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*Croatia and the Post-Yugoslav Condition: Legal and Political Aspects*

# The War in Croatia: Temporal Application of Conventional Rules Prohibiting International Crimes

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*Summary*

The author discusses the applicability of international law concerning armed conflicts and especially the provisions about war crimes and crimes against humanity in the war in Croatia. After presenting the relevant information about the origin and the course of the war in Croatia, he argues that all rules prohibiting international crimes (war crimes and crimes against humanity) are applicable irrespective of the status of armed conflicts in Croatia. Every international crime remains a crime irrespective of date and place of its committal. Therefore it must be expected that both authorities of Serbia and Montenegro and the commanders of the Federal Army must be held responsible and prosecuted for the crimes committed by the regular Army forces as well as by irregular Serbian paramilitaries which they supplied with food, arms and ammunition.

## *The Law in Force between Conflicting Parties*

Besides customary rules of general international law, and in particular the "Martens Clause" from the preamble of the Fourth Hague Convention of 1907 Respecting the Laws and Customs of War on Land[1], the former Socialist Federal Republic of Yugoslavia (SFRY) was a party to all four Geneva Conventions on Humanitarian Law of 12 August 1949, They are as follows:

- Convention for the Amelioration of the Conditions of Wounded and Sick in Armed Forces in the Field (the first Convention);

[1] This clause in English translation reads: "... in cases not included in the Regulations... The inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." The substance of this rule was confirmed in denunciation clauses of all four 1949 Geneva Conventions, and in Article 1 (2) of the 1977 Protocol I.

- Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwecked Members of Armed Forces at Sea (the second Convention);

- Convention Relative to the Treatment of Prisoners of War (the third Convention); and

- Convention Relative to the Protection of Civilian Persons in Time of War (the fourth Convention)).

The SFRY ratified four Geneva Conventions on 28 March 1950. They entered into force on 21 April 1950.

The SFRY was in addition a party to both Protocols Additional to the above Geneva Conventions:

- Protocol I relating to the Protection of Victims of International Armed Conflicts; and

- Protocol II relating to the Protection of Victims of Non-International Armed Conflicts.

The SFRY ratified these two Protocols on 26 December 1978, and they entered into force on 11 June 1979.

The reservations of the SFRY in respect of the duties of Protective Power (on Article 10 of the first Convention; on Article 10 of the second Convention; on Articles 10 and 12 of the third Convention; and on Articles 11 and 45 of the last Convention of 1949), have lost their legal effect after it ratified the Protocol I and Protocol II without any reservations.

The SFRY was in addition a party to most of human rights conventions concluded under the auspices of the United Nations. Conventions relevant for this analysis, and of which the SFRY was a party, are the following:

- Convention on the Prevention and Punishment of the Crime of Genocide of 1948; ratified by it on 29 August 1950; entered into force on 12 January 1951;

- Convention on the Elimination of All Forms of Racial Discrimination of 1965; ratified on 2 October 1967; entered into force on 4 January 1969;

- International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973; ratified by it on 1 July 1975; entered into force on 18 July 1976;

- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968; ratified by it on 9 June 1970; entered into force on 26 November 1968.

All ratifications of the above human rights conventions were done without reservations or objections.

By virtue of the legal principle enshrined in Article 34 (1) of the 1978 Viena Convention on Succession of States in Respect of Treaties, all these conventions continue to be in force in regard to all successor States of former SFRY, regardless of any notification to depositaries on their side.

Because the exact dates of dissolution of the SFRY, and of creation of newly independent successor States, might be a matter of dispute, it is important to stress here that since the beginning of the armed conflict on its soil up to the present date, all these conventions remained in force without interruption, as international instruments governed by the law of treaties.

It was the case *inter alia* of Article 1 of the Convention on the Non-Applicability of Statutory Limitations. Although specifying that-"No statutory limitations shall apply" to two categories of international crimes, and "irrespective of the date of their commission", this provision makes an important distinction. Only in regard to crimes against humanity it was stressed in its sub-paragraph (b) that they can be "committed in time of war or in time of peace". In regard to war crimes such a qualification is missing in its sub-paragraph (a). A restrictive interpretation of this provision could lead to the conclusion that "war crimes" can be committed only in a situation of a recognized international armed conflict.

