

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/13

Date: 22 June 2015

TRIAL CHAMBER VII

Before: Judge Chile Eboe-Osuji, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF

***THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO, AIME KILOLO
MUSAMBA, JEAN-JACQUES MANGENDA KABONGO, FIDELE BABALA WANDU
AND NARCISSE ARIDO***

**Confidential Document
with
Confidential Annex A**

**Consolidated Prosecution Response to the Defence Submissions on the Legal
Elements of the Charged Offences and Modes of Liability**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the**Court to:****The Office of the Prosecutor**

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I. Introduction

1. The Office of the Prosecutor ("Prosecution") requests Trial Chamber VII ("Chamber") to disregard the Defence submissions on the legal elements of the charged offences against the administration of justice and modes of liability.¹ The submissions are unsubstantiated, misleading and, in many instances, inconsistent with the proper interpretation of the Rome Statute ("Statute").

II. Confidentiality

2. This filing is classified as "Confidential", as it responds to filings of the same designation.² The Prosecution has no objection to its reclassification as "Public".

III. Submissions

A. The Defence submissions contradict basic rules of treaty interpretation

3. The Statute must be construed in accordance with existing customary international law, as codified in articles 31 through 33 of the 1969 Vienna Convention on the Law of Treaties.³ *First*, the terms of article 70 in each authentic language⁴ must

¹ ICC-01/05-01/13-973; ICC-01/05-01/13-974-Conf; ICC-01/05-01/13-977; ICC-01/05-01/13-978; ICC-01/05-01/13-979-Conf.

² ICC-01/05-01/13-974-Conf; ICC-01/05-01/13-979-Conf.

³ See, ICC-01/04-01/06-1486, para.40; ICC-01/04-01/07-776, para.82; ICC-02/05-01/09-3, para.44; ICC-01/05-01/08-424, para.361; ICC-01/09-01/11-373, para.289; ICC-01/04-01/06-2842, paras.601, 602, 979; ICC-01/11-01/11-420, para.12, fn.14; ICC-02/05-01/09-192, para.8; ICC-01/04-01/07-3436, paras.43-49; see also, "Arbitral Award of 31 July 1989" (*Guinea-Bissau v. Senegal*), Judgment, 12 November 1991, I.C.J. Reports 1991, p.53, para.48; "Territorial Dispute" (*Libyan Arab Jamahiriya v. Chad*), Judgment, 3 February 1994, I.C.J. Reports 1994, p.6, para.41 ("Territorial Dispute Judgment"); "Kasikili/Sedudu Island" (*Botswana v. Namibia*), Judgment, 13 December 1999, I.C.J. Reports 1999, p.1045, para.48; "LaGrand" (*Germany v. United States of America*), Judgment, 27 June 2001, I.C.J. Reports 2001, p.466, paras.99, 101 ("LaGrand Judgment"); "Avena and Other Mexican Nationals" (*Mexico v. United States of America*), Judgment, 31 March 2004, I.C.J. Reports 2004, p.12, para.83; "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, p.136, para.94; "Application of the Convention on the Prevention and Punishment of the Crime of Genocide" (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, 26 February 2007, I.C.J. Reports 2007, p.43, para.160; "Dispute Regarding Navigational and Related Rights" (*Costa Rica v. Nicaragua*), Judgment, 13 July 2009, I.C.J. Reports 2009, p.213, para.47 ("Navigational Rights Judgment"); "Pulp Mills on the River Uruguay" (*Argentina v. Uruguay*), Judgment, 20 April 2010, I.C.J. Reports 2010, p.14, para.65; "Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area", Advisory Opinion, 1 February 2011, I.T.L.O.S. Reports 2011, para.57; ECJ, *Axel Walz v. Clickair SA*, Appl. no. C-63/09, "Judgment", 6 May 2010, para.23.

be understood in accordance with their ordinary meaning,⁵ *i.e.* a meaning that is “regular, normal or customary”⁶ in the applicable context.⁷ They must be construed in light of the statutory framework as a whole,⁸ and not contrary to it, as the Bemba Defence argues.⁹

4. *Second*, the Bemba Defence’s extensive reliance on the Statute’s preparatory work¹⁰ disregards that it cannot supersede the plain meaning of the final text presumed to be the unique authentic expression of the drafters’ intentions.¹¹

5. *Third*, recourse to national legislation underlying the Babala Defence submission¹² is not an autonomous means¹³ of treaty interpretation.

