ – a pejorative term for Tutsis) and told his listeners to “cut the tall trees” which many people understood as a referral to the Tutsi who were generally considered to be taller. Ruggiu did not, however, speak Kinyarwanda.

Ruggiu's friends in Rwanda, who were all Hutus, told him about the situation in Rwanda. During his stay in Rwanda, he was always in the company of Hutus who showed him around. He was even taken to places where killings were happening but many of his friends described it as political violence rather than ethnic. Once, when left alone in the street for a short while, he rescued a lone Tutsi child.

### *Indictment*

The accused Georges Ruggiu is charged with direct and public incitement to kill and cause serious bodily and mental harm to members of the Tutsi population, and thereby with direct and public incitement to commit genocide, punishable under Article 6 (a) and (b) and 25(3)(e) Rome Statute.

### *Rome Statute*

**Phase one: Did the accused commit a crime against humanity**  
(Have the objective criteria been met)?

#### *Article 25 of the Rome Statute. Individual criminal responsibility*

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

#### *Article 6 of the Rome Statute. Genocide*

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

### **Stage two: Did he do it intentionally and knowingly?**

(Have the subjective criteria been met? Has there been duress which would exclude responsibility?)

#### *Article 30 of the Rome Statute. Mental element*

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

### *Task for case Ruggiu*

#### **The role of prosecutors**

Your role is to explain why Ruggiu should be convicted. To do that, you should prove **both** of the following points:

1. He incited others to genocide (i.e. all the criteria in Articles 6 and 25 have been met).
2. He did this intentionally and knowingly (i.e. all the criteria in Article 30 have been met).

#### **The role of defence counsels**

Your role is to explain why Ruggiu should be acquitted. To do that, you should prove **at least one**<sup>5</sup> of the following two points:

1. The objective element (i.e. all the criteria in Articles 6 and 25) is not present.
2. The subjective element (i.e. all the criteria in Article 30) is not present.

It is reasonable to try to prove more than one point in order to increase the chance of success if one of the arguments fails.

#### **Application aid:** Rome Statute

**Phase one: Did the accused commit a crime against humanity**  
(Have the objective criteria been met?)

##### *Article 25 of the Rome Statute. Individual criminal responsibility*

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

##### *Article 6 of the Rome Statute. Genocide*

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

#### **Phase two: did he do it intentionally and knowingly?**

(Have the subjective criteria been met? Has there been duress which would exclude responsibility?)

*Article 30 of the Rome Statute. Mental element*

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
  - (a) In relation to conduct, that person means to engage in the conduct;
  - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.