The aggressive war, especially against Croatia-with the aim of the conquest of its territories and of "ethnic cleansing" of them, had several different phases.[2] These phases would seem, at the first glance at least, to be relevant for application of different categories of rules of humanitarian law, and even of those relating to war crimes.

## *A Brief Summary of Facts and on Applicable Legal Rules*

After the first free elections in Croatia, which took place between 22 April and 7 May 1990, its first non-communist Parliament and Executive power were constituted. At that time Yugoslavia was still a Federation with Croatia as one of its component States.

Before these events, in March 1989 the autonomy of the Province of Kosovo within that Federation was illegally and by brute military and police force suppressed. These far reaching changes were obviously accomplished against the will of its Albanian population, which forms the majority of 90 % in total population of this Province. The Governments in the Province of Voyvodina and in the Republic of Montenegro where in like manner overthrown by organizing mob violences, in October 1988 and in January 1989 respectively.

Subsequently to these illegitimate changes it became impossible to restore the subtle balance between Republics and Provinces on which the Yugoslav Federation relied, as well as the equilibrium between its nations and nationalities (minorities). As a consequence, Yugoslavia itself as a State could not be preserved anymore by democratic changes of Federal institutions. That proved true latter on also in the Soviet Union and even in Czecho-Slovakia.

It was obvious that after free elections Federal authorities and particularly the "Yugoslav People's Army" (JNA), still under strong communist influence, did not recognize in practice the legality of non-communist Governments in Slovenia and Croatia.

1. The aggression against Croatia virtually started with the riot of fractions of Serbian population near Knin in Croatia on 17 August 1990, by erection of barricades and cutting of communications.

[2] For the development of political crisis and conflict since 1986 and until 5 March 1992, see - Paul Garde: *Vie et mort de la Yugoslavie*, Paris (Fayard) 1992, pp. 251-334. See also the chronology at the end of the book, pp. 427-430.

At that very moment the situation was as described in Article 2 (1) of the 1977 Protocol II as:

"... internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of similar nature, as not being armed conflicts."

Although no rules of international law on armed conflicts apply on these situations, but only municipal law of the State concerned, "the human person remains under the protection of the principles of humanity and the dictates of the public conscience", as provides the preamble of the Protocol II.

The JNA has, however, prevented the Croatian authorities-under whose competence according to Federal laws fall these situations-to intervene, and even to reach a political understanding with Serbian Community on its own status in Croatia.

The JNA had allegedly the task to separate "conflicting parties". But in soon became obvious that wherever a few Serbian attacked Croatian police units or premises, the JNA occupied the region in question which was lost for Croatian authorities, because it had no access on it. That was a kind of effective conquest of Croatian territory before a full-scale aggression by the JNA started.

At that initial period there were no human losses, nor even substantial damages of property. But a considerable loss of Croatian income from tourist industry has been deliberately inflicted. Some foreign tourists were plundered by rebels when returning home from the Adriatic Coast in panic.

2. The foregoing situation lasted only for a few weeks. Side by side with efforts of Croatia and Slovenia to reshape Yugoslavia into a confederation of sovereign and equal States, a "referendum" for Serbian autonomy was organized in the ethnically mixed region of Knin.[3] The right to participate was given only to Serbs, being residents there, or those who arrived or just happened to be there at that time. That "referendum" took place on 2 September 1990. Soon after that "Militia of the Serbian Autonomous Region of Krayina", composed of rebelled policeman, was organized under the leadership of Milan Martić.

Since then, this local riot evolved into a "non-international armed conflict". Article 3 common to four 1949 Geneva Conventions, and the 1977 Protocol II as a whole, became applicable.

According to Article 1 (1) of the said Protocol II, non-international armed conflicts are such:

"... which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concentrated military operations and to implement this Protocol."

[3] In history there has never existed areas within actual borderlines of Croatia, settled exclusively by Serbian population. Before this war started, in the beginning of 1991, only in 11 out of 115 communes of Croatia Serbs constituted a numeric majority of up to 70 %. However, about 30 % of Croats lived even in communes such as Knin. In parts of Eastern Slavonia now under Serbian occupation in the beginning of 1991 lived less than 20 % of Serbs in total population.

In a loose Federation such as the SFRY, the status of three armed forces on Croatian soil was at that time not clear enough. It is only clear that the open rebellion started on 17 August 1990.