6. *Fourth*, the interpretation of a treaty must advance its object and purpose.¹⁴ The Statute’s preamble guarantees lasting respect for and the enforcement of

⁴ Dörr, O., “Article 31. General rule of interpretation”, in Dörr and Schmalenbach (eds.), *Vienna Convention on the Law of Treaties: A Commentary* (Springer-Verlag Berlin Heidelberg, 2012), p.543; *see also*, article 33 of the Vienna Convention on the Law of Treaties, 1155 UNTS 331 (1969) (“VCLT”).

⁵ Article 31(1) of the VCLT; *see*, Territorial Dispute Judgment, para.41; “Legality of the Use of Force” (*Serbia and Montenegro v Belgium*), Preliminary Objections, Judgment, 15 December 2004, I.C.J. Reports 2004, p.279, para.100; *see also*, McNair, A., *The Law of Treaties* (Oxford: Clarendon Press, 1961), p.365.

⁶ Gardiner, R., *Treaty Interpretation* (Oxford University Press: Oxford, 2008), p.164.

⁷ “Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture”, Advisory Opinion, 12 August 1922, P.C.I.J. Series B no.2, p.23; “Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization”, Advisory Opinion, 8 June 1960, I.C.J. Reports 1960, p.150, p.158 (“Maritime Safety Committee Opinion”); “Competence of the General Assembly for the Admission of a State to the United Nations”, Advisory Opinion, 3 March 1950, I.C.J. Reports 1950, p.8: “[T]he first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter”.

⁸ Dörr, fn.4 above, p.544; “Land, Island and Maritime Frontier Dispute” (*El Salvador v. Honduras, Nicaragua intervening*), Judgment, 11 September 1992, I.C.J. Reports 1992, p.351, para.374 (“Land, Island Judgment”); Navigational Rights Judgment, paras.77–79, 84.

⁹ ICC-01/05-01/13-977, para.15.

¹⁰ ICC-01/05-01/13-977, paras.17-25.

¹¹ Article 32 of the VCLT; “Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)”, Advisory Opinion, 28 May 1948, I.C.J. Reports 1948, p.63; Aust, A., *Modern Treaty Law and Practice* (Cambridge University Press, 2007), p.244; Le Bouthillier, Y., “Article 32”, in Corten and Klein (eds.), *Les conventions de Vienne sur le droit des traités: commentaire article par article* (Bruylant: Brussels, 2006), para.7; Dörr, fn.4 above, pp.581-582; Gardiner, fn.6 above, p.307; Draft Articles on the Law of Treaties with Commentaries, ILC Report 18th Session, *Yearbook of the International Law Commission*, Vol. II (1966), p. 220, para.11; pp.222-223, paras.18-19.

¹² ICC-01/05-01/13-973, paras.18-20.

¹³ Recourse to national legislation may be considered to help determine, for example, the subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation, *see*, article 31(3)(b) of the VCLT.

international justice regarding the most serious crimes of concern to the international community.¹⁵ This necessarily entails preventing the obstruction, frustration, prejudice to or abuse of the Court's ability to adjudicate core crimes, and preserving the integrity and dignity of the judicial process.¹⁶ Any interpretation of article 70 tending to undermine this purpose is inconsistent with the Statute and contravenes the principles of treaty interpretation laid down in international law.

7. In addition, article 22 mandates that all offences be construed in accordance with the *nullum crimen sine lege* principle. This does not require that an accused knows the specific legal definition of each element of a crime they commit.¹⁷ In turn, article 22(2) requires construing only genuine ambiguities¹⁸ in favour of the accused.¹⁹

8. Finally, article 21's normative hierarchy should not be conflated with the rules of treaty interpretation, as done by the Arido Defence.²⁰ Although the Chamber may apply, where appropriate, sources of law under articles 21(1)(b) and (c) on a

¹⁴ Maritime Safety Committee Opinion, paras.160–161, 166.