Formally speaking, the JNA seems to be the regular armed force of the "High Contracting Party" of the Protocol II, which was then the SFRY. The highest civil commander of the JNA according to Article 313 (3) of the Federal Constitution was the Presidency of Yugoslavia, composed of eight Members, one from each Republic and Autonomous Province. The President of the Presidency at that time was Mr. Borislav Jović from Serbia. Even then not all Members of the Federal Presidency were informed about all decisions in regard to the JNA. A secret body of top Army officers was organized, which non-Serbian Members had no knowledge of.

From the aspects of Serbian members of Federal Presidency and of the JNA, the "Croatian Guard", being an armed police force under the command of Croatian legitimate Government, was probably a "dissident armed force". In the view of the democratically elected Croatian Government it the Martić's Militia organized on Croatian soil.

Meanwhile, the dissolution of Yugoslav Federation was in full progress. On 15 May 1991, the term of presidency of Borislav Jović expired. The pre-established turn for this post was on the Croatian Member Mr. Stjepan Mesić. By the blockade on the part of the Members from Serbia, Voyvodina, Kosovo i Montenegro (in the meantime the Serbian Parliament illegally destituted the Member of Yugoslav Presidency from Kosovo, and appointed a person of its choice), Mr. Mesić was not elected on 17 May.

That was the virtual end of the Yugoslav Federation. As a consequence, the JNA remained without its constitutional commander in chief.[4]

The matter was in fact of a *coup d'Etat* organized and perpetrated jointly by the leaderships of Serbia and Montenegro, and supported by the JNA.

3. Following referendums in Slovenia and Croatia-with participation of all their citizens-the parliaments of these two Republics declared independence on 25 June 1991. In carrying out the decisions from the Brioni Declaration, both Republics suspended their declarations of independence for three months, and confirmed them 8 October 1991.[5]

[4] The subsequent election of Mr. Mesić to the Federal Presidency by intervention of the European Community and in pursuance of the Brioni Agreement of 7 July 1991, had no effect on that situation. The JNA simply ignored him and did not recognize his competencies as the President of Presidency. They followed only the commands of Members of the Presidency appointed by parliaments of Serbia (one for Serbia itself, another for Kosovo), of Voyvodina and of Montenegro.

[5] These events were established in the Opinion No. 1 of Arbitration Commision within the Conference on Yugoslavia, of 29 November 1991. This and other opinions will be soon published in *International Legal Materials 1992*, No. 6. The main documents on declaration of independence by Croatia and of breaking its relations with the former SFRY were published in-Zvonimir Šeparović (Ed.): *Documenta Croatica, On Croatian History and Identity and the War against Croatia*, Second Edition, Zagreb 1992, pp. 131-139.

After fulfilling conditions prescribed by the European Community in its Declaration on Yugoslavia and in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union of 16 December 1991, these two States gained international recognition by a large number of States since 15 January 1992.[6] Together with Bosnia and Herzegovina they were admitted to membership of the United Nations on 22 May 1992.

On the following day after proclamation of independence, 26 June 1991, the JNA committed a short-lived aggression against Slovenia. Since mid-August 1992, the disguised intervention in favour of Serbian rebels by the JNA, has transformed into its open and full-scale aggression against Croatia.

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The disintegration of Yugoslavia was therefore a continuous process.[7] It started with the forceable constitutional changes in Serbia, Kosovo and Voyvodina in March 1989. It Clear that after 17 May 1991 the JNA has lost the appearance of a legitimate armed force of the Yugoslav Federation.

Therefore, it can be a matter of dispute at what time the "non-international" armed conflict, especially in Croatia, became an international one, on which all four 1949 Geneva Conventions and the 1977 Protocol I apply. It could be already 17 May, or 25 June.

It is important to note here that by Geneva Memorandum of Understanding of 27 November 1991, the representatives of the Federation, of Serbia and Croatia, agreed that wounded, sick and shipwercked persons, captured combatants and civilians will be treated according to provisions from respective Geneva Conventions and the Protocol I. This document referred in addition to the Hague statement of 5 November, signed by the Presidents of the six Republics "undertaking to respect and ensure respect of international humanitarian law."

It is maybe more a dispute of principles than of facts in regard to the rhythm of crimes committed.