¹⁵ The preamble of the Statute; on the relevance of a treaty's preamble to establish its object and purpose, see, "Asylum" (*Colombia v. Peru*), Judgment, 20 November 1950, I.C.J. Reports 1950, p.282; "Rights of Nationals of the United States of America in Morocco" (*France v. United States of America*), Judgment, 27 August 1952, I.C.J. Reports 1952, p.196; "Sovereignty over Pulau Ligitan and Pulau Sipadan" (*Indonesia v. Malaysia*), Judgment, 17 December 2002, I.C.J. Reports 2002, p.625, para.51; ECHR, *Golder v. The United Kingdom*, Appl. no. 4451/70, "Judgment", 21 February 1975, para.34; "United States – Import Prohibition of Certain Shrimp and Shrimp Products", WT/DS58/AB/R, Report of the Appellate Body, 12 October 1998, para.129; "Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products", WT/DS207/AB/R, Report of the Appellate Body, 23 September 2002, paras.196–197.

¹⁶ See, e.g., *Prosecutor v. Tadić*, IT-94-1-A-R77, Judgement on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000, para.16; *Prosecutor v. Simić et al.*, IT-95-9-R77, Judgment in the Matter of Contempt Allegations against an Accused and his Counsel, 30 June 2000, para.91; *Prosecutor v. Jokić*, IT-05-88-R77, Judgement on Allegations of Contempt, 27 March 2009, para.38; *Prosecutor v. Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, 27 May 2005, paras.13-14 (*Beqaj* Judgment); *Prosecutor v. GAA*, ICTR-07-90-R77-I, Judgement and Sentence, 4 December 2007, para.10; *Prosecutor v. Nshogoza*, ICTR-07-91-T, Judgment, 7 July 2009, para.218; *Independent Counsel v. Samura*, SCSL-2005-01, Judgement in Contempt Proceedings, 26 October 2005, para.15.

¹⁷ See, e.g., *Beqaj* Judgment, para.14; *Prosecutor v. Kordić and Cerkez*, IT-95-14/2-A, Judgment, 17 December 2004, para.311.

¹⁸ Identified as a result of the regular interpretative exercise, see, paras.3-5 above.

¹⁹ See, Broomhall, B., "Nullum crimen sine lege", in Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* (Nomos Verlag: Baden-Baden, 2008), p.726.

²⁰ ICC-01/05-01/13-978, para.5.

subsidiary basis, these do not “define” the Statute’s provisions, unless otherwise provided.²¹

B. The legal elements of the charged offences are clear

a) Mens rea

9. Under the statutory framework, unless otherwise provided, the definition of intent set out in article 30(2) applies.²² None of the Defence teams has established that article 70 offences require a specific intent to interfere with the administration of justice. Unsubstantiated allegations to this effect,²³ as well as resort to different tribunals’ determinations regarding differently worded provisions,²⁴ are not dispositive. Thus, offences against the administration of justice require only general intent and knowledge.

b) Giving false testimony when under an obligation to tell the truth

10. The Mangenda and Arido Defences erroneously argue that article 70(1)(a) requires that the false testimony adduced be material. This contention is based entirely on the unsubstantiated superimposing of the elements of perjury under rule 91 of the *ad hoc* tribunals’ procedural rules, established in an ICTR decision.²⁵ However, the Statute’s reference to “false testimony” clearly does not imply any such materiality requirement.²⁶

²¹ See, e.g., articles 8(2)(a) and 8(2)(c) of the Statute referring to the Geneva Conventions of 12 August 1949; article 8bis referring to the United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974.

²² See, e.g., Piragoff, D., Robinson, D., “Mental element”, in Triffterer, fn.21 above, p.856.

²³ ICC-01/05-01/13-979-Conf, para.14.

²⁴ See, ICC-01/05-01/13-974-Conf, paras.6, 9, 21; ICC-01/05-01/13-978, paras.19, 20, 39. On the difference between article 70 of the Statute and rule 77 of the *ad hoc* tribunals’ Rules of Procedure and Evidence offences, see, ICC-01/05-01/13-646-Conf, paras.23-24.