The first conflict between Croatia police and rebelled Serbian militia with three causalities happened on 31 March 1991 at Plitvice. On 2 May thirteen Croatian policemen were massacred and four civilians killed by Serbian rebels at Borovo Selo in Eastern Slavonia near Vukovar. On 6 May, during a manifestations in Split, A Federal soldier of Macedonian was killed in Split.

[6] The applications for recognition were considered by the Arbitration Commision. The recognition was granted on the basis of favourable assessments by this Commission in its Opinion No. 5 for Croatia, and its Opinion No. 7 for Slovenia, both of 11 January 1992. The Commission has also concluded in its Opinion No. 6 of the same date that the Republic of Macedonia satisfies the same conditions for recognition.

[7] The Arbitration Commision has established in its Opinion No. 1 of 29 November 1991 that the SFRY was "in the process of dissolution". It has further concluded in its Opinion No. 8 of 4 July 1992, that this process of dissolution "is now completed and that the SFRY no longer exists". Cf., Degan, V., D., Yugoslavia in Dissolution, *Croatian Political Science Review*, 1992, (Zagreb), No. 1, pp. 20-32.

The first large scale massacre of Croatian civilians has occurred on 2 August 1991 at village of Dalj in Eastern Slavonia. But after that day there were more and more frequent exemplary massacres of helpless civilians in different regions of Croatia intended to spread panic and thus force others to take refuge from their homes and property. This practice, which was latter on called "ethnic cleansing", became far more widespread during the Serbian aggression of Bosnia and Herzegovina. Most of these dreadful acts were probably committed by Serbian irregulars or militiamen.

However, as will be seen, massacres of civilians are crimes against humanity, even if committed in time of peace. Therefore, the dates of crimes propertrated Croatia policemen and soldiers are more important for our analysis.

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In this respect it seems important to discuss the relationship of the JNA and Serbian militia and Serbian irregulars of various kinds and under different appellations and symbols, who were ostensibly not parts of the JNA.

It is undisputable that the JNA, being a regular force of the former Yugoslav Federation, was in all phases on that conflict legally bound by all provisions of the "Geneva Law", comprising under this term all 1949 Geneva Conventions and both 1977 Protocols.

Under Article 86 of the Protocol I, the High Contracting Parties and the Parties to the conflict are in particular obliged to repress grave breaches of the rules from these Conventions.[8] According to its Article 87, the duty of military commanders is to repress and prevent breaches of the Convention and of the Protocol-with respect to members of the armed forces under their command, - "and other persons under their control".[9]

The JNA with its commanders is therefore responsible for crimes committed by all Serbian militiamen and paramilitaries whenever it supplied them with food, arms or ammunition, and especially it did not prevent them from committing these unlawful acts.

The duty for reparation of losses lies, however, on Serbia and Montenegro. The leaderships of these two Republics exercised virtual control over the JNA during all phases of the armed conflict on Yugoslav soil. Ultimately the JNA became the armed force of their still unrecognized "Federal Republic of Yugoslavia" under a new name: "The Army of Jugoslavia".

In addition, the responsible authorities of Serbia and Montenegro did nothing to prevent Serbian paramilitaries and individual war criminals to enter from their soil to Croatia and Bosnia and Herzegovina and to commit their crimes. The leaderships of these two Republics instigated riots and commission of crimes. They

[8] On the scope of these obligations, including the duty of suppressing breaches resulting from failures to act, see-*Commentary on the Additional Protocol of 8 June 1977*, I.C.R.C., Geneva 1987, pp. 1005-1016.

[9] See on this duty in particular, *ibid.*, p. 1020.

especially inspired the practice of ethnic cleansing of non-Serbian population. For these reasons the UN Security Council ordered sanctions against these two Republics under Chapter VII of the UN Charter.

*Relationship of Municipal and International Law*

In this analysis we took into consideration some acts of violation of the Federal Constitutional Law, and constitutional changes in successor States of former SFRY. Yet by doing so we did not challenge the dualistic view of the Arbitration Commission, in particular in its Opinion No. 1 of 29 November 1991.