²⁵ *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Decision on the Defence Motions to Direct the Prosecutor to Investigate the Matter of False Testimony by Witness “R”, 9 March 1998. See, ICC-01/05-01/13-974-Conf, paras.6, 9; ICC-01/05-01/13-978, para.18.

²⁶ “False – untrue <a false statement>; deceitful lying <a false witness>; not genuine, inauthentic”; “False testimony – testimony that is untrue. This term is broader than perjury, which has a state-of-mind element”, Garner, B. (ed.), *Black’s Law Dictionary – Eighth Edition* (West Publishing Company, 2004), pp.635, 1515. See also, ICC-01/05-01/13-749, para.28.

11. In their challenges to the Pre-Trial Chamber's finding²⁷ that a statement withholding true information is false, the Mangenda and Arido Defences conflate the act of giving testimony and its untruthfulness.²⁸ Specifically, a witness' testimony is false when they deliberately omit a true fact in giving evidence.

c) *Presenting evidence that the party knows is false or forged*

12. The Arido Defence does not show why the term "evidence" under article 70(1)(b) should be limited to non-testimonial evidence.²⁹ The Mangenda Defence's assertion that the Prosecution's definition of "presenting" evidence excludes testimonial evidence³⁰ either misunderstands or flatly misrepresents the Prosecution's confirmation submission. The text makes clear that the definition proposed is without prejudice to other possible meanings: "In the context of legal proceedings, its plain meaning comprises, *inter alia*, 'to exhibit, to view or notice; to display'".³¹

13. The fundamental rules of treaty construction solidly underpin the Prosecution's interpretation of the statutory provisions at issue. The Mangenda Defence's contention that the Prosecution has engaged in an "interpretative revision of the Statute's express language"³² is unfounded, and betrays a lack of understanding of the applicable principles. In particular, (i) the comparison of the disputed term's use elsewhere in the treaty – in this case the entire statutory framework – is a recognised means of establishing its meaning;³³ (ii) this exercise may yield a certain necessary

²⁷ ICC-01/05-01/13-749, para.28.

²⁸ ICC-01/05-01/13-974-Conf, para.8; ICC-01/05-01/13-978, paras.14-16.

²⁹ ICC-01/05-01/13-978, para.23. Pre-Trial Chamber II determined that "[a]s for the offence of 'presenting evidence that the party knows is false or forged', under article 70(1)(b) of the Statute, [...] the reference to 'evidence' in this provision has to be construed so as to include all types of evidence, namely documents, material and tangible objects, as well as oral evidence", see, ICC-01/05-01/13-749, para.29.

³⁰ ICC-01/05-01/13-974-Conf, para.11.

³¹ ICC-01/05-01/13-597-Conf-AnxB, para.271 (emphasis added).

³² ICC-01/05-01/13-974-Conf, para.10.

³³ Land, Island Judgment, para.374.

reading of the term.³⁴ The Statute and Rules refer to the verbs “to present”, “to rely” and “to use” with respect to evidence interchangeably.³⁵

14. The term “party” is used inconsistently in the six authentic statutory texts.³⁶ Thus, the meaning that best reconciles the instances of its use and non-use in light of the Statute’s object and purpose is determinative.³⁷

15. There is no legal or logical basis for limiting the scope of possible violators of article 70(1)(b) to the Prosecution and Defence,³⁸ including the accused, who is undeniably a “party” to the proceedings.³⁹ Such a construction cripples the Court’s ability to protect its basic mandate by, *inter alia*, immunising the perpetration of article 70(1)(b) offences by a “non-party” through another person. It further frustrates the preamble’s commitment to guarantee lasting respect for and the enforcement of international justice, and disregards the broader context of the Statute, including article 25.

d) *Corruptly influencing a witness*

16. The violation of article 70(1)(c) does not require the actual corruption of a witness.⁴⁰ Contrary to the Arido,⁴¹ Mangenda⁴² and Kilolo Defences,⁴³ the *ad hoc* tribunals’ case-law supports this position. For example, ICTY Trial Chambers in

³⁴ See, Navigational Rights Judgment, paras.77–79, 84.

³⁵ See, for example, ICC-01/05-01/13-597-Conf-AnxB, para.271.