When establishing that the SFRY was "in process of dissolution", the Commission stated in paragraph 1)a) of its Opinion the following:

"a) that the answer to the question should be based on the principles of public international law which serve to define the conditions on which an entity constitutes a State; that in this respect, the existence or disappearance of State is a question of fact; that the effects or recognition by other States are purely declaratory;" and

"c) that, for the purpose of applying these criteria, the form of international political organization and the constitutional provisions are mere facts, although it is necessary to take them into consideration in order to determine the Government's sway over the population and the territory;".[10]

Especially important for this analysis is the further finding of the Commission from sub-paragraph d) of this Opinion:

"d) that in the case of a federal-type State, which embraces communities that possess a degree of autonomy and, moreover, participate in the exercise of political power within the framework of institutions common to the Federation, the existence of the State implies that the federal organs represent the components of the Federation and wield effective power;".

And in this respect, in sub-paragraph b) of paragraph 2), the Commission has concluded that:

"The composition and working of the essential organs of the Federation, be they the Federal Presidency ... or the Federal Army, no longer meet the criteria of participation and representativeness inherent in a federal State; ...".

It is a pity that the Arbitration Commission could not establish the precise date on which the aforementioned events have occurred.

[10] This doctrine was even better expressed in the following quotation of the Judgement of the Permanent Court of International Justice on *Certain German interests in Polish Upper Silesia* (merits), of 25 May 1926: "... From the standpoint of International Law and of the Court which is its organ, municipal laws are merely facts which express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures. The Court is certainly not called upon to interpret the Polish law as such; but there is nothing to prevent the Court's giving judgment on the question whether or not, in applying that law, Poland is acting in conformity with its obligations towards Germany under the Geneva Convention." (*P.C.I.J., Series A*, No. 7, p. 19)

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Although international law, as it currently stands, does not spell out all implications of application of rules of international law of war on an armed conflict which is in its initial phase a civil strife, some facts should not be neglected here.

Within a complex and multiethnic Federation like the former SFRY, the leadership of one of its component parts (Serbia) has undertaken or inspired a sequence of unconstitutional changes in order to impose its power over the rest of them. It has succeeded to usurp the power in Voyvodina, Kosovo and Montenegro. As a consequence, it won half of posts in the Federal Presidency, as well as the decisive influence over the JNA.

After these changes, this force has committed armed aggression-which cannot be justified neither by Jugoslav, nor by international law-first against Slovenia i Croatia, and in 1992 against Bosnia and Herzegovina. The latest aggression was perpetrated as an undisguised response to successful referendum of citizens of Bosnia and Herzegovina for independence, which was recommended by the Arbitration Commission i its Opinion No. 4 of 11 January 1992.

For all these aggressive acts Serbia and Montenegro are now subject to the UN sanctions under Chapter VII of the UN Charter.[11]

Therefore, any successor State of former SFRY of which Serbia and/or Montenegro will be parts, will bear responsibility for international criteria and for damages inflicted so far in Slovenia, Croatia and Bosnia and Herzegovina. The international community is now preparing new measures against these two Republics in order to prevent them from further aggressive acts against Macedonia, Kosovo, Voyvodina, or even in its ethnically mixed non-autonomous area of Sanddak.

*Crimes against Humanity and War Crimes*

The entire text of Article 1 of the 1968 Convention on the Non-Applicability of Statutory Limitations, reads as follows:

"No statutory limitations 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, Nürnberg, of 8 August 1945 and confirmed by resolutions 3(I) of 13 February 1946 and 95(I) 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, Nürnberg, of 8 August 1945 and confirmed by resolutions 3(I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United

[11] A large scale of economic and diplomatic sanctions, as well as these in regard to sporting events, technical cooperation and cultural exchange, were imposed by the Security Council Resolutions 757 of 30 May 1992, and 787 (paras. 9 and 10) of 16 November 1992.

Nations, eviction by armed attack or occupation and inhuman 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 domestic law of the country i which they were committed."

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Let us first analyze crimes against humanity which are according to the aforementioned provision absolutely prohibited in time of war, as well as in time of peace. The said Charter of the Nürnberg Tribunal defines them namely as:

"... murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

The crime of genocide was defined in Article II of the said 1948 Convention, as follows:

"In the present Convention, genocide means any of following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups, as such:

a) Killing members of the group;
b) Causing serious bodily on the group conditions of life calculated to bring about its physical destruction in whole or in part;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group."

According to Article III, punishable are a) genocide itself; b) conspiracy to commit genocide; c) direct and public incitement to commit genocide; d) attempt to commit genocide; and e) complicity in genocide.

Because the SFRY was also party to the Apartheid Convention of 1973, which has entered into force after adoption of the 1968 Convention of the Non-Applicability of Statutory Limitations, its complicated and rather descriptive definition of *apartheid* in Article II will be applicable on all successor States of the former SFRY as well. Articles I and III of the 1973 Apartheid Convention also apply here.

These crimes against humanity are punishable as such, whenever they were committed, therefore in all phases if the armed conflict on the soil of former SFRY, and even before also apply here.

It should be pointed out that although the main victim of these crimes is supposed to be civilian population, all civilian goods are not under protection of rules prohibiting this crime. For instance, launching indiscriminate attack affecting the civilian population or civilian objects "in the knowledge that such attack will

cause excessive loss of life, injury to civilians or damage to civilian objects", which would be excessive in relation to the concrete an direct military advantage,[12] is obviously a war crime. But it is perhaps not a crime against humanity in all circumstances. The same goes for a deliberate destruction of historic monuments, works of art or places of worship belonging to the ethnic or other group which the aggressive part in war considers to be its "enemy".

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The definition of war crimes attracts our attention in particular from theaspects of the problem of their perpetration in time.

The 1945 Charter of the Nürnberg Tribunal defines war crimes namely as:

"... violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostaged, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity."

This definition, although not precise enough, nor even all-embracing, is a useful guidance on what the war crimes are. More exhaustive are however provisions from four 1949 Geneva Conventions prohibiting reprisals,[13] and these qualifying their "grave breaches".[14] Both qualifications are in fact synonymous to war crimes.

However, after the Convention on the Non-Applicability of Statutory Limitations has been adopted in 1968, the Protocol I of 1977 has more extensively defined "grave breaches", and it also extended provisions prohibiting reprisals.[15] These

[12] Cf. Article 85 (3) (b) and Article 57 (2) (a) (iii) of the 1977 Protocol I.

[13] Article 46 of the first Convention and Article 47 of the second Convention prohibit reprisals against the wounded, sick and shipwrecked persons and against personnel, buildings or equipment protected by these Conventions, i.e. medical units and establishments including medical and religious personnel. Article 13 (3) of the third Convention prohibits measures of reprisals against prisoners of war. Finally, Article 33 (3) of the fourth Convention prohibits reprisals against protected persons and their property, i.e. persons who find themselves in case of a conflict or occupation in the hands of a State of which they are not nationals.

[14] "Grave breachnes" are defined in Article 50 of the first Convention, and Article 51 of the second Convention, Article 130 of the third Convention, and Article 147 of the fourth Convention. They are as follows: wilful killing, torture or inhuman treatment including biological experiments, wilfully causing great suffering or serious injury to body or health; compelling a prisoner of war or civilian to serve in the forces of the hostile Power, or wilfully depriving him of his rights of fair and regular trial; or unlawful deportation or transfer or unlawful confinement of a civilian; taking of hostages; and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

[15] Rules on prohibition of reprisals are provided in Articles 52 to 56 of the Protocol I. This prohibition is extended to all civilian objects, cultural objects and places of worship, objects indispensable to the survival of the civilian population, and works and installations containing dangerous forces.

broader definitions of war crimes subsequently bind all parties of the said 1977 Protocol I. The former SFRY was among them, and after its dissolution all its successor States are among them now.

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Now we come to the main problem of the evolution of the armed conflict on the soil of the former SFRY. Can war crimes, as being crimes under international law, be committed only during a recognized "international armed conflict?"

Namely, provisions concerning prohibition of reprisals and "grave breaches" are not set forth in Article 3 common to four 1949 Geneva Conventions, nor in the 1977 Protocol II. These provisions relating to "non-international armed conflicts" are summary in their content. They equally do not provide rules on missing and dead persons, on prisoners-of-war, or on occupation. Even their respective rules on humane treatment, wounded, sick and shipwrecked persons and on protection of civilian population, are much condensed, although basically not different from more detailed written rules applicable to international armed conflicts.