³⁶ Only English and Arabic texts out of six equally authentic versions of article 70(1)(b) use the term “party”: “Presenting evidence that the party knows is false or forged” (English); “تقديم أدلة يعرف الطرف أنها زائفة أو مزورة” (Arabic). The other four versions do not contain such limitation: “Production d’éléments de preuve faux ou falsifiés en connaissance de cause” (French); “Presentar pruebas a sabiendas de que son falsas o han sido falsificadas” (Spanish); “Представление заведомо ложных или сфальсифицированных доказательств” (Russian); “提出自己明知是不实的或伪造的证据” (Chinese).

³⁷ Article 33(4) of the VCLT; see, e.g., LaGrand Judgment, paras.101-102.

³⁸ Argument underscored by Judge Eboe-Osuji omitting the qualifier “party” when describing the conduct proscribed under article 70(1)(b), see: ICC-01/05-01/13-992-Anx-Corr, para.111 (“clause (b) concerns the offence of knowingly presenting false or forged evidence”).

³⁹ See, *contra*, ICC-01/05-01/13-977, para.37.

⁴⁰ See, ICC-01/05-01/13-749, para.30.

⁴¹ ICC-01/05-01/13-978, para.36.

⁴² ICC-01/05-01/13-974-Conf, para.13.

⁴³ ICC-01/05-01/13-979-Conf, para.22.

Brdjanin, Haraqija, Beqaj and Margetić did not require proof that witness interference produced a result.⁴⁴

17. The offence is conduct-based. Thus, the proscribed act need not be objectively or otherwise capable of influencing the witness by virtue of the perpetrator's position⁴⁵ or by its nature.⁴⁶

C. The applicability of article 25 and its elements are settled

a) *Applicability of article 25 to the article 70 offences*

18. In repeatedly challenging the applicability of article 25 to the article 70 offences, the Defence⁴⁷ persist in ignoring the straightforward wording of rule 163 of the Rules, Pre-Trial Chamber II's unambiguous legal findings,⁴⁸ and this Chamber's assimilation of the article 70 offences with the "crime[s] within the jurisdiction of the Court".⁴⁹ In light of this concurrency of the legal and judicial pronouncements, it seems gratuitous to engage into further debate on the issue.

⁴⁴ *Prosecutor v. Haraqija*, IT-04-84-R77.4, Judgment on Allegations of Contempt, 17 December 2008, para.18: "[F]or the purposes of establishing the responsibility of the accused, it is immaterial whether the witness actually felt threatened or intimidated, or was deterred or influenced"; *Beqaj* Judgment, para.21: "There is nothing to indicate that proof is required that the conduct intended to influence the nature of the witness's evidence produced a result"; *Prosecutor v. Margetić*, IT-95-14-R77.6, Judgment on Allegations of Contempt, 7 February 2007, para.64: "Proof is not required that this conduct *actually* produced such a result" (italics in the original); *Prosecutor v. Brdjanin*, IT-99-36-R77, Decision on Motion for Acquittal Pursuant to Rule 98bis, 19 March 2004, para.28: "As in the case of intimidation of a witness as a form of contempt of court, it is not necessary for the Prosecution to prove that the witness was actually deterred or influenced".

⁴⁵ See, *contra*, ICC-01/05-01/13-978, paras.34, 40.

⁴⁶ See, ICC-01/05-01/13-749, para.30; see, *contra*, ICC-01/05-01/13-978, para.37; ICC-01/05-01/13-974-Conf, para.14; ICC-01/05-01/13-979-Conf, para.22.

⁴⁷ See, for the Mangenda Defence, ICC-01/05-01/13-974-Conf, paras.17-21; for the Arido Defence, ICC-01/05-01/13-598-Conf, paras.327-335; for the Kilolo Defence, ICC-01/05-01/13-600-Conf-Corr2, paras.158-163; for all Defence teams, ICC-01/05-01/13-926, paras.15-16.

⁴⁸ ICC-01/05-01/13-749, para.32.