And because paragraph a) of Article of the 1968 Convention on the Non-Applicability of Statutory Limitation does not expressly provide that war crimes can be committed in time of peace, would it be a sufficient argument for an allegation that some means and methods of warfare were legitimate as long as the armed conflict in Croatia was "non-international', and that they became "war crimes" and as such punishable, since this war became recognized as an international armed conflict?

Such an interpretation of Article of the said 1968 Convention seems to lead to a result which is manifestly absurd or unreasonable, for the following reasons:

1. Already in respect of the rules prohibiting the crime of genocide, which, it is true, do not create problems with their temporal application, the International Court of Justice has established some principles which relate in our view to all kinds of international crimes.

In its Advisory Opinion of 28 May 1951 the Court asserted in regard to the conception underlying the 1948 Genocide Convention, that the matter is of:

> "... principles which are recognized by civilized nations as binding on States, even without any conventional obligations ...", because this international crime by its inhumane consequences "shocks the conscience of making and results in great losses to humanity, and ... is contrary to moral law and to the spirit and aims of the United Nations."[16]

Therefore all international crimes, including crimes against humanity, but also "war crimes", are prohibited because of their evil consequences-wherever and

In Article 11 (2) the Protocol I extends "grave breaches" in particular to physical mutilations, medical or scientific experiments, and removal of tissue or organs for transplantation. Its Article 68 (3) and (4) defines more precisely some above mentioned grave breaches of four Conventions and this Protocol "shall be regarded as war crimes".

[16] Cf., I.C.J. Reports 1951, p. 23.

whenever committed-and not because a group of States have defined them in a convention in one way or another.

That is *a fortiori* true for murder, ill treatment of civilians or other guiltless persons, or for plundering of public or private property. These acts are crimes according to penal legislation of all civilized States.

Hence it would be absurd to pretend that the same acts were prohibited by municipal law of the former SFRY before the armed conflict has started in Croatia; that they became permitted against one or against both conflicting parties during the period of "non-international armed conflict" in Croatia; and that they became punishable as international crimes since this strife got form of "international armed conflict".[17]

Whether in some phase of evolution of this conflict the Protocol II or the Protocol I were applicable, is inconclusive in regard to the binding force of peremptory norms of general international law (*jus cogens*) prohibiting all kinds of international crimes.

2. The subtle difference in qualification of war crimes and of crimes against humanity in Article 1 of the said 1968 Convention was probably a result of compiling some earlier international instruments by its drafters.

As it was seen, the Charter of Nürnberg Tribunal had stressed only in regard to crimes against humanity that they could be committed "before or during the war", and "whether or not in violation of the domestic law of the country where perpetrated". The first part of this qualification is repeated also in Article I of the 1948 Genocide Convention.

The fact that the international crimes qualified as "war crimes" are not exactly prohibited in international instruments relating to "non-international armed conflict" does not prove that the intention of parties of the 1968 Convention was to permit them during that phase of the conflict, or even in time of peace.

Hence, every international crime remains a crime, irrespective of date or place of its committal.

3. Finally, all kinds of war crimes and of crimes against humanity were expressly prohibited by the domestic law of the former SFRY. They formed the Chapter XI of the Criminal Law of the SFRY, entitled: "Crimes against Humanity and International Law."

In addition, the "Instructions on Application of Rules of International Law of War in Armed Forces of the Socialist Federal Republic of Yugoslavia",[18] is one of the best and most recent restatements of this part of international law in the

[17] Such an interpretation would be obviously contrary to the initial part of Article 1 of the 1968 Convention on Non-Applicability of Statutory Limitations. For both war crimes and crimes against humanity it prescribes that statutory limitations shall not apply, "irrespective of the date of their commission".

[18] "Uputstvo o primeni pravila međunarodnog ratnog prava u Oružanim snagama Socijalističke Federativne Republike Jugoslavije". Its second version was published in "*Službeni vojni list*" (Military Official Gazette), No. 7 of 28 April 1988, and was signed by the Federal Secretary for National Defence, Colonel General Veljko Kadijević.

world. It provides rules on non-international armed conflicts (paragraph 16), and especially detailed provisions expressly prohibiting war crimes (paragraphers 32 to 35).

Thus, no commanding officer of the JNA will be in a position to successfully disclaim his criminal responsibility, when his committal or failures to act have resulted in violations of these rules of his own country, which are the same as peremptory norms of general international law (*jus cogens*).