⁴⁹ ICC-01/05-01/13-955, para.35.

b) *Aiding, abetting or otherwise assisting*

19. An aider and abettor's conduct need not have a substantial effect on the commission or attempted commission of the crime.⁵⁰ *First*, this requirement does not transpire from the plain language of article 25(3)(c), which is clear and does not beg recourse to any supplementary means of interpretation. *Second*, according to the drafters, article 25(3)(c) is not a statement of customary international law.⁵¹ Thus, even if the "substantial effect" standard were accepted as an international custom, it is not reflected in the Statute's provision on aiding and abetting.

20. Contrary to the Babala and Arido Defences contentions,⁵² the term "for the purpose of facilitating the commission" of a crime within the Court's jurisdiction, contemplates a *mens rea* relating to the act of facilitation, not to the commission of the underlying crime. The accused must know that in the ordinary course of events a crime will be committed by the perpetrator, and that his or her conduct will facilitate the crime. Similar to article 30(1), which predicates a person's liability on the intentional commission of a crime – including core crimes – article 70(1) requires that offences against the administration of justice be carried out with intent. The term "committed intentionally" is not an exceptional mode of liability standard, as argued by the Bemba and Mangenda Defences.⁵³ Instead, it is merely a common mental element applicable to all of the punishable acts, and is thus placed at the *chapeau* as a drafting device, to avoid repetition. Articles 8(2)(b)(xxiv) or 8(2)(b)(xxv) are illustrative.⁵⁴

⁵⁰ See, ICC-01/05-01/13-749, para.35; see, *contra*, ICC-01/05-01/13-973, para.25; ICC-01/05-01/13-978, para.47.

⁵¹ Scheffer, D., Kaeb, C., "The Five Levels of CSR Compliance: The Resiliency of Corporate Liability under the Alien Tort Statute and the Case for a Counterattack Strategy in Compliance Theory", *Berkeley Journal of International Law*, Vol.29, Issue 1 (2011), p.352: "[I]f anyone had claimed that the negotiators were writing customary international law on aiding and abetting liability in Article 25(3)(c), they would have been laughed out of the room".

⁵² ICC-01/05-01/13-973, para.24; ICC-01/05-01/13-978, paras.48, 51-53.

⁵³ ICC-01/05-01/13-977, para.38; ICC-01/05-01/13-974-Conf, paras.19-21.

⁵⁴ "Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law"; "intentionally using

21. Further, contrary to the Arido Defence's arguments,⁵⁵ the element "for the purpose of facilitating" under article 25(3)(c) is not equivalent to the highly controversial, inconsistently applied and recently repudiated by the ICTY Appeals Chamber "specific direction" requirement.⁵⁶ The notion applies to the *actus reus* of the mode of liability, whereas the term "for the purpose" as used in article 25(3)(c) relates to the *mens rea*.⁵⁷

IV. Relief Requested

22. For the foregoing reasons, the Prosecution requests the Chamber to disregard the Defence submissions on the legal elements of the charged article 70 offences and modes of liability.



Fatou Bensouda, Prosecutor

Dated this 22nd Day of June 2015
At The Hague, The Netherlands

starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions" (*italics added*).

⁵⁵ ICC-01/05-01/13-978, para.48.

⁵⁶ See, *Prosecutor v. Sainović et al.*, IT-05-87-A, Judgment, 23 January 2014, paras.1621, 1623, 1624-1626 and esp. para.1649; Ventura, M., "Farewell 'Specific Direction': Aiding and Abetting War Crimes and Crimes Against Humanity in Perišić, Taylor, Šainović et al., and US Alien Tort Statute Jurisprudence", in Casey-Maslen (ed.), *The War Report: Armed Conflict in 2013* (Oxford University Press: Oxford, 2014), pp.511-553.

⁵⁷ See, for example, *Prosecutor v. Tadić*, IT-94-1-A, Judgment, 15 July 1999, para.229; *Prosecutor v. Simić*, IT-95-9-A, Judgment, 28 November 2006, para.85; *Prosecutor v. Seromba*, ICTR-2001-66-A, Judgment, 12 March 2008, para.139; *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgment, 28 November 2007, para.482; *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 2006, para.370; *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A, ICTR-96-17-A, Judgment, 13 December 2004, para.530; *Prosecutor v. Karera*, ICTR-01-74-A, Judgment, 2 February 2009, para.